

DOMICILE

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TABLE OF CORRESPONDING SECTIONS

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I. IN GENERAL

§ 1. Scope of Title

This title deals with the legal concept of home or places of fixed habitation of individuals. It also discusses the nature, acquisition, and change of such habitation, in general.

Subjects which are excluded from this title and treated elsewhere include the domicile of corporations;¹ and the application of the law of domicile for particular purposes or to particular subjects.²

§ 2. General Considerations

While the meaning of domicile and the basic principles for determining domicile are the same regardless of the context in which the issue of domicile arises, the concept of domicile must be applied flexibly case by case.

Research Note

Domicile and citizenship are discussed in C.J.S. Citizens § 5.

Library References

Domicile ⇨1.

The meaning of domicile and the basic principles for determining domicile are the same regardless of the context in which the issue of domicile arises.³ However, though domicile has been viewed as a unitary concept, rules for determining domicile may be applied differently because of particular circumstances.⁴ The determination of domicile is depen-

dent on the facts of a particular case,⁵ and the concept of domicile must be applied flexibly case by case.⁶

What law governs.

The question of domicile is to be determined by the law of the forum.⁷

§ 3. Definition

Domicile is the legal conception of home, and the relation created by law between an individual and a particular locality or country. The term has been variously defined, the definitions agreeing substantially on the elements of a true, fixed home, habitation, or abode, where a person intends to remain permanently or indefinitely, and to which, whenever absent, he intends to return.

Library References

Domicile ⇨1.

The term "domicile" may have a variety of significations dependent on its various applications;⁸ and it has been said that an exact and comprehensive definition is difficult to formulate,⁹ and could not be given or agreed on.¹⁰

The word "domicile" is derived from the Latin "domus," meaning a home or dwelling house.¹¹ Domicile is the legal conception of home,¹² and the term "home" is frequently used in defining or describing the legal concept of domicile.¹³

1. See C.J.S. Corporations.
2. See C.J.S. titles Conflict of Laws, Elections, Venue, War and National Defense, Wills, and other specific topics.
3. Md.—Toll v. Moreno, 397 A.2d 1009, 284 Md. 425.
4. Md.—Toll v. Moreno, 397 A.2d 1009, 284 Md. 425.

No absolute criteria

Statute pertaining to determination of residence for purposes of voting does not establish absolute criteria for determining residence or domicile.

- Neb.—Dilsaver v. Pollard, 214 N.W.2d 478, 191 Neb. 241.
5. La.—Slocum v. DeWitt, App., 374 So.2d 755, writ denied 375 So.2d 1182.
 - Pa.—Civil Service Com'n of City of Pittsburgh v. Parks, 471 A.2d 154, 80 Pa.Cmwlth. 134.
 6. U.S.—Rabinowitz v. New Jersey State Bd. of Educ., D.C.N.J., 550 F.Supp. 481.
 - La.—Calix v. Souza, App. 5 Cir., 467 So.2d 1369.
 7. Mo.—Turner v. Turner, App., 637 S.W.2d 764.
 - Pa.—Greenwood v. Hildebrand, 515 A.2d 963, 357 Pa.Super. 253, appeal denied 528 A.2d 602, 515 Pa. 594.
 8. Fla.—Smith v. Croom, 7 Fla. 81.

- Kinds of domicile see *infra* §§ 6–9.
9. Mass.—Tuelle v. Flint, 186 N.E. 222, 283 Mass. 106.
 10. Ind.—Croop v. Walton, 157 N.E. 275, 199 Ind. 262, 53 A.L.R. 1386.
 - Ky.—Stair's Adm'r v. Commonwealth, 239 S.W. 40, 194 Ky. 316.
 - Me.—Mather v. Cunningham, 74 A. 809, 105 Me. 326.
 - Mass.—Thorndike v. City of Boston, 1 Metc. 242.
 - Or.—Stewart v. Stewart, 242 P. 852, 117 Or. 157.
 - Va.—Cooper's Adm'r v. Commonwealth, 93 S.E. 680, 121 Va. 338.
 11. Fla.—Minick v. Minick, 149 So. 483, 111 Fla. 469.
 12. Fla.—Minick v. Minick, 149 So. 483, 111 Fla. 469.
 - Idaho—MacLeod v. Stelle, 249 P. 254, 43 Idaho 64.
 - Wis.—In re Heymann's Will, 208 N.W. 913, 190 Wis. 97.
 13. Fla.—Minick v. Minick, 149 So. 483, 111 Fla. 469.

Definitions

- (1) "Domicile" is that place where a person has his true, fixed and permanent home.
- Neb.—Gosny v. Department of Public Welfare, 291 N.W.2d 708, 206 Neb. 137.

Domicile is the relation which the law creates between an individual and a particular locality or country.¹⁴ A comprehensive definition of domicile is¹⁵ in a strict legal sense, the place where a person

has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning.¹⁶ The place

Pa.—*McKenna v. McKenna*, 422 A.2d 668, 282 Pa.Super. 45.

(2) "Domicile" means a person's permanent place of residence.

Iowa—Iowa Beef Processors, Inc. v. Miller, 312 N.W.2d 530.

(3) A person's domicile is in the parish wherein he has his principal establishment, that being the parish in which he makes his habitual residence.

La.—*LaFleur v. Seaboard Fire & Marine Ins. Co.*, App., 296 So.2d 860, writ refused 300 So.2d 185.

(4) Where there are multiple residences, "domicile" is that place which subject regards as his true and permanent home.

N.J.—*Citizens Bank & Trust Co. v. Glaser*, 357 A.2d 753, 70 N.J. 72.

"Summer home"

"Coupled with the word 'summer' the word 'home' prima facie ... [loses] its domiciliary force."

N.J.—*In re Gilbert's Estate*, 15 A.2d 111, 18 N.J.Misc. 540.

"Dwelling," "dwelling house," and "dwelling place"

(1) "Dwelling house" and "dwelling" are synonymous with "domicile."

Or.—*McFarlane v. Cornelius*, 73 P. 325, 74 P. 468, 43 Or. 513.

(2) "Domicile ... [is] a dwelling place."

Idaho—*MacLeod v. Stelle*, 249 P. 254, 43 Idaho 64.

Principal domestic establishment

(1) "Domicile" is person's principal domestic establishment, as contrasted to business establishment.

La.—*Messer v. London*, 438 So.2d 546.

(2) Person's domicile is principal establishment wherein he makes his habitual residence.

La.—*Veillon v. Veillon*, App. 3 Cir., 517 So.2d 936, writ denied 519 So.2d 105.

Business residence

Fact that a person has a business residence in a community is a circumstance or factor to be considered in determining domicile or residence generally.

Tex.—*A & M Const. Co. v. Davidson*, Civ.App., 485 S.W.2d 375.

14. U.S.—*AFCO Steel, Inc. v. TOBI Engineering, Inc.*, C.A.5(La.), 893 F.2d 92.

Fla.—*Minick v. Minick*, 149 So. 483, 111 Fla. 469.

La.—*Succession of Purdy v. Klock*, 155 So. 394, 179 La. 902.

Ohio—*Snelling v. Gardner*, 10 Dist., 590 N.E.2d 330, 69 Ohio App.3d 196.

Definitions involving legal relationship

(1) "Domicile" implies a nexus between person and place of such performance as to authorize control of legal status, relationship and responsibilities of the domiciliary.

Tex.—*Dosamantes v. Dosamantes*, Civ.App., 500 S.W.2d 233, error dismissed.

(2) "Domicile is the place where the law regards the person to be, whether or not he is corporeally found there."

U.S.—U.S. ex rel. *Devenuto v. Curran*, C.C.A.N.Y., 299 F. 206.

(3) Domicile means "that place to which a man's rights and obligations of citizenship are referred, and by which his legal status, public and private, is determined."

Ky.—*Johnson v. Harvey*, 88 S.W.2d 42, 261 Ky. 522.

Definitions involving political rights

(1) Domicile is the place where a man establishes his abode, makes the seat of his property, and exercises his civil and political rights.

Fla.—*Smith v. Croom*, 7 Fla. 81.

Pa.—*Chase v. Miller*, 41 Pa. 403.

(2) Where a party has two residences at different seasons of the year, "that will be esteemed his domicile which he himself selects, or describes, or deems to be his home, or which appears to be the center of his affairs, or where he votes or exercises the rights and duties of a citizen."

Miss.—*McHenry v. State*, 80 So. 763, 119 Miss. 289.

Mo.—*Chariton County v. Moberly*, 59 Mo. 238.

15. Miss.—*Hairston v. Hairston*, 27 Miss. 704.

16. U.S.—U.S. ex rel. *Patti v. Curran*, D.C.N.Y., 22 F.2d 314.

In re McQueen, Bkrcty.Vt., 27 B.R. 717, affirmed 34 B.R. 702.

Ala.—*Basiouny v. Basiouny*, Civ.App., 445 So.2d 916.

Fla.—*Housey v. Rutter*, 166 So. 558, 123 Fla. 156.

Hawaii—*In re Estate of Grant*, 34 Haw. 559.

Ill.—*In re Marriage of Goldstein*, 423 N.E.2d 1201, 53 Ill.Dec. 397, 97 Ill.App.3d 1023.

Ind.—*Matter of Adoption of T.R.M.*, 525 N.E.2d 298, rehearing denied, certiorari denied *J.O. v. D.R.L.*, 109 S.Ct. 2072, 490 U.S. 1069, 104 L.Ed.2d 636.

Iowa—*In re Colburn's Estate*, 173 N.W. 35, 186 Iowa 590.

La.—*Temple v. Jackson*, App., 376 So.2d 972.

Miss.—*Clay v. Clay*, 99 So. 818, 134 Miss. 658.

Mo.—*Byars v. Byars*, App., 593 S.W.2d 656.

N.J.—*Matter of Unanue*, 605 A.2d 279, 255 N.J.Super. 362.

N.Y.—*Will of Brown*, 505 N.Y.S.2d 334, 132 Misc.2d 811.

N.C.—*Howard v. Queen City Coach Co.*, 193 S.E. 138, 212 N.C. 201.

Okla.—*Suglove v. Oklahoma Tax Commission*, 605 P.2d 1315.

Pa.—*In re Dorrance's Estate*, 163 A. 303, 309 Pa. 151, certiorari denied *Dorrance v. Commonwealth of Pennsylvania*, 53 S.Ct. 222, 287 U.S. 660, 77 L.Ed. 570, and 53 S.Ct. 507, 288 U.S. 617, 77 L.Ed. 990.

S.C.—*Nagy v. Nagy-Horvath*, 257 S.E.2d 757, 273 S.C. 583.

Tenn.—*Brown v. Hows*, 42 S.W.2d 210, 163 Tenn. 178.

where a man lives is properly taken to be his domicile until the facts adduced establish the contrary.¹⁷

Domicile has also been defined as that place in which a person's habitation is fixed, without any present intention of removing therefrom,¹⁸ and that place is properly the domicile of a person in which he has voluntarily fixed his abode,¹⁹ or habitation,²⁰ not for a mere special or temporary purpose, but with a present intention of making it his permanent home.

Domicile has been defined, in terms of its elements, as residence or physical presence at a particular place, accompanied by an intention, either positive or presumptive, to remain there permanently or for an indefinite or unlimited length of

time;²¹ the essential elements of domicile are separately considered in subsequent sections.

§ 4. Domicile and Residence Distinguished

- a. In general
- b. Use of terms in statutes

a. In General

While "domicile" and "residence" are frequently used synonymously, they are not, in precise usage, convertible terms; "domicile" is a larger term, of more extensive signification, while "residence" is of a more temporary character. One may have his residence in one place while his domicile is in another, and may have more than one residence at the same time, but only one domicile.

Library References

Domicile ⇐=2.

While the terms "domicile" and "residence" or "legal residence" are frequently used synonymously-

Vt.—Piche v. Department of Taxes, 565 A.2d 1283, 152 Vt. 229.
Wash.—Spielman v. Spielman, 258 P. 37, 144 Wash. 421.

Place of citizenship

A person's place of citizenship is his domicile, i.e., where he has his true, fixed home and principal establishment, and to which, whenever he is absent, he has the intention of returning.

U.S.—Vitro v. Town of Carmel, D.C.N.Y., 433 F.Supp. 1110.

17. U.S.—District of Columbia v. Murphy, App.D.C., 62 S.Ct. 303, 314 U.S. 441, 86 L.Ed. 329.

Where household established

Domicile is based upon where a person sleeps, takes his meals, has established his household, and surrounds himself with his family and the comforts of life.

La.—Charbonnet v. Hayes, App., 318 So.2d 917, application denied 320 So.2d 201.

18. Ala.—Ex parte State ex rel. Altman, 188 So. 685, 237 Ala. 642.

Fla.—Minick v. Minick, 149 So. 483, 111 Fla. 469.

N.J.—Matter of Unanue, 605 A.2d 279, 255 N.J.Super. 362.

N.Y.—Will of Brown, 505 N.Y.S.2d 334, 132 Misc.2d 811.

N.C.—Howard v. Queen City Coach Co., 193 S.E. 138, 212 N.C. 201.

Tex.—Martin v. State, Civ.App., 75 S.W.2d 950.

Vt.—Piche v. Department of Taxes, 565 A.2d 1283, 152 Vt. 229.

Indefinite period

"Domicile" consists of actual residence within a state with the intention of making that state one's permanent home or one's home for an indefinite period.

U.S.—Rosenstiel v. Rosenstiel, D.C.N.Y., 368 F.Supp. 51, affirmed 503 F.2d 1397.

Statutory definition

Statute defining domicile as "A fixed, permanent and principal home to which a person wherever temporarily located always intends to return" codifies case law under which domicile is the place which the testator intends to make his home indefinitely.

N.Y.—Matter of Brunner's Estate, 363 N.E.2d 346, 41 N.Y.2d 917, 394 N.Y.S.2d 621.

19. Fla.—Minick v. Minick, 149 So. 483, 111 Fla. 469.

20. Conn.—Mills v. Mills, 179 A. 5, 119 Conn. 612.

Mont.—State ex rel. Duckworth v. District Court of Seventeenth Judicial Dist., 80 P.2d 367, 107 Mont. 97.

N.J.—In re Gilbert's Estate, 15 A.2d 111, 18 N.J.Misc. 540.

Pa.—In re McKinley's Estate, 337 A.2d 851, 461 Pa. 731.

Similar definitions

(1) Both words "domicile" and "inhabitant" mean substantially same thing; one is inhabitant of or domiciled in given place if he resides there actually and permanently.

N.C.—Sherwood v. Sherwood, 223 S.E.2d 509, 29 N.C.App. 112.

(2) "Inhabitant" is one who resides actually and permanently in a given place and has his domicile there.

Neb.—In re Guardianship of La Velle, 230 N.W.2d 213, 194 Neb. 91.

Inhabitant as domiciliary

An inhabitant is a domiciliary of the Commonwealth.

Mass.—Custody of a Minor (No. 3), 468 N.E.2d 251, 392 Mass. 728.

21. U.S.—U.S. v. Scott, D.C.Ill., 472 F.Supp. 1073, affirmed 618 F.2d 109, certiorari denied 100 S.Ct. 1650, 445 U.S. 962, 64 L.Ed.2d 238.

In re Wellberg, Bkrtcy.Va., 12 B.R. 48.

Ala.—Basiouny v. Basiouny, Civ.App., 445 So.2d 916.

Cal.—In re Wanomi P., 2 Dist., 264 Cal.Rptr. 623, 216 C.A.3d 156, review denied, certiorari denied Mic Mac Nation v. Giesler, 111 S.Ct. 57, 498 U.S. 816, 112 L.Ed.2d 33.

Fla.—Minick v. Minick, 149 So. 483, 111 Fla. 469.

Idaho—MacLeod v. Stelle, 249 P. 254, 43 Idaho 64.

La.—Veillon v. Veillon, App. 3 Cir., 517 So.2d 936, writ denied 519 So.2d 105.

N.J.—Eckman v. Grear, 187 A. 556, 14 N.J.Misc. 807.

N.Y.—Cincinnati, H. & D. R. Co. v. Ives, 3 N.Y.S. 895.

N.C.—Industrial Discount Corp. v. Radecky, 170 S.E. 640, 205 N.C. 163.

Tex.—Cauble v. Gray, Civ.App., 604 S.W.2d 197.

Va.—State—Planters Bank & Trust Co. of Richmond v. Commonwealth, 6 S.E.2d 629, 174 Va. 289.

W.Va.—Lotz v. Atamaniuk, 304 S.E.2d 20, 172 W.Va. 116.

ly, or said to be synonymous,²² and "residence" and "legal residence" have been defined in language similar to that used in defining "domicile,"²³ "domi-

cile" and "residence" are not, when accurately and precisely used, convertible²⁴ or identical²⁵ terms. "Domicile" is a larger term, of more extensive

22. U.S.—U.S. ex rel. Devenuto v. Curran, C.C.A.N.Y., 299 F. 206. Colo.—Fangman v. Moyers, 8 P.2d 762, 90 Colo. 308.

Fla.—Walker v. Harris, App., 398 So.2d 955.

Hawaii—In re Estate of Grant, 34 Haw. 559.

Idaho—Reubelmann v. Reubelmann, 220 P. 404, 38 Idaho 159.

Ind.—Croop v. Walton, 157 N.E. 275, 199 Ind. 262.

Mich.—Leader v. Leader, 251 N.W.2d 288, 73 Mich.App. 276.

Mo.—Fowler v. Clayton School Dist., App., 528 S.W.2d 955.

N.Y.—Dublin v. Dublin, 270 N.Y.S. 22, 150 Misc. 694.

N.D.—Matter of Estate of Burshiem, 483 N.W.2d 175.

Okla.—Southwestern Greyhound Lines v. Craig, 80 P.2d 221, 182 Okl. 610.

R.I.—Soucy v. Knight, 161 A. 132, 52 R.I. 405.

Tenn.—Coke v. Coke, App., 560 S.W.2d 631.

"Reside," "resident"

The words "reside" or "resident" mean domicile unless a contrary intent is shown.

Md.—Dorf v. Skolnik, 371 A.2d 1094, 280 Md. 101.

Bona fide residence

In determining bona fide residence, the search in each instance is for the state to which the person is most closely related at the time.

U.S.—Ramey v. Rockefeller, D.C.N.Y., 348 F.Supp. 780.

23. U.S.—In re Kalpachnikoff, D.C.Pa., 28 F.2d 288.

Alaska—White's Guardian v. Martin, 2 Alaska 495.

Ariz.—Hiatt v. Lee, 61 P.2d 401, 48 Ariz. 320, 107 A.L.R. 444.

Ill.—Anderson v. Pifer, 146 N.E. 171, 315 Ill. 164, 37 A.L.R. 134.

Kan.—Roberts v. Robertson, 254 P. 1026, 123 Kan. 222.

Mich.—Leader v. Leader, 251 N.W.2d 288, 73 Mich.App. 276.

Miss.—Collier v. Chamblee, 101 So. 372, 136 Miss. 257.

Neb.—In re Meyers' Estate, 288 N.W. 35, 137 Neb. 60.

N.J.—Brown v. Brown, 165 A. 643, 112 N.J.Eq. 600.

N.M.—Perez v. Health and Social Services, App., 573 P.2d 689, 91 N.M. 334, certiorari denied 576 P.2d 297, 91 N.M. 491.

N.Y.—Cincinnati, H. & D.R. Co. v. Ives, 3 N.Y.S. 895.

N.C.—Howard v. Queen City Coach Co., 193 S.E. 138, 212 N.C. 201.

N.D.—Dietz v. City of Medora, 333 N.W.2d 702.

Okla.—Southwestern Greyhound Lines v. Craig, 80 P.2d 221, 182 Okl. 610.

Similar definitions in terms of elements

(1) Establishment of residence requires concurrence of physical presence in location and intent to remain there either permanently or for indefinite period of time.

Kan.—Matter of Phillips' Estate, 604 P.2d 747, 4 Kan.App.2d 256.

(2) Continuous personal presence and intention establish residency.

Wis.—Eastman v. City of Madison, App., 342 N.W.2d 764, 117 Wis.2d 106.

(3) In order to have one's residence in a certain place, one must both establish a physical presence there and have the intent to make that location his permanent residence.

Ill.—Miller v. Police Bd., City of Chicago, 349 N.E.2d 544, 38 Ill. App.3d 894.

24. U.S.—Mississippi Band of Choctaw Indians v. Holyfield, Miss., 109 S.Ct. 1597, 490 U.S. 30, 104 L.Ed.2d 29.

Baker v. Keck, D.C.Ill., 13 F.Supp. 486.

Conn.—Clegg v. Bishop, 136 A. 102, 105 Conn. 564.

Fla.—Minick v. Minick, 149 So. 483, 111 Fla. 469.

Ga.—Avery v. Bower, 152 S.E. 239, 170 Ga. 202.

Idaho—Reubelmann v. Reubelmann, 220 P. 404, 38 Idaho 159.

Ill.—Pope v. Board of Election Com'rs, 18 N.E.2d 214, 370 Ill. 196.

Ind.—Croop v. Walton, 157 N.E. 275, 199 Ind. 262, 53 A.L.R. 1386.

Iowa—Turner v. Ryan, 272 N.W. 60, 223 Iowa 191, 110 A.L.R. 554.

Kan.—Ford v. Peck, 225 P. 1054, 116 Kan. 74, rehearing denied 227 P. 527, 116 Kan. 481.

Ky.—Johnson v. Harvey, 88 S.W.2d 42, 261 Ky. 522.

La.—Werner v. Department of Police, App. 4 Cir., 435 So.2d 475, writ denied 441 So.2d 751.

Mass.—Tuelle v. Flint, 186 N.E. 222, 283 Mass. 106.

Miss.—Collier v. Chamblee, 101 So. 372, 136 Miss. 257.

N.Y.—Dublin v. Dublin, 270 N.Y.S. 22, 150 Misc. 694.

N.C.—Howard v. Queen City Coach Co., 193 S.E. 138, 212 N.C. 201.

N.D.—McEwen v. McEwen, 197 N.W. 862, 50 N.D. 662.

Ohio—Larrick v. Walters, 177 N.E. 642, 39 Ohio App. 363, 10 Ohio Law Abs. 500.

Pa.—Greenwood v. Hildebrand, 515 A.2d 963, 357 Pa.Super. 253, appeal denied 528 A.2d 602, 515 Pa. 594.

Tenn.—Howell v. Moore, 14 Tenn.App. 594.

Va.—State-Planters Bank & Trust Co. of Richmond v. Commonwealth, 6 S.E.2d 629, 174 Va. 289.

At common law

"Residence" and "domicile" are not synonymous terms at common law.

Ariz.—St. Joseph's Hosp. and Medical Center v. Maricopa County, 688 P.2d 986, 142 Ariz. 94.

Crucial distinction

Amount of time person spends at one or the other place is not decisive in determining whether that place is person's residence or home/domicile; intent to return and remain is the crucial distinction between the two concepts.

N.Y.—S. Axelrod Co., Inc. v. Mel Dixon Studio, Inc., 471 N.Y.S.2d 945, 122 Misc.2d 770.

Differences on ground of intent

(1) Intent is relevant to question of domicile when party has more than one residence or has departed from residence for temporary stay elsewhere with intent of returning, but it has far less to do with concept of residency.

Ark.—Davis v. Holt, 804 S.W.2d 362, 304 Ark. 619.

(2) "Domicile" means living in a locality with the intent to make it a fixed and permanent home, while "residence" simply requires bodily presence as an inhabitant in a given place.

U.S.—Wolinsky v. Bradford Nat. Bank, D.C.Vt., 34 B.R. 702.

N.Y.—S. Axelrod Co., Inc. v. Mel Dixon Studio, Inc., 471 N.Y.S.2d 945, 122 Misc.2d 770.

signification,²⁶ and has been said to be used more in reference to personal rights, duties, and obligations;²⁷ and residence is of a more temporary character than domicile.²⁸

That "domicile" is not necessarily synonymous with "residence" or that there is a difference in

meaning between "residence" and "domicile" is shown by the fact that a person may have his residence in one place while his domicile is in another,²⁹ and that he may have more than one residence at the same time,³⁰ but, as appears *infra* § 5, only one domicile.

(3) "Residence" denotes one's permanent abode, while "domicile" is a place where a person lives and has his true permanent home and to which he intends to return whenever he is absent.

Ill.—In re Marriage of Weiss, 409 N.E.2d 329, 42 Ill.Dec. 714, 87 Ill.App.3d 643, appeal after remand 472 N.E.2d 128, 84 Ill.Dec. 378, 129 Ill.App.3d 166.

(4) Domicile and residence are two separate concepts; domicile includes residence but it also includes added element of intent to make residence one's principal establishment.

La.—Gowins v. Gowins, 466 So.2d 32.

Residency

"Residency" signifies living in particular locality while "domicile" means living in that locality with intent to make it a fixed and permanent home.

Tex.—Schreiner v. Schreiner, Civ.App., 502 S.W.2d 840, dismissed.

25. N.Y.—417 East Realty Associates, Ryan, 442 N.Y.S.2d 880, 110 Misc.2d 607.

More stringent test for domicile

Test for domicile is generally more stringent than test for mere residence.

U.S.—Pitts v. Black, D.C.N.Y., 608 F.Supp. 696.

26. Fla.—Minick v. Minick, 149 So. 483, 111 Fla. 469.

Iowa—Edmundson v. Miley Trailer Co., 211 N.W.2d 269.

Mich.—Hartzler v. Radeka, 251 N.W. 554, 265 Mich. 451.

N.Y.—Cincinnati, H. & D.R. Co. v. Ives, 3 N.Y.S. 895.

Ohio—In re Palmer's Estate, 28 Ohio N.P.N.S. 200.

Va.—State-Planters Bank & Trust Co. of Richmond v. Commonwealth, 6 S.E.2d 629, 174 Va. 289.

Domicile as including residence

While domicile and residence are not synonymous terms, domicile includes residence.

La.—Menard v. Zeno, App. 3 Cir., 558 So.2d 744, writ denied 561 So.2d 121.

N.C.—Davis by Davis v. Maryland Cas. Co., 331 S.E.2d 744, 76 N.C.App. 102.

27. Fla.—Minick v. Minick, 149 So. 483, 111 Fla. 469.

28. U.S.—Owens v. Huntling, C.C.A.Or., 115 F.2d 160.

Fla.—Minick v. Minick, 149 So. 483, 111 Fla. 469.

Idaho—Reubelmann v. Reubelmann, 220 P. 404, 38 Idaho 159.

Ky.—Louisville & N.R. Co. v. Mitchell, 172 S.W. 527, 162 Ky. 253.

Mass.—Tuelle v. Flint, 186 N.E. 222, 283 Mass. 106.

N.Y.—Maloney v. Maloney, 22 N.Y.S.2d 334, affirmed 29 N.Y.S.2d 419, 262 A.D. 936, affirmed 41 N.E.2d 934, 288 N.Y. 532.

N.C.—Industrial Discount Corp. v. Radecky, 170 S.E. 640, 205 N.C. 163.

For the time being

(1) Under Indiana law, person can be a resident simply by having a fixed abode in a household, even if "only for the time being."

U.S.—Allstate Ins. Co. v. Shockley, S.D.Ind., 793 F.Supp. 852, affirmed 980 F.2d 733.

(2) Residence usually includes intent to live in place for time being; domicile means permanent place of habitat.

Ga.—Smiley v. Davenport, 229 S.E.2d 489, 139 Ga.App. 753.

Domiciliary, residency

"Domiciliaries" are those who have fixed, permanent and principal home to which they always intend to return, but "residency" means established abode that is permanent for time for personal or business reasons.

U.S.—Rosario v. I.N.S., C.A.2 (N.Y.), 962 F.2d 220.

29. U.S.—Mississippi Band of Choctaw Indians v. Holyfield, Miss., 109 S.Ct. 1597, 490 U.S. 30, 104 L.Ed.2d 29.

Rosario v. I.N.S., C.A.2(N.Y.), 962 F.2d 220—In re Brannock, D.C.Iowa, 131 F. 819.

In re Carl, Bkrcty.N.D.Ill., 142 B.R. 257.

Fla.—Gordon v. Gordon, App., 369 So.2d 421.

Ind.—Croop v. Walton, 157 N.E. 275, 199 Ind. 262, 53 A.L.R. 1386.

Iowa—Turner v. Ryan, 272 N.W. 60, 223 Iowa 191, 110 A.L.R. 554.

Ky.—United Pipeline Const. Co. v. Kaelin, App., 602 S.W.2d 176.

La.—McMahon v. Louisiana Ins. Guar. Ass'n, App. 1 Cir., 596 So.2d 1384, writ denied 604 So.2d 970.

Mass.—Tuelle v. Flint, 186 N.E. 222, 283 Mass. 106.

Miss.—Collier v. Chamblee, 101 So. 372, 136 Miss. 287.

N.Y.—In re Curtiss' Will, 250 N.Y.S. 146, 140 Misc. 185.

Ohio—In re Palmer's Estate, 28 Ohio N.P.N.S. 200.

Tex.—Evans v. American Pub. Co., 13 S.W.2d 358, 118 Tex. 433, rehearing denied 16 S.W.2d 516, 118 Tex. 433 and 16 S.W.2d 984.

Va.—State-Planters Bank & Trust Co. of Richmond v. Commonwealth, 6 S.E.2d 629, 174 Va. 289.

Wis.—In re Heymann's Will, 208 N.W. 913, 190 Wis. 97.

30. U.S.—Bank One, Texas, N.A. v. Montle, C.A.1(Mass.), 964 F.2d 48, opinion after remand 974 F.2d 220—Rosario v. I.N.S., C.A.2(N.Y.), 962 F.2d 220.

Ala.—Ex parte Bullen, 181 So. 498, 236 Ala. 56.

Cal.—In re Marriage of Tucker, 4 Dist., 277 Cal.Rptr. 403, 226 C.A.3d 1249, review denied.

Conn.—Smith v. Smith, 389 A.2d 756, 174 Conn. 434.

Fla.—Minick v. Minick, 149 So. 483, 111 Fla. 469.

Ga.—Griffin v. State Farm Mut. Auto. Ins. Co., 199 S.E.2d 101, 129 Ga.App. 179.

Hawaii—In re Estate of Grant, 34 Haw. 559.

Ind.—Hayward v. Hayward, 115 N.E. 966, 65 Ind.App. 440, rehearing denied 116 N.E. 746, 65 Ind.App. 440.

Iowa—In re Jones' Estate, 182 N.W. 227, 192 Iowa 78, 16 A.L.R. 1286.

Ky.—Hite's Adm'r v. Hite's Ex'r, 97 S.W.2d 811, 265 Ky. 786.

La.—Martin v. Willis, App. 2 Cir., 584 So.2d 1192.

Me.—Margani v. Sanders, 453 A.2d 501.

Md.—Shenton v. Abbott, 15 A.2d 906, 178 Md. 526.

Neb.—State v. Jones, 275 N.W.2d 851, 202 Neb. 488.

N.J.—In re Dorrance's Estate, 170 A. 601, 115 N.J.Eq. 268, supplemented 172 A. 503, 116 N.J.Eq. 204, sustained Dorrance v. Martin,

An "address" where mail or other communications will reach a person is not a domicile and may be other than his residence.³¹

b. Use of Terms in Statutes

The terms "domicile" and "residence," as used in statutes, are commonly, although not necessarily, construed as synonymous.

Whether the term "residence," as used in a statute, will be construed as having the meaning of "domicile," or the term "domicile" construed as "residence," depends on the purpose of the statute and the nature of the subject matter, as well as the context in which the term is used.³² It has been declared that the terms "residence" and "domicile" are almost universally used interchangeably in stat-

utes,³³ and that since domicile and legal residence are synonymous, the statutory rules for determining the place of residence are the rules for determining domicile.³⁴ However, it has been held that "residence," when used in statutes, is generally interpreted by the courts as meaning "domicile," but with important exceptions.³⁵

Accordingly, whenever the terms "residence" and "domicile" are used in connection with subjects of domestic policy, the terms are equivalent,³⁶ as they also are, generally, where a statute prescribes residence as a qualification for the enjoyment of a privilege or benefit,³⁷ or the exercise of a franchise.³⁸ "Residence" as used in various particular statutes has been considered synonymous with "domicile."³⁹ However, the terms are not neces-

176 A. 902, 13 N.J.Misc. 168, affirmed 184 A. 743, 116 N.J.Law 362, certiorari denied 56 S.Ct. 949, 298 U.S. 678, 80 L.Ed. 1399, rehearing denied 56 S.Ct. 957, 298 U.S. 692, 80 L.Ed. 1410.

N.Y.—Laufer v. Hauge, 2 Dept., 528 N.Y.S.2d 878, 140 A.D.2d 671, appeal dismissed 531 N.E.2d 659, 72 N.Y.2d 1041, 534 N.Y.S.2d 939.

N.D.—Matter of Estate of Burshiem, 483 N.W.2d 175.

Ohio—Hill v. Blumenberg, 19 Ohio App. 404.

Or.—Eli Bridge Co. v. Lachman, 265 P. 435, 124 Or. 592.

Pa.—Rodgers v. Commonwealth, Unemployment Compensation Bd. of Review, 397 A.2d 1286, 40 Pa.Cmwlth. 552.

Tenn.—Brown v. Brown, 261 S.W. 959, 150 Tenn. 89.

Tex.—Pittsburg Water Heater Co. of Texas v. Sullivan, 282 S.W. 576, 115 Tex. 417.

Va.—State-Planters Bank & Trust Co. of Richmond v. Commonwealth, 6 S.E.2d 629, 174 Va. 289.

W.Va.—Lotz v. Atamaniuk, 304 S.E.2d 20, 172 W.Va. 116.

Wis.—In re Village of Chenequa, 221 N.W. 856, 197 Wis. 163.

Children of divorced parents

A child, can have more than one "residence" as distinguished from a "domicile" and that is particularly true of minor child of divorced or estranged parents.

U.S.—Aetna Cas. & Sur. Co. v. Shambaugh, N.D.W.Va., 747 F.Supp. 1203.

Tex.—Hartford Cas. Ins. Co. v. Phillips, Civ.App., 575 S.W.2d 62.

More than one abode or dwelling

A person may have several places of abode or dwelling.

Md.—Bainum v. Kalen, 325 A.2d 392, 272 Md. 490.

31. Wash.—State v. Morgan, 646 P.2d 1387, 32 Wash.App. 236.

32. U.S.—U.S. ex rel. Devenuto v. Curran, C.C.A.N.Y., 299 F. 206.

Ala.—Baker v. Conway, 108 So. 18, 214 Ala. 356.

Fla.—Evans v. Evans, 194 So. 215, 141 Fla. 860.

Ill.—In re Quinn's Estate, 283 Ill.App. 597.

Mich.—School Dist. No. 1 Fractional of Mancelona Tp. v. School Dist. No. 1 of Custer Tp., 211 N.W. 60, 236 Mich. 677.

N.Y.—Rawstorne v. Maguire, 192 N.E. 294, 265 N.Y. 204.

Pa.—Hunter v. Bremer, 100 A. 809, 256 Pa. 257.

Va.—Wilkinson v. Spiller, 129 S.E. 235, 143 Va. 267.

33. N.Y.—In re Bennett's Estate, 238 N.Y.S. 723, 135 Misc. 486.

Same connotations

Generally, statutory usage of term "resident" carries same connotations as term "domicile."

Ariz.—St. Joseph's Hosp. and Medical Center v. Maricopa County, 688 P.2d 986, 142 Ariz. 94.

Convertible terms

Terms "residence" and "domicile," as used in statutes, are generally convertible terms.

Neb.—Gosney v. Department of Public Welfare, 291 N.W.2d 708, 206 Neb. 137.

34. N.D.—Matter of Estate of Burshiem, 483 N.W.2d 175.

35. Iowa—Fisher & Van Gilder v. First Trust Joint-Stock Land Bank of Chicago, 231 N.W. 671, 210 Iowa 531, 69 A.L.R. 1340.

Different meanings of residence

"Residence" may mean a temporary, permanent or transient character or may mean one's fixed abode, depending on the purpose of the particular object, and in determining its meaning as it is used in particular pieces of legislation, its context within the statute and the legislative purpose are examined.

U.S.—In re McQueen, Bkrcty.Vt., 27 B.R. 717, affirmed Wolinsky v. Bradford Nat. Bank, 34 B.R. 702.

36. Fla.—Evans v. Evans, 194 So. 215, 141 Fla. 860.

When equivalent

When statutory use of "residence" is to be the equivalent of "domicile," there must be bodily presence in a place and an intention of remaining in that place; neither element alone is sufficient to create a legal residence.

U.S.—McDougald v. Jenson, D.C.Fla., 596 F.Supp. 680, affirmed 786 F.2d 1465, certiorari denied 107 S.Ct. 207, 479 U.S. 860, 93 L.Ed.2d 137, rehearing denied 107 S.Ct. 614, 479 U.S. 1001, 93 L.Ed.2d 611.

37. N.Y.—State v. Collins, 435 N.Y.S.2d 161, 78 A.D.2d 295.

38. Fla.—Evans v. Evans, 194 So. 215, 141 Fla. 860.

39. U.S.—Owens v. Huntling, C.C.A.Or., 115 F.2d 160.

Fla.—Evans v. Evans, 194 So. 215, 141 Fla. 860.

Hawaii—Zumwalt v. Zumwalt, 23 Haw. 376.

Idaho—Reubelmann v. Reubelmann, 220 P. 404, 38 Idaho 159.

Ill.—In re Estate of Elson, 2 Dist., 458 N.E.2d 637, 76 Ill.Dec. 237, 120 Ill.App.3d 649.

sarily synonymous.⁴⁰

§ 5. Necessity and Number

Every person must have a domicile somewhere, and, according to the common view, can have only one at any given time.

Library References

Domicile ⇄ 1.

It is a settled principle that every person must have a domicile somewhere.⁴¹ The law permits no

individual to be without a domicile,⁴² and an individual is never without a domicile somewhere.⁴³ Domicile is a continuing thing, and from the moment a person is born he must, at all times, have a domicile.⁴⁴

The common statement is that a person can have only one domicile at any given time;⁴⁵ however, it

Iowa—Fisher & Van Gilder v. First Trust Joint-Stock Land Bank, 231 N.W. 671, 210 Iowa 531, 69 A.L.R. 1340.

Kan.—Ford v. Peck, 225 P. 1054, 116 Kan. 74, rehearing denied 227 P. 527, 116 Kan. 481.

Ky.—Hite's Adm'r v. Hite's Ex'r, 97 S.W.2d 811, 265 Ky. 786.

La.—Barrow v. Barrow, 106 So. 705, 160 La. 91.

Md.—Shenton v. Abbott, 15 A.2d 906, 178 Md. 526.

Mass.—Inhabitants of Town of Plymouth v. Inhabitants of Town of Kingston, 193 N.E. 576, 289 Mass. 57.

Mich.—Gluc v. Klein, 197 N.W. 691, 226 Mich. 175.

Miss.—Bilbo v. Bilbo, 177 So. 772, 180 Miss. 536.

Mo.—In re Ozias' Estate, App., 29 S.W.2d 240.

Neb.—Mudge v. Mudge, 196 N.W. 706, 111 Neb. 403.

N.J.—Brown v. Brown, 165 A. 643, 112 N.J.Eq. 600.

N.Y.—In re Gifford's Will, 18 N.E.2d 663, 279 N.Y. 470.

N.D.—State ex rel. Sathre v. Moodie, 258 N.W. 558, 65 N.D. 340.

Ohio—In re Murray, 4 Ohio N.P., N.S., 233, affirmed 8 Ohio Cir.Ct. N.S. 498, 18 Ohio Cir.Dec. 652.

R.I.—Greene v. Willis, 133 A. 651, 47 R.I. 375.

Tenn.—Brown v. Brown, 261 S.W. 959, 150 Tenn. 89.

Tex.—Hill v. John W. Hunt & Son, Civ.App., 12 S.W.2d 638.

"Resident" as meaning "domiciled"

D.C.—Sweeney v. District of Columbia, 113 F.2d 25, 72 App.D.C. 30, certiorari denied 60 S.Ct. 1082, 310 U.S. 631, 84 L.Ed. 1402.

40. Fla.—Evans v. Evans, 194 So. 215, 141 Fla. 860.

Mich.—School Dist. No. 1, Fractional, of Mancelona Tp. v. School Dist. No. 1 of Custer Tp., 211 N.W. 60, 236 Mich. 677.

N.Y.—Kemp v. Kemp, 16 N.Y.S.2d 26, 172 Misc. 738.

Va.—Wilkinson v. Spiller, 129 S.E. 235, 143 Va. 267.

41. U.S.—Katz v. Goodyear Tire and Rubber Co., C.A.N.Y., 737 F.2d 238.

Conn.—McDonald v. Hartford Trust Co., 132 A. 902, 104 Conn. 169.

Ill.—Pope v. Board of Election Com'rs., 18 N.E.2d 214, 370 Ill. 196.

Iowa—Fisher & Van Gilder v. First Trust Joint-Stock Land Bank of Chicago, 231 N.W. 671, 210 Iowa 531, 69 A.L.R. 1340.

Ky.—Wheeler v. Burgess, 93 S.W.2d 351, 263 Ky. 693.

La.—Lorio v. Gladney, 97 So. 16, 153 La. 993.

Mass.—Commonwealth v. Davis, 187 N.E. 33, 284 Mass. 41.

Miss.—Weisinger v. McGehee, 134 So. 148, 160 Miss. 424.

N.Y.—In re Lydig's Estate, 180 N.Y.S. 843, 191 A.D. 117.

Or.—Stewart v. Stewart, 242 P. 852, 117 Or. 157.

Pa.—Commonwealth ex rel. Fortney v. Bobrofskie, 196 A. 489, 329 Pa. 44.

Tenn.—Hyder v. Hyder, 66 S.W.2d 235, 16 Tenn.App. 64.

Tex.—Pittsburg Water Heater Co. of Texas v. Sullivan, 282 S.W. 576, 115 Tex. 417.

Va.—Bowen v. Commonwealth, 101 S.E. 232, 126 Va. 182.

Wis.—In re Heymann's Will, 208 N.W. 913, 190 Wis. 97.

Same rule applied as to "legal residence"

Conn.—Town of Salem v. Town of Lyme, 29 Conn. 74.

Ky.—Hines v. Gaines, 232 S.W. 624, 192 Ky. 198.

Same rule applied as to "residence"

Ky.—Pettit's Ex'x v. City of Lexington, 237 S.W. 391, 193 Ky. 679.

Okl.—Richardson v. Gregg, 290 P. 190, 144 Okl. 102.

42. N.C.—Hall v. Wake County Bd. of Elections, 187 S.E.2d 52, 280 N.C. 600.

43. Ariz.—DeWitt v. McFarland, 537 P.2d 20, 112 Ariz. 33.

44. Ill.—In re Estate of Elson, 2 Dist., 458 N.E.2d 637, 76 Ill.Dec. 237, 120 Ill.App.3d 649.

45. U.S.—Hawes v. Club Ecuestre El Comandante, C.A.Puerto Rico, 598 F.2d 698.

Gallagher v. Carroll, D.C.N.Y., 33 F.Supp. 945.

Ala.—Ex parte Bullen, 181 So. 498, 236 Ala. 56.

Cal.—De La Montanya v. De La Montanya, 44 P. 345, 112 C. 101.

Conn.—Smith v. Smith, 389 A.2d 756, 174 Conn. 434.

Ga.—Avery v. Bower, 152 S.E. 239, 170 Ga. 202.

Hawaii—In re Estate of Grant, 34 Haw. 559.

Ill.—O'Boyle v. Personnel Bd. of City of Chicago, 1 Dist., 456 N.E.2d 998, 75 Ill.Dec. 177, 119 Ill.App.3d 648.

Ind.—Croop v. Walton, 157 N.E. 275, 199 Ind. 262, 53 A.L.R. 1386.

Iowa—Fisher & Van Gilder v. First Trust Joint-Stock Land Bank of Chicago, 231 N.W. 671, 210 Iowa 531, 69 A.L.R. 1340.

Ky.—Hite's Adm'r v. Hite's Ex'r, 97 S.W.2d 811, 265 Ky. 786.

La.—Gowins v. Gowins, 466 So.2d 32.

Mass.—Commonwealth v. Davis, 187 N.E. 33, 284 Mass. 41.

Md.—Shenton v. Abbott, 15 A.2d 906, 178 Md. 526.

Minn.—Mutual Service Cas. Ins. Co. v. Olson, App., 402 N.W.2d 621, review denied.

Miss.—Weisinger v. McGehee, 134 So. 148, 160 Miss. 424.

Mo.—In re Ozias' Estate, App., 29 S.W.2d 240.

N.J.—Matter of Unanue, 605 A.2d 279, 255 N.J.Super. 362.

N.Y.—S. Axelrod Co., Inc. v. Mel Dixon Studio, Inc., 471 N.Y.S.2d 945, 122 Misc.2d 770.

N.D.—B.R.T. v. Executive Director of Social Service Bd. North Dakota, 391 N.W.2d 594.

Ohio—Hill v. Blumenberg, 19 Ohio App. 404.

Okl.—Suglove v. Oklahoma Tax Commission, 605 P.2d 1315.

Or.—Eli Bridge Co. v. Lachman, 265 P. 435, 124 Or. 592.

has been said that a person may have only one domicile at the same time for the same purpose,⁴⁶ but that he may have two domiciles for some purposes.⁴⁷

§ 6. Kinds

Domicile may be divided into domicile of origin, domicile of choice, and domicile by operation of law.

Research Note

Extraterritorial domicile is considered in C.J.S. Conflict of Laws § 6.

Library References

Domicile 3-5.

Domicile is of three kinds; domicile of origin or birth, domicile by choice, and domicile by operation

of law,⁴⁸ which are separately considered in the next succeeding sections. The subject may also be classified territorially, as national and domestic,⁴⁹ or as national, quasi-national, and municipal⁵⁰ domicile. Again, it has been said that one may have a commercial, a political, or a forensic domicile, all of which may exist at one and the same time and in different localities.⁵¹

Elected domicile.

An elected domicile is the domicile of parties fixed in a contract between them for the purpose of such contract.⁵²

§ 7. — Domicile of Origin

A person's domicile of origin is the domicile of his parents, the head of his family, or the person on whom he is legally

Pa.—Commonwealth ex rel. Fortney v. Bobrofskie, 196 A. 489, 329 Pa. 44.

Tenn.—Brown v. Brown, 261 S.W. 959, 150 Tenn. 89.

Tex.—Pittsburg Water Heater Co. of Texas v. Sullivan, 282 S.W. 576, 115 Tex. 417.

Va.—Wilkinson v. Spiller, 129 S.E. 235, 143 Va. 267.

W.Va.—State v. Stalnaker, 412 S.E.2d 231, 186 W.Va. 233.

Wis.—In re Village of Chenequa, 221 N.W. 856, 197 Wis. 163.

Same rule as to "legal residence"

Ky.—Burr's Adm'r v. Hatter, 43 S.W.2d 26, 240 Ky. 721.

Miss.—McHenry v. State, 80 So. 763, 119 Miss. 289.

Tenn.—Boone v. Boone, 3 Tenn.App. 141.

Same rule as to "residence"

Ill.—Anderson v. Pifer, 146 N.E. 171, 315 Ill. 164, 37 A.L.R. 134.

Ky.—Pettit's Ex'x v. City of Lexington, 237 S.W. 391, 193 Ky. 679.

Mont.—Herrin v. Herrin, 63 P.2d 137, 103 Mont. 469.

N.D.—State ex rel. Sathre v. Moodie, 258 N.W. 558, 65 N.D. 340.

Same rule as to permanent residence

Ill.—Miller v. Police Bd., City of Chicago, 349 N.E.2d 544, 38 Ill. App.3d 894.

Many successive domiciles

A person in his lifetime may have many domiciles, one after another, if at each time he relocates himself he does so with intention of making new location his permanent home.

Ky.—Wheeler v. Burgess, 93 S.W.2d 351, 263 Ky. 693.

46. Conn.—McDonald v. Hartford Trust Co., 132 A. 902, 104 Conn. 169.

Ind.—Hayward v. Hayward, 115 N.E. 966, 65 Ind.App. 440, rehearing denied 116 N.E. 746, 65 Ind.App. 440.

Iowa.—In re Jones' Estate, 182 N.W. 227, 192 Iowa 78, 16 A.L.R. 1286.

Mass.—Hershkoff v. Board of Registrars of Voters of Worcester, 321 N.E.2d 656, 366 Mass. 570.

N.Y.—In re Lydig's Estate, 180 N.Y.S. 843, 191 A.D. 117.

Va.—State—Planters Bank & Trust Co. of Richmond v. Commonwealth, 6 S.E.2d 629, 174 Va. 289.

For venue purposes

A person can have only one domicile at a time for venue purposes.

U.S.—Whitehouse v. C.I.R., C.A.1, 963 F.2d 1, opinion amended.

In re Frame, Bkrcty.S.D.N.Y., 120 B.R. 718.

47. Ohio.—In re Palmer's Estate, 28 Ohio N.P.,N.S., 200.

48. Ind.—Matter of Adoption of T.R.M., 525 N.E.2d 298, rehearing denied, certiorari denied J.Q. v. D.R.L., 109 S.Ct. 2072, 490 U.S. 1069, 104 L.Ed.2d 636.

Iowa.—In re Jones' Estate, 182 N.W. 227, 192 Iowa 78, 16 A.L.R. 1286.

Ky.—Johnson v. Harvey, 88 S.W.2d 42, 261 Ky. 522.

Miss.—Weisinger v. McGehee, 134 So. 148, 160 Miss. 424.

N.C.—Thayer v. Thayer, 122 S.E. 307, 187 N.C. 573.

Tenn.—Hyder v. Hyder, 66 S.W.2d 235, 16 Tenn.App. 64.

Tex.—Pittsburg Water Heater Co. of Texas v. Sullivan, 282 S.W. 576, 115 Tex. 417.

49. La.—Succession of Steers, 18 So. 503, 47 La. Ann. 1551.

50. Distinction

"There may be 'national domicile,' relating to residence in a nation; 'quasi national domicile,' relating to residence in a state; or 'municipal domicile,' sometimes referred to as 'domestic domicile,' relating to residence in a county, township, or municipality. The first two are sometimes included in the term 'national domicile.'"

Ind.—Hayward v. Hayward, 115 N.E. 966, 65 Ind.App. 440, rehearing denied 116 N.E. 746, 65 Ind.App. 440.

No municipal domicile

"There is now no such thing in law as a domicile in a particular city. One is domiciled in a country or territory, although he may reside in a particular city. The contrary notion is to confuse domicile with residence."

N.Y.—In re Grant's Estate, 144 N.Y.S. 567, 83 Misc. 257.

51. Fla.—Smith v. Croom, 7 Fla. 81.

Domicile of succession

The "domicile of succession," as distinguished from a commercial, political, or forensic domicile, is the actual residence of a man within some particular jurisdiction, of such character as shall, in accordance with well established principles of the public law, give direction to the succession to his personal estates.

Fla.—Smith v. Croom, 7 Fla. 81.

52. N.Y.—Woodworth v. Bank of America, 19 Johns. 391.

dependent, at the time of his birth. It is generally, but not necessarily, the place of birth.

Library References

Domicile ⇨3.

A person acquires a domicile of origin at birth.⁵³ The law attributes to every individual a domicile of origin,⁵⁴ which is the domicile of his parents,⁵⁵ or of the father,⁵⁶ or of the head of his family,⁵⁷ or of the person on whom he is legally dependent,⁵⁸ at the time of his birth. While the domicile of origin is generally the place where one is born⁵⁹ or reared,⁶⁰ may be elsewhere.⁶¹

The domicile of origin has also been defined as the primary domicile of every person subject to the common law.⁶²

§ 8 — Domicile of Choice

A domicile of choice is the place which a person has chosen for himself to displace his previous domicile; it is based on the intention of the person.

53. U.S.—Mississippi Band of Choctaw Indians v. Holyfield, Miss., 109 S.Ct. 1597, 490 U.S. 30, 104 L.Ed.2d 29.

National Artists Management Co., Inc. v. Weaving, S.D.N.Y., 769 F.Supp. 1224.

54. Mass.—Commonwealth v. Davis, 187 N.E. 33, 284 Mass. 41. N.Y.—In re Lydig's Estate, 180 N.Y.S. 843, 191 A.D. 117.

55. Ga.—McDowell v. Gould, 144 S.E. 206, 166 Ga. 670. Iowa—In re Jones' Estate, 182 N.W. 227, 192 Iowa 78, 16 A.L.R. 1286. Pa.—Greenwood v. Hildebrand, 515 A.2d 963, 357 Pa.Super. 253, appeal denied 528 A.2d 602, 515 Pa. 594.

Child born out-of-wedlock

"In case of illegitimacy the domicile of origin [is] that of the mother."

N.C.—Thayer v. Thayer, 122 S.E. 307, 308, 187 N.C. 573.

Birthplace unknown

If the place of a person's birth is "not known, then . . . [his domicile] is the place of which . . . [he] has the earliest recollection, where he was first seen and known by others."

N.Y.—Matter of Bye, 2 Daly 525.

56. U.S.—Shishko v. State Farm Ins. Co., D.C.Pa., 553 F.Supp. 308, affirmed 722 F.2d 734 and Appeal of Shishko, 722 F.2d 734.

Legitimate child

Md.—Liberty Mut. Ins. Co. v. Craddock, 338 A.2d 363, 26 Md.App. 296.

Mass.—Hershkoff v. Board of Registrars of Voters of Worcester, 321 N.E.2d 656, 366 Mass. 570.

57. N.Y.—Cohen v. Delaware, L. & W.R. Co., 269 N.Y.S. 667, 150 Misc. 450.

S.C.—Cribbs v. Floyd, 199 S.E. 677, 188 S.C. 443.

Tenn.—Hyder v. Hyder, 66 S.W.2d 235, 16 Tenn.App. 64.

58. N.C.—Hall v. Wake County Bd. of Elections, 187 S.E.2d 52, 280 N.C. 600.

S.C.—Cribbs v. Floyd, 199 S.E. 677, 188 S.C. 443.

Research Note

Acquisition of, and capacity to acquire, a domicile are considered infra §§ 11-18.

Library References

Domicile ⇨4, 4(1).

A domicile of choice is the place which a person has elected and chosen for himself to displace his previous domicile;⁶³ it has for its true basis or foundation the intention of the person.⁶⁴

A person having more than one residence may choose which of them shall be his domicile,⁶⁵ and his choice is final if made in good faith,⁶⁶ although he may spend less time at his domicile than at his other residence.⁶⁷

§ 9. — Domicile by Operation of Law

Domicile by operation of law is that domicile which the law attributes to a person, independently of his own intention or actual residence. It ordinarily results from legal domestic relations.

Residence of custodial parent

Newborn child acquires residence of its custodial parent.

N.Y.—Westbury Union Free School Dist., Towns of North Hempstead and Hempstead v. Amityville Union Free School Dist., 431 N.Y.S.2d 641, 106 Misc.2d 189.

59. U.S.—Gregg v. Louisiana Power and Light Co., C.A.La., 626 F.2d 1315.

Ariz.—DeWitt v. McFarland, 537 P.2d 20, 112 Ariz. 33.

Ga.—McDowell v. Gould, 144 S.E. 206, 166 Ga. 670.

Ky.—Johnson v. Harvey, 88 S.W.2d 42, 261 Ky. 522.

Pa.—Greenwood v. Hildebrand, 515 A.2d 963, 357 Pa.Super. 253, appeal denied 528 A.2d 602, 515 Pa. 594.

60. Ky.—Johnson v. Harvey, 88 S.W.2d 42, 261 Ky. 522.

61. S.C.—Cribbs v. Floyd, 199 S.E. 677, 188 S.C. 443.

62. N.Y.—In re McElwaine's Will, 137 N.Y.S. 681, 77 Misc. 317.

63. Fla.—Wade v. Wade, 113 So. 374, 93 Fla. 1004.

Iowa—In re Jones' Estate, 182 N.W. 227, 192 Iowa 78, 16 A.L.R. 1286.

N.C.—Thayer v. Thayer, 122 S.E. 307, 187 N.C. 573.

64. Ind.—Croop v. Walton, 157 N.E. 275, 199 Ind. 262, 53 A.L.R. 1386.

65. N.J.—In re Dorrance's Estate, 170 A. 601, 115 N.J.Eq. 268, supplemented 172 A. 503, 116 N.J.Eq. 204, sustained Dorrance v. Martin, 176 A. 902, 13 N.J.Misc. 168, affirmed 184 A. 743, 116 N.J.Law 362, certiorari denied 56 S.Ct. 949, 298 U.S. 678, 80 L.Ed. 1399, rehearing denied 56 S.Ct. 957, 298 U.S. 692, 80 L.Ed. 1410, and certiorari denied Camden Safe Deposit & Trust Co. v. Martin, 56 S.Ct. 949, 298 U.S. 678, 80 L.Ed. 1399, and 56 S.Ct. 950, 298 U.S. 678, 80 L.Ed. 1399.

Pa.—In re Wimsor's Estate, 107 A. 888, 264 Pa. 522.

66. N.J.—Duke v. Duke, 62 A. 466, 70 N.J.Eq. 135, affirmed 65 A. 1117, 72 N.J.Eq. 434.

67. N.J.—Duke v. Duke, 62 A. 466, 70 N.J.Eq. 135, affirmed 65 A. 1117, 72 N.J.Eq. 434.

Research Note

Domicile of particular classes of persons is considered *infra* §§ 20-37.

Library References

Domicile ⇐5.

Domicile by operation of law is that domicile which the law attributes to a person, independently of his own intention or actual residence.⁶⁸ It is consequential, ordinarily resulting from legal domestic relations,⁶⁹ as that of the wife arising from marriage,⁷⁰ or the relation of parent and child.⁷¹

Whenever a person does not fix a domicile for himself, the law will fix one for him in accordance with the facts and circumstances of the case;⁷² and an infant's domicile will be fixed by operation of law where it cannot be determined from that of the parents.⁷³

§ 10. Residence on Boundary Line

Where a person's dwelling is on the boundary line between two localities, that portion which constitutes a habitation by itself, or in which the occupant mainly performs the offices characterizing his home, will be considered the domicile.

§ 11. In General

For the acquisition of a domicile of choice, actual residence or physical presence in a particular locality and intent to remain are required, or must concur. The intent to remain may be formed after removal to the new location.

Library References

Domicile ⇐1, 4(2).

68. Iowa.—*In re Jones' Estate*, 182 N.W. 227, 192 Iowa 78, 16 A.L.R. 1286.

N.Y.—*In re Lyon's Estate*, 191 N.Y.S. 260, 117 Misc. 189, affirmed 192 N.Y.S. 936, 200 A.D. 918.

N.C.—*Thayer v. Thayer*, 122 S.E. 307, 187 N.C. 573.

69. N.Y.—*In re Lyon's Estate*, 191 N.Y.S. 260, 117 Misc. 189, affirmed 192 N.Y.S. 936, 200 A.D. 918.

N.C.—*Thayer v. Thayer*, 122 S.E. 307, 187 N.C. 573.

70. Ky.—*Johnson v. Harvey*, 88 S.W.2d 42, 261 Ky. 522.

71. U.S.—*Linville v. Price*, D.C.W.Va., 572 F.Supp. 345.

Ky.—*Robinson v. Paxton*, 276 S.W. 500, 210 Ky. 575.

72. Ky.—*Ashland v. Catlettsburg*, 189 S.W. 454, 172 Ky. 364.

Tenn.—*Denny v. Sumner County*, 184 S.W. 14, 134 Tenn. 468.

73. Ky.—*Louisville & N.R. Co. v. Kimbrough*, 74 S.W. 229, 24 Ky.L.Rptr. 2409, 115 Ky. 512.

74. Cal.—*Gray v. O'Banion*, 138 P. 977, 23 C.A. 468, hearing denied 138 P. 981, 23 C.A. 468.

75. Cal.—*Gray v. O'Banion*, 138 P. 977, 23 C.A. 468, hearing denied 138 P. 981, 23 C.A. 468.

76. Mass.—*Abington v. North Bridgewater*, 23 Pick. 170.

Library References

Domicile ⇐6.

If the boundary line between two localities passes through the dwelling of a person whose domicile is at issue, and the portion of the house on one side of the line is sufficient to constitute a habitation by itself while the other portion is not, the first will be considered the domicile.⁷⁴ If the line divides more equally, then that portion is deemed the domicile in which the occupant mainly and substantially performs those offices which characterize his home, such as sleeping, eating, sitting, and receiving visitors;⁷⁵ but in the event of a still closer division, then that part where he habitually sleeps is so considered in the absence of other facts showing a positively contrary intention.⁷⁶ The location and uses of the different rooms in the house may be considered.⁷⁷

Where a house was on the boundary line between two counties, it was held that the owner might elect either county for his domicile, such election being evidenced by his acts and declarations of intent.⁷⁸

II. ACQUISITION OF DOMICILE**WESTLAW ELECTRONIC RESEARCH**

See WESTLAW Electronic Research Guide following Preface.

Domicile of choice is entirely a question of residence or physical presence and intention, or as it is frequently put, of factum and animus.⁷⁹ To constitute such a domicile, or to effect a change of domicile, there must appear both an actual resi-

77. Mass.—*Chenery v. Waltham*, 8 Cush. 327.

Vt.—*East Montpelier v. City of Barre*, 66 A. 100, 79 Vt. 542.

78. Pa.—*Follweiler v. Lutz*, 2 A. 721, 112 Pa. 107.

79. U.S.—*In re Ring*, Bkrtcy.E.D.Mo., 144 B.R. 446.

D.C.—*District of Columbia v. Woods*, App., 465 A.2d 385.

Iowa.—*In re Coldburn's Estate*, 173 N.W. 35, 186 Iowa 590.

N.Y.—*Minsky v. Tully*, 433 N.Y.S.2d 276, 78 A.D.2d 955.

Okl.—*Strathmann v. Kinkelaar*, 233 P. 215, 105 Okl. 290.

Essentially

Domicile is essentially comprised of the two elements of residence and intention.

Vt.—*Piche v. Department of Taxes*, 565 A.2d 1283, 152 Vt. 229.

Ultimate facts

Ultimate facts necessary to sustain a conclusion of domicile are physical presence in the state at some time and a concurrent intention to make the state one's home.

N.M.—*Worland v. Worland*, 551 P.2d 981, 89 N.M. 291.

dence or physical presence in a particular locality and an intention to remain there or to make it one's home,⁸⁰ or, as frequently stated, the fact of residence or physical presence and the intent to remain must concur, or be coupled, or be found together;⁸¹ and residence without intention or intention with-

out residence is of no avail.⁸² The same union of act and intent, or actual location in, or removal to, a particular place with intent to remain, has been required for "residence" or "legal residence," or a change thereof, in cases using those terms in the sense of domicile.⁸³

80. U.S.—Mississippi Band of Choctaw Indians v. Holyfield, Miss., 109 S.Ct. 1597, 490 U.S. 30, 104 L.Ed.2d 29—State of Texas v. State of Florida, Fla., Tex., 59 S.Ct. 563, 306 U.S. 398, 83 L.Ed. 817.

Bank One, Texas, N.A. v. Montle, C.A.1(Mass.), 964 F.2d 48, opinion after remand 974 F.2d 220.

National Artists Management Co., Inc. v. Weaving, S.D.N.Y., 769 F.Supp. 1224.

Ala.—Ex parte State ex rel. Altman, 188 So. 685, 237 Ala. 642.

Alaska—Sheley v. Alaska Bar Ass'n, 620 P.2d 640.

Ariz.—St. Joseph's Hosp. and Medical Center v. Maricopa County, 688 P.2d 986, 142 Ariz. 94.

Cal.—In re Marriage of Tucker, 4 Dist., 277 Cal.Rptr. 403, 226 C.A.3d 1249, review denied.

Conn.—Foss v. Foss, 136 A. 98, 105 Conn. 502.

D.C.—Stallforth v. Helvering, 77 F.2d 548, 64 App.D.C. 290, certiorari denied 56 S.Ct. 123, 296 U.S. 606, 80 L.Ed. 430.

Fla.—Wade v. Wade, 113 So. 374, 93 Fla. 1004.

Hawaii—In re Estate of Grant, 34 Haw. 559.

Ill.—Matter of Jackson's Estate, 363 N.E.2d 919, 6 Ill.Dec. 972, 48 Ill.App.3d 1035.

Ind.—State Election Bd. v. Bayh, 521 N.E.2d 1313.

Kan.—Ford v. Peck, 225 P. 1054, 116 Kan. 74, rehearing denied 227 P. 527, 116 Kan. 481.

Ky.—Robinson v. Paxton, 276 S.W. 500, 210 Ky. 575.

La.—Succession of Lauricella, App. 5 Cir., 571 So.2d 885.

Me.—Gilmartin v. Emery, 160 A. 874, 131 Me. 236.

Md.—Liberty Mut. Ins. Co. v. Craddock, 338 A.2d 363, 26 Md.App. 296.

Mass.—Atwood v. Atwood, 8 N.E.2d 916, 297 Mass. 229.

Miss.—McHenry v. State, 80 So. 763, 119 Miss. 289.

Mo.—Nolker v. Nolker, 257 S.W. 798.

Mont.—In re Coppock's Estate, 234 P. 258, 72 Mont. 431, 39 A.L.R. 1152.

Neb.—Huffman v. Huffman, 441 N.W.2d 899, 232 Neb. 742, appeal after remand 459 N.W.2d 215, 236 Neb. 101.

N.J.—Matter of Unanue, 605 A.2d 279, 255 N.J.Super. 362.

N.Y.—Antone v. General Motors Corp., Buick Motor Div., 473 N.E.2d 742, 64 N.Y.2d 20, 484 N.Y.S.2d 514.

N.C.—In re Martin's Estate, 117 S.E. 561, 185 N.C. 472.

N.D.—McEwen v. McEwen, 197 N.W. 862, 50 N.D. 662.

Okl.—Youngblood v. Rector, 259 P. 579, 126 Okl. 210.

Pa.—In re Estate of Getz, 611 A.2d 778, 148 Pa.Cmwlth. 393.

Tenn.—Brown v. Hows, 42 S.W.2d 210, 163 Tenn. 178.

Va.—Guilfoil v. Hayes, 194 S.E. 804, 169 Va. 548.

Vt.—In re Hanrahan's Will, 194 A. 471, 109 Vt. 108.

Wash.—In re Olson's Estate, 77 P.2d 781, 194 Wash. 219.

Wis.—In re Heymann's Will, 208 N.W. 913, 190 Wis. 97.

Physical presence at some time

"Domicile" within state does not require physical presence, but, rather, physical presence in state at some time in the past, and concurrent contention to make the state one's home.

N.M.—Hagan v. Hardwick, 624 P.2d 26, 95 N.M. 517.

81. U.S.—Holmes v. Sopotich, C.A.Mo., 639 F.2d 431.

Sadat v. Mertes, D.C.Wis., 464 F.Supp. 1311, affirmed 615 F.2d 1176, 54 A.L.R.Fed. 401.

In re Ring, Bkrtcy.E.D.Mo., 144 B.R. 446.

Ala.—Ex parte State ex rel. Altman, 188 So. 685, 237 Ala. 642.

Ariz.—DeWitt v. McFarland, 537 P.2d 20, 112 Ariz. 33.

Ark.—State v. Red Oak Trust & Savings Bank, 267 S.W. 566, 167 Ark. 234.

Conn.—Foss v. Foss, 136 A. 98, 99, 105 Conn. 502.

D.C.—District of Columbia v. Woods, App., 465 A.2d 385.

Ga.—Avery v. Bower, 152 S.E. 239, 170 Ga. 202.

Idaho—Kirkpatrick v. Transtector Systems, 759 P.2d 65, 114 Idaho 559.

Ind.—In re Marriage of Bates, App. 4 Dist., 474 N.E.2d 140.

Iowa—In re Colburn's Estate, 173 N.W. 35, 186 Iowa 590.

Ky.—Wheeler v. Burgess, 93 S.W.2d 351, 263 Ky. 693.

La.—Succession of Webre, 136 So. 67, 172 La. 1104.

Me.—Margani v. Sanders, 453 A.2d 501.

Md.—Shenton v. Abbott, 15 A.2d 906, 178 Md. 526.

Mass.—Rosa v. Rosa, 5 N.E.2d 417, 296 Mass. 271.

Minn.—Manthey v. Commissioner of Revenue, 468 N.W.2d 548.

Neb.—In re Meyer's Estate, 288 N.W. 35, 137 Neb. 60.

N.J.—Rinaldi v. Rinaldi, Ch., 118 A. 685.

N.Y.—In re Johnson's Will, 18 N.Y.S.2d 958, 259 A.D. 290, appeal denied 20 N.Y.S.2d 671, affirmed 31 N.E.2d 202, 284 N.Y. 733.

N.C.—Howard v. Queen City Coach Co., 193 S.E. 138, 212 N.C. 201.

N.D.—McEwen v. McEwen, 197 N.W. 862, 50 N.D. 662.

Okl.—Youngblood v. Rector, 259 P. 579, 126 Okl. 210.

Pa.—In re Dorrance's Estate, 163 A. 303, 309 Pa. 151, certiorari denied Dorrance v. Commonwealth of Pennsylvania, 53 S.Ct. 222, 287 U.S. 660, 77 L.Ed. 570, and 53 S.Ct. 507, 288 U.S. 617, 77 L.Ed. 990.

Tex.—Evans v. American Pub. Co., 13 S.W.2d 358, 118 Tex. 433, rehearing denied 16 S.W.2d 516, 118 Tex. 433 and 16 S.W.2d 984.

Vt.—Piche v. Department of Taxes, 565 A.2d 1283, 152 Vt. 229.

Va.—Guilfoil v. Hayes, 194 S.E. 804, 169 Va. 548.

One element

Physical relocation and residence in parish is but one element of domicile.

La.—Succession of Lauricella, App. 5 Cir., 571 So.2d 885.

82. Minn.—Davidner v. Davidner, 232 N.W.2d 5, 304 Minn. 491.

83. U.S.—Roorda v. Volkswagenwerk, A.G., D.C.S.C., 481 F.Supp. 868.

Ark.—State v. Red Oak Trust & Savings Bank, 267 S.W. 566, 167 Ark. 234.

Cal.—Bragg v. Bragg, 90 P.2d 329, 32 C.A.2d 611.

Colo.—Kay v. Strobeck, 254 P. 150, 81 Colo. 144.

As soon as a point of time is reached when residence and intent concur, the domicile is obtained.⁸⁴ It is not necessary that the intention to acquire a new domicile should exist at the time of removal, as the animus manendi may be formed afterward.⁸⁵ Thus, if a person leaves his domicile, and while residing elsewhere forms an intention not to return, but to make his new residence his home permanently or for an indefinite period, he thereby acquires a new domicile.⁸⁶

§ 12. Residence

The physical character of the residence is of no importance in fixing the domicile, except as it may bear on the question of intent.

Library References

Domicile ⇨4(1, 2).

The physical character of the residence is of no importance in fixing the domicile,⁸⁷ except as it may have a bearing on the question of intent,⁸⁸ and it is immaterial whether the person lives in his own dwelling or in a hired house,⁸⁹ or at a boarding house or hotel.⁹⁰ Residence in some one particular house as a fixed place of abode is not essential.⁹¹

A domicile may be any building or shelter used as a permanent residence, although not characterized by the usual appearance of a dwelling house or the ordinary comforts of a home.⁹² It may be a building detached from the principal residence,⁹³ such as a dormitory for servants.⁹⁴

Between two residences.

As between two residences, the place where a person sleeps may be determinative of his domicile.⁹⁵ It has been held, however, that the important facts in determining the domicile of a person who has two residences are the physical character of each residence, time spent and things done in each place, and whether or not there is an intention to return to the original domicile.⁹⁶ One may, for purposes of convenience, maintain a residence at a place not intended as a permanent abode without affecting any change in his domicile.⁹⁷

"Principal establishment."

A statute fixing domicile at one's "principal establishment" means principal domestic establishment.⁹⁸

- Fla.—Cruikshank v. Cruikshank, App. 1 Dist., 420 So.2d 914.
 Ga.—Mayo v. Ivan Allen-Marshall Co., 180 S.E. 20, 51 Ga.App. 250.
 Iowa—Taylor v. Independent School Dist. of Earlham, 164 N.W. 878, 181 Iowa 544.
 Kan.—Roberts v. Robertson, 254 P. 1026, 123 Kan. 222.
 Ky.—Thomas v. Newell, 127 S.W.2d 610, 277 Ky. 712.
 Md.—Pattison v. Firor, 126 A. 109, 146 Md. 243.
 Mich.—Leonetti v. Tolton, 250 N.W. 512, 264 Mich. 618, 92 A.L.R. 1050.
 Mo.—State Farm Mut. Auto. Ins. Co. v. McBride, App., 489 S.W.2d 229.
 Mont.—Herrin v. Herrin, 63 P.2d 137, 103 Mont. 469.
 Nev.—Presson v. Presson, 147 P. 1081, 1082, 38 Nev. 203.
 N.Y.—Wallace & Sons v. Castle, 68 N.Y. 370.
 N.D.—State ex rel. Sathre v. Moodie, 258 N.W. 558, 65 N.D. 340.
 Pa.—Alburger v. Alburger, 10 A.2d 888, 138 Pa.Super. 339.
 Tenn.—Brown v. Hows, 42 S.W.2d 210, 163 Tenn. 178.
 Tex.—Whitney v. State, Cr.App., 472 S.W.2d 524.
 Wash.—Kankelborg v. Kankelborg, 90 P.2d 1018, 199 Wash. 259.
 84. Va.—Guilfoil v. Hayes, 194 S.E. 804, 169 Va. 548.
 85. Kan.—Ford v. Peck, 225 P. 1054, 116 Kan. 74, rehearing denied 227 P. 527, 116 Kan. 481.
 Ky.—Bailey v. Norman's Adm'r, 15 S.W.2d 1005, 228 Ky. 790.
 Pa.—In re Dorrance's Estate, 163 A. 303, 309 Pa. 151, certiorari denied Dorrance v. Commonwealth of Pennsylvania, 53 S.Ct. 222, 287 U.S. 660, 77 L.Ed. 570, and 53 S.Ct. 507, 288 U.S. 617, 77 L.Ed. 990.
 86. Kan.—Ford v. Peck, 225 P. 1054, 116 Kan. 74, rehearing denied 227 P. 527, 116 Kan. 481.

Ky.—Bailey v. Norman's Adm'r, 15 S.W.2d 1005, 228 Ky. 790.

Va.—State-Planters Bank & Trust Co. of Richmond v. Commonwealth, 6 S.E.2d 629, 174 Va. 289.

87. Kan.—Stracklejohn v. Campbell, 12 P.2d 829, 136 Kan. 145.

88. Kan.—Stracklejohn v. Campbell, 12 P.2d 829, 136 Kan. 145.

89. La.—Brewster v. Emlet, 122 So. 54, 168 La. 326.

90. La.—Succession of Dancie, 186 So. 14, 191 La. 518.

N.J.—In re Gilbert's Estate, 15 A.2d 111, 18 N.J.Misc. 540.

91. Me.—Parsonfield v. Perkins, 2 Me. 411.

92. Kan.—Stracklejohn v. Campbell, 12 P.2d 829, 136 Kan. 145.

93. Mich.—Pond v. People, 8 Mich. 150.

94. Mich.—Pond v. People, 8 Mich. 150.

95. Iowa—State v. Savre, 105 N.W. 387, 129 Iowa 122.

96. W.Va.—White v. Manchin, 318 S.E.2d 470, 173 W.Va. 526.

Circumstances indicating domicile

Circumstances indicating establishment of a domicile include where a person sleeps, takes his meals, has established his household, and surrounds himself with his family and the comforts of domestic life.

La.—Mason v. Mason, App., 399 So.2d 1272.

97. Ga.—Haggard v. Graham, 236 S.E.2d 92, 142 Ga.App. 498.

Similar rule for legal residence

Maintenance of separate home is not inconsistent with continuance of a person's legal residence in but one locality.

OKL.—Moore v. Hayes, 744 P.2d 934.

98. La.—Mosely v. Dabiezies, 76 So. 705, 142 La. 256.

§ 13. — Duration

Apart from statutory regulation, no particular period of residence is required to establish domicile, and any residence, however short, will suffice when coupled with intent; without intent, residence, however long continued, will not establish domicile.

Library References
 Domicile ⇨4(1, 2).

Except as the rule may be affected by statutory regulation, no particular period of residence or specified length of time in a particular place is required in order to establish a domicile,⁹⁹ but when coupled with the element of intent to establish a domicile any residence, however short, will be sufficient,¹ even if it is but for a day² or an hour.³ However, a short stay has been considered insufficient to establish domicile.⁴

Although a long-continued residence in one place has been regarded as strong evidence, or even a

controlling circumstance, in determining the question of domicile,⁵ residence alone, or a mere change of residence, however long continued, will not establish domicile or effect a change of domicile, in absence of the requisite intention.⁶

§ 14. Intent in General

Domicile, or a change thereof, is largely a matter of intention. Such intention is not qualified or conditional. Intention to acquire a domicile of choice involves freedom of choice.

Library References
 Domicile ⇨4(2).

While, as discussed supra § 11, actual residence in a locality and intention to remain are both essential to domicile, it is frequently declared that domicile,⁷ or "residence" or "legal residence" as used in the same sense,⁸ is largely a question, or

99. U.S.—Hawes v. Club Ecuestre El Comandante, C.A.Puerto Rico, 598 F.2d 698.
 National Artists Management Co., Inc. v. Weaving, S.D.N.Y., 769 F.Supp. 1224.
 Kan.—Ford v. Peck, 225 P. 1054, 116 Kan. 74, rehearing denied 227 P. 527, 116 Kan. 481.
 Ky.—Bartlett v. Buckner's Adm'r, 97 S.W.2d 805, 265 Ky. 747.
 La.—Succession of Dancie, 186 So. 14, 191 La. 518.
 Mo.—Nolker v. Nolker, 257 S.W. 798.
 N.Y.—Beischer v. Beischer, 235 N.Y.S. 652, 226 A.D. 454.
 Vt.—Dailey v. Town of Ludlow, 147 A. 771, 102 Vt. 312.
 1. U.S.—Williams v. Williams, D.C.Virgin Islands, 328 F.Supp. 1380.
 La.—Brewster v. Emet, 122 So. 54, 168 La. 326.
 Mo.—Finley v. Finley, App., 6 S.W.2d 1006.
 N.J.—Lyon v. Glaser, 288 A.2d 12, 60 N.J. 259.
 N.Y.—Beischer v. Beischer, 235 N.Y.S. 652, 226 A.D. 454.
 Pa.—In re Dorrance's Estate, 163 A. 303, 309 Pa. 151, certiorari denied Dorrance v. Commonwealth of Pennsylvania, 53 S.Ct. 222, 287 U.S. 660, 77 L.Ed. 570, and 53 S.Ct. 507, 288 U.S. 617, 77 L.Ed. 990.
 2. Ky.—Bartlett v. Buckner's Adm'r, 97 S.W.2d 805, 265 Ky. 747.
 Me.—Inhabitants of Stockton v. Staples, 66 Me. 197.
 Mo.—Nolker v. Nolker, 257 S.W. 798.
 N.Y.—Beischer v. Beischer, 235 N.Y.S. 652, 226 A.D. 454.
 Vt.—Dailey v. Town of Ludlow, 147 A. 771, 102 Vt. 312.
 3. Mo.—Nolker v. Nolker, 257 S.W. 798.
 Vt.—Dailey v. Town of Ludlow, 147 A. 771, 102 Vt. 312.

Instantaneous establishment of domicile

Domicile is established instantaneously where elements exist simultaneously.

- U.S.—St. Onge v. McNeilus Truck and Mfg., Inc., D.Minn., 645 F.Supp. 280—White v. All America Cable & Radio, Inc., D.Puerto Rico, 642 F.Supp. 69.

4. Overnight stop

Plaintiffs' overnight stop in Phoenix to rest and refuel when moving from New York to California did not constitute sufficient "presence" in Arizona to establish Arizona as plaintiffs' domicile at that point.

- Ariz.—Houghton v. Piper Aircraft Corp., 542 P.2d 24, 112 Ariz. 365.
 5. Iowa.—In re Titterington's Estate, 106 N.W. 761, 130 Iowa 356.
 6. U.S.—Chew v. Nicholson, D.C.Del., 281 F. 400.
 Ala.—Ex parte Bullen, 181 So. 498, 236 Ala. 56.
 Minn.—Berc v. Berc, App., 407 N.W.2d 131.
 Mo.—In re Ritter's Estate, App., 518 S.W.2d 453.
 N.J.—Rinaldi v. Rinaldi, 118 A. 685, 94 N.J.Eq. 14.
 N.Y.—Larkin v. Herbert, 3 Dept., 586 N.Y.S.2d 679, 185 A.D.2d 607.
 7. Ill.—In re Marriage of Goldstein, 423 N.E.2d 1201, 53 Ill.Dec. 397, 97 Ill.App.3d 1023.
 Ind.—Croop v. Walton, 157 N.E. 275, 199 Ind. 262, 53 A.L.R. 1386.
 Mich.—Fowler v. Fowler, 477 N.W.2d 112, 191 Mich.App. 318.
 Mo.—Fowler v. Clayton School Dist., App., 528 S.W.2d 955.
 N.J.—Trust Co. of New Jersey v. Spalding, 4 A.2d 401, 125 N.J.Eq. 66.
 N.Y.—Leviton v. Leviton, 6 N.Y.S.2d 535, modified on other grounds 4 N.Y.S.2d 992, 254 A.D. 670.
 Pa.—Commonwealth ex rel. Cronhardt v. Cronhardt, 4 A.2d 589, 135 Pa.Super. 117.

True basis and foundation

- S.C.—Nagy v. Nagy—Horvath, 257 S.E.2d 757, 273 S.C. 583.
 8. Cal.—Chambers v. Hathaway, 200 P. 931, 187 C. 104.
 Ill.—Anderson v. Pifer, 146 N.E. 171, 315 Ill. 164, 37 A.L.R. 134.
 Iowa.—Harris v. Harris, 215 N.W. 661, 205 Iowa 108.
 Ky.—National Life & Accident Ins. Co. v. Pate, 54 S.W.2d 663, 246 Ky. 186.
 La.—State v. Wimby, 43 So. 984, 119 La. 139.
 Mo.—Trigg v. Trigg, 41 S.W.2d 583, 226 Mo.App. 284.
 N.Y.—Gasper v. Wales, 227 N.Y.S. 421, 223 A.D. 89.
 Okl.—Johnson v. Petty, 281 P. 276, 138 Okl. 208.
 Or.—Popejoy v. Boynton, 230 P. 1016, 112 Or. 646.
 Pa.—Petition of Knauer, 134 A. 463, 287 Pa. 115.
 S.C.—St. Clair v. St. Clair, 178 S.E. 493, 175 S.C. 83.

matter, of intention, in the absence of fraud.⁹ It is said that intention is the fundamental or controlling element,¹⁰ that it is the crux of the test for domicile,¹¹ that it is a decisive,¹² dominant,¹³ necessary,¹⁴ important¹⁵ or the key¹⁶ factor, and that it is largely determinative of the question.¹⁷

In order to establish a new domicile, the intent to do so must be unqualified and not conditional upon the happening of some future event.¹⁸ The intention to make a home must be an intention to make a home at the moment, not to make a home in the future.¹⁹

Change of domicile.

The essential fact that raises a change of abode to a change of domicile is the absence of any intention to live elsewhere.²⁰ Thus, a change of domicile or residence depends on intention,²¹ or, as sometimes stated, on a dual intention to abandon the former domicile and to acquire another,²² and a change of residence lacking in the requisite intent to abandon the prior residence leaves the last established domicile unaffected.²³ Where a person has two residences, the earlier in time remains his domicile until a clear intention to change is established.²⁴

Wis.—In re Village of Chenequa, 221 N.W. 856, 197 Wis. 163.

Marital relationship indicative of intention

Marital relationship may affect determination of one's "intent" to establish residency.

Ariz.—St. Joseph's Hosp. and Medical Center v. Maricopa County, 688 P.2d 986, 142 Ariz. 94.

Residence and domicile not equivalent

Intent is relevant to question of domicile, but it has far less to do with concept of residency.

Ark.—Davis v. Holt, 804 S.W.2d 362, 304 Ark. 619.

9. Wis.—In re Village of Chenequa, 221 N.W. 856, 197 Wis. 163.

10. Conn.—Town of Washington v. Town of Warren, 193 A. 751, 123 Conn. 268.

11. Cincinnati Ins. Co. v. Argubright, 3 Dist., 502 N.E.2d 868, 104 Ill.Dec. 371, 151 Ill.App.3d 324, appeal denied 508 N.E.2d 726, 108 Ill.Dec. 415, 114 Ill.2d 543.

Ind.—Croop v. Walton, 157 N.E. 275, 199 Ind. 262, 53 A.L.R. 1386.

La.—Brewster v. Emlet, 122 So. 54, 168 La. 326.

Md.—Comptroller of the Treasury, Income Tax Div. v. Haskin, 472 A.2d 70, 298 Md. 681.

N.Y.—In re Cornish's Estate, 22 N.Y.S.2d 451.

R.I.—Flather v. Norberg, 377 A.2d 225, 119 R.I. 276.

11. U.S.—Boston Safe Deposit and Trust Co. v. Morse, S.D.N.Y., 779 F.Supp. 347.

12. N.Y.—In re Bennett's Estate, 238 N.Y.S. 723, 135 Misc. 486.

13. Ky.—Hite's Adm'r v. Hite's Ex'r, 97 S.W.2d 811, 265 Ky. 786.

Okl.—Moore v. Hayes, 744 P.2d 934.

14. R.I.—Soucy v. Knight, 161 A. 132, 52 R.I. 405.

15. Mass.—Gardner v. Gardner, 122 N.E. 308, 232 Mass. 253.

N.Y.—In re Lynch's Estate, 11 N.Y.S.2d 303, 170 Misc. 966.

Most important

Ill.—Miller v. Police Bd., City of Chicago, 349 N.E.2d 544, 38 Ill. App.3d 894.

Of paramount importance

Ill.—In re Marriage of Goldstein, 423 N.E.2d 1201, 53 Ill.Dec. 397, 97 Ill.App.3d 1023.

16. Cal.—In re Marriage of Thornton, 185 Cal.Rptr. 388, 135 C.A.3d 500.

Mich.—Leader v. Leader, 251 N.W.2d 288, 73 Mich.App. 276.

17. Minn.—Manthey v. Commissioner of Revenue, 468 N.W.2d 548.

N.J.—Smith v. Starkey Farms, 149 A. 759, 8 N.J.Misc. 259.

18. Ill.—Fink v. Fink, 346 N.E.2d 415, 37 Ill.App.3d 604.

19. Wash.—In re Marriage of Strohmaier, 659 P.2d 534, 34 Wash. App. 14.

20. U.S.—Williams v. State of North Carolina, N.C., 63 S.Ct. 207, 317 U.S. 287, 87 L.Ed. 279, 143 A.L.R. 1273.

21. U.S.—Swift & Co. v. Lidklider, C.C.A.W.Va., 7 F.2d 19.

Cal.—Johnston v. Benton, 239 P. 60, 73 C.A. 565.

Ind.—Croop v. Walton, 157 N.E. 275, 199 Ind. 262, 53 A.L.R. 1386.

Ky.—Wheeler v. Burgess, 93 S.W.2d 351, 263 Ky. 693.

Wash.—In re Olson's Estate, 77 P.2d 781, 194 Wash. 219.

22. Ark.—Stewart v. Stewart, 698 S.W.2d 516, 16 Ark.App. 164.

Conn.—McDonald v. Hartford Trust Co., 132 A. 902, 104 Conn. 169.

Del.—Bruce E.M. v. Dorothea A. M., 455 A.2d 866.

D.C.—District of Columbia v. Woods, App., 465 A.2d 385.

Hawaii—In re Estate of Grant, 34 Haw. 559.

Ind.—Croop v. Walton, 157 N.E. 275, 199 Ind. 262, 53 A.L.R. 1386.

Kan.—Teter v. Corley, 584 P.2d 651, 2 Kan.App.2d 540.

Ky.—Wallis v. Short, 237 S.W. 675, 193 Ky. 827.

La.—Succession of Webre, 136 So. 67, 172 La. 1104.

Md.—Shenton v. Abbott, 15 A.2d 906, 178 Md. 526.

Mo.—In re Ozias' Estate, App., 29 S.W.2d 240.

Neb.—In re Meyers' Estate, 288 N.W. 35, 137 Neb. 60.

N.J.—In re Dorrance's Estate, 170 A. 601, 115 N.J.Eq. 268, supplemented 172 A. 503, 116 N.J.Eq. 204, sustained Dorrance v. Martin, 176 A. 902, 13 N.J.Misc. 168, affirmed 184 A. 743, 116 N.J.Law 362, certiorari denied 56 S.Ct. 949, 298 U.S. 678, 80 L.Ed. 1399, rehearing denied 56 S.Ct. 957, 298 U.S. 692, 80 L.Ed. 1410, and certiorari denied Camden Safe Deposit & Trust Co. v. Martin, 56 S.Ct. 949, 298 U.S. 678, 80 L.Ed. 1399, and 56 S.Ct. 950, 298 U.S. 678, 80 L.Ed. 1399.

Okl.—Suglove v. Oklahoma Tax Commission, 605 P.2d 1315.

Visiting former domicile as bar

In order to effect a change of domicile, it is unnecessary that one never again set foot in his former domicile.

U.S.—Rosenstiel v. Rosenstiel, D.C.N.Y., 368 F.Supp. 51, affirmed 503 F.2d 1397.

23. N.Y.—Sarraf v. Szunics, 503 N.Y.S.2d 513, 132 Misc.2d 97.

24. N.Y.—Matter of Estate of Gadway, 3 Dept., 510 N.Y.S.2d 737, 123 A.D.2d 83.

Legal or moral duty.

The question of domicile or the accompanying intention is not affected by the fact that it was the legal or moral duty of the individual to reside in a given place.²⁵

Voluntary removal.

Intention to acquire a domicile or residence of choice necessarily involves an exercise of volition or freedom of choice,²⁶ and therefore the removal must be voluntary.²⁷ Where a person's stay outside his state of domicile was involuntary and was never intended to be permanent,²⁸ or where there was a forcible change in a person's state of residence,²⁹ there was no change of domicile. However, the bare fact that a person has been compelled to relocate in a particular place does not ordinarily prevent him from becoming domiciled therein.³⁰

Change of nationality.

A change of domicile to another country does not involve or require a change of nationality or an

intent to cast off all allegiance to the country of the former domicile.³¹

§ 15. — Intention as to Length of Stay

The intention to remain in a locality, which is essential to domicile, has been variously referred to as an intention to remain indefinitely, to remain permanently, and to remain permanently or indefinitely.

Library References

Domicile ⇨4(2).

The intention to remain in the chosen locality, or animus manendi, which, as discussed supra § 11, is essential to the establishment of a domicile of choice or a change of domicile, is variously referred to as an intention to remain indefinitely,³² an intention to remain in the new location or make it home for some time at least,³³ an intention to remain permanently, or to make the new location a fixed or permanent home,³⁴ and an intention to remain per-

- 25. Ky.—Bailey v. Norman's Adm'r, 15 S.W.2d 1005, 228 Ky. 790.
- 26. Ga.—Stanfield v. Hursey, 136 S.E. 826, 36 Ga.App. 394.
- Iowa—Harris v. Harris, 215 N.W. 661, 205 Iowa 108.
- N.Y.—Westbury Union Free School Dist., Towns of North Hempstead and Hempstead v. Amityville Union Free School Dist., 431 N.Y.S.2d 641, 106 Misc.2d 189.
- 27. Ky.—Staiar's Adm'r v. Commonwealth, 239 S.W. 40, 194 Ky. 316.
- La.—Brantley v. Smith, 6 La.App. 182.
- Miss.—Bilbo v. Bilbo, 177 So. 772, 180 Miss. 536.
- N.Y.—Westbury Union Free School Dist., Towns of North Hempstead and Hempstead v. Amityville Union Free School Dist., 431 N.Y.S.2d 641, 106 Misc.2d 189.
- 28. N.J.—Matter of Unanue, 605 A.2d 279, 255 N.J.Super. 362.
- 29. U.S.—Sullivan v. Freeman, C.A.7(III.), 944 F.2d 334, appeal after remand 21 F.3d 198, certiorari denied 115 S.Ct. 670, 130 L.Ed.2d 604.
- 30. U.S.—Stifel v. Hopkins, C.A. Ohio, 477 F.2d 1116, 23 A.L.R.Fed. 595.
- 31. N.Y.—In re Tallmadge, 181 N.Y.S. 336, 109 Misc. 696.
- Va.—State-Planters Bank & Trust Co. of Richmond v. Commonwealth, 6 S.E.2d 629, 174 Va. 289.
- 32. U.S.—Granite Trading Corp. v. Harris, C.C.A.N.C., 80 F.2d 174.
- D.C.—Goodloe v. Hawk, 113 F.2d 753, 72 App.D.C. 287.
- Ky.—City of Ashland v. City of Catlettsburg, 189 S.W. 454, 172 Ky. 364.
- Md.—Shenton v. Abbott, 15 A.2d 906, 178 Md. 526.
- Mass.—Inhabitants of Town of Plymouth v. Inhabitants of Town of Kingston, 193 N.E. 576, 289 Mass. 57.
- Neb.—In re Meyer's Estate, 288 N.W. 35, 137 Neb. 60.
- Wash.—In re Olson's Estate, 77 P.2d 781, 194 Wash. 219.

Possible change in future

Intention to retain an adopted domicile for an indefinite time is sufficient, notwithstanding there may be further entertained purpose to change domicile at some unfixed time in the future, dependent on changed conditions which may or may not appear.

- Ky.—Robinson v. Paxton, 276 S.W. 500, 210 Ky. 575.
- 33. Mass.—Dane v. Board of Registrars of Voters of Concord, 371 N.E.2d 1358, 374 Mass. 152.
- Tex.—Southern v. Glenn, App. 4 Dist., 677 S.W.2d 576, error refused no reversible error.
- 34. Ark.—State v. Red Oak Trust & Savings Bank, 267 S.W. 566, 167 Ark. 234.
- Cal.—Fenton v. Board of Directors of Groveland Community Services Dist., 5 Dist., 203 Cal.Rptr. 388, 156 C.A.3d 1107.
- Conn.—McDonald v. Hartford Trust Co., 132 A. 902, 104 Conn. 169.
- Fla.—Wade v. Wade, 113 So. 374, 93 Fla. 1004.
- Ga.—Alvaton Mercantile Co. v. Caldwell, 128 S.E. 781, 34 Ga.App. 151.
- Hawaii—Arakaki v. Arakaki, 502 P.2d 380, 54 Haw. 60.
- Ill.—Keck v. Keck, 309 N.E.2d 217, 56 Ill.2d 508.
- Iowa—In re Colburn's Estate, 173 N.W. 35, 186 Iowa 590.
- Ky.—Wallis v. Short, 237 S.W. 675, 193 Ky. 827.
- La.—Succession of Webre, 136 So. 67, 172 La. 1104.
- Mass.—Hershkoff v. Board of Registrars of Voters of Worcester, 321 N.E.2d 656, 366 Mass. 570.
- N.J.—Michaud v. Yeomans, 278 A.2d 537, 115 N.J.Super. 200.
- N.M.—Montoya v. Collier, 512 P.2d 684, 85 N.M. 356.
- N.Y.—Clute v. Chu, 3 Dept., 484 N.Y.S.2d 239, 106 A.D.2d 841.
- N.C.—Hall v. Wake County Bd. of Elections, 187 S.E.2d 52, 280 N.C. 600.
- Okl.—Youngblood v. Rector, 259 P. 579, 126 Okl. 210.

manently or indefinitely.³⁵

An intention to remain permanently, as distinguished from indefinitely, has been declared not necessary,³⁶ as has an intent to make the new place a permanent home³⁷ for the remainder of one's life.³⁸

§ 16. — Bona Fide Intention; Motive

To acquire, or effect a change of, domicile, the intention must be bona fide and unequivocal. The motive for the change is commonly not considered.

- Pa.—Boswell v. South Carolina Ins. Co., 509 A.2d 358, 353 Pa.Super. 108.
 Vt.—Dailey v. Town of Ludlow, 147 A. 771, 102 Vt. 312.
 Wash.—Kankelborg v. Kankelborg, 90 P.2d 1018, 199 Wash. 259.

Test of intent

The test of intent with respect to a domicile is whether the place of habitation is the permanent home of a person, with a range of sentiment, feeling and permanent association with it.

- N.Y.—Shapiro v. State Tax Commission, 415 N.Y.S.2d 282, 67 A.D.2d 191, reversed on other grounds 407 N.E.2d 1330, 50 N.Y.2d 822, 430 N.Y.S.2d 33.

Habitual residence

- La.—LaFleur v. Seaboard Fire & Marine Ins. Co., App., 296 So.2d 860, writ refused 300 So.2d 185.

Permanent residence

- Mo.—Bridges v. Bridges, App., 559 S.W.2d 753.

Principal establishment

- La.—Ober v. Bounds, App. 3 Cir., 528 So.2d 247.
 35. U.S.—Owens v. Hunting, C.C.A.Or., 115 F.2d 160.
 Prince v. New York Life Ins. Co., D.C.Mass., 24 F.Supp. 41.
 Ala.—Ex parte State ex rel. Altman, 188 So. 685, 237 Ala. 642.
 Conn.—Foss v. Foss, 136 A. 98, 105 Conn. 502.
 D.C.—Anwo v. Immigration and Naturalization Service, 607 F.2d 435, 197 U.S.App.D.C. 121.
 Ga.—Campbell v. Campbell, 200 S.E.2d 899, 231 Ga. 214.
 Hawaii—Whitehead v. Whitehead, 492 P.2d 939, 53 Haw. 302.
 Ind.—Hayward v. Hayward, 115 N.E. 966, 65 Ind.App. 440, rehearing denied 116 N.E. 746, 65 Ind.App. 440.
 Kan.—Ford v. Peck, 225 P. 1054, 116 Kan. 74, rehearing denied 227 P. 527, 116 Kan. 481.
 La.—Moble v. Namie, App., 337 So.2d 306, writ refused 339 So.2d 850.
 Md.—Liberty Mut. Ins. Co. v. Craddock, 338 A.2d 363, 26 Md.App. 296.
 Mass.—Hershkoff v. Board of Registrars of Voters of Worcester, 321 N.E.2d 656, 366 Mass. 570.
 Mo.—In re Ritter's Estate, App., 518 S.W.2d 453.
 N.J.—Schweitzer v. Buser, 190 A. 89, 15 N.J.Misc. 217.
 Or.—Matter of Marriage of Pirouzkar, 626 P.2d 380, 51 Or.App. 519.
 Pa.—McCloskey v. McCloskey, 336 A.2d 279, 461 Pa. 267.
 Va.—Guilfoil v. Hayes, 194 S.E. 804, 169 Va. 548.

Permanently meaning indefinitely

Term "permanently" as used in test for domicile is interpreted to mean intent to remain indefinitely.

Library References

Domicile ⇨4(2).

To acquire, or effect a change of, domicile, the intention must be bona fide,³⁹ in good faith,⁴⁰ honest,⁴¹ genuine,⁴² and unequivocal.⁴³ There must be intention as to the fact, not as to the legal consequences of the fact;⁴⁴ so, the intention must be to

- Alaska—Perito v. Perito, 756 P.2d 895.

Real, true, fixed home

- N.D.—McEwen v. McEwen, 197 N.W. 862, 50 N.D. 662.

Inference of intention

Intention to establish permanent home may be inferred from facts excluding intention to make domicile elsewhere; and intention to establish permanent residence may be shown by establishing abode without intention to remove therefrom.

- Conn.—Foss v. Foss, 136 A. 98, 105 Conn. 502.

Same true as to "residence" or "legal residence"

- Fla.—Wade v. Wade, 113 So. 374, 93 Fla. 1004.
 Iowa—Harris v. Harris, 215 N.W. 661, 205 Iowa 108.
 Tenn.—Brown v. Hows, 42 S.W.2d 210, 163 Tenn. 178.
 36. U.S.—Krasnov v. Dinan, D.C.Pa., 333 F.Supp. 751, supplemented 339 F.Supp. 1357, affirmed 465 F.2d 1298.
 Wash.—In re Olson's Estate, 77 P.2d 781, 194 Wash. 219.
 37. N.J.—Brueckmann v. Frignoca, 152 A. 780, 9 N.J.Misc. 128.
 Wash.—In re Olson's Estate, 77 P.2d 781, 194 Wash. 219.
 38. Wash.—In re Olson's Estate, 77 P.2d 781, 194 Wash. 219.
 39. La.—Brewster v. Emler, 122 So. 54, 168 La. 326.
 Nev.—Walker v. Walker, 198 P. 433, 45 Nev. 105.
 N.Y.—In re Curtiss' Will, 250 N.Y.S. 146, 140 Misc. 185.
 Wis.—In re Heymann's Will, 208 N.W. 913, 190 Wis. 97.
 40. Ark.—Moon v. Moon, 578 S.W.2d 203, 265 Ark. 310.
 41. La.—Frazier v. Allen, App., 363 So.2d 542.
 42. Wash.—In re Marriage of Strohmaier, 659 P.2d 534, 34 Wash. App. 14.
 43. Ind.—State ex rel. White v. Scott, 86 N.E. 409, 171 Ind. 349.

Residency

Residency requires definite intention.

- Ind.—State Election Bd. v. Bayh, 521 N.E.2d 1313.

44. Controlling effect of facts

(1) When one intends the facts to which the law attaches consequences, he must abide the consequences whether intended or not, as regards question of domicile.

- U.S.—State of Texas v. State of Florida, 59 S.Ct. 563, 306 U.S. 398, 83 L.Ed. 817, 121 A.L.R. 1179.

(2) Intention that certain place shall be domicile is not conclusive as establishing new domicile, where person in fact has domicile elsewhere.

- U.S.—Leave v. Boston Elevated Ry. Co., D.C.Mass., 14 F.Supp. 775.

(3) One generally cannot retain a domicile in one place when he has moved to another and intends to reside there for the rest of his life, by

make a home in fact, and not to acquire a domicile.⁴⁵

Motive or purpose.

If the requisite intention is shown to exist, the law will not scrutinize the motive or purpose prompting a change of domicile,⁴⁶ and motive or purpose of a change of domicile or residence is not material.⁴⁷ A person's choice of domicile, irrespective of his motive, is honored by courts provided objective indicia support the actual existence of such domicile.⁴⁸ However, some authorities have considered motive,⁴⁹ particularly in determining whether the apparent intent was actual or merely pretended.⁵⁰

§ 17. — Intention to Return

a. In general

any declaration or intent inconsistent with the dominant facts of where he actually lives and what he actually means to do.

Pa.—In re Koleff's Estate, Pennsylvania, 16 A.2d 384, 340 Pa. 423.

45. U.S.—Leave v. Boston Elevated Ry. Co., D.C.Mass., 14 F.Supp. 775.

N.J.—In re Gilbert's Estate, 15 A.2d 111, 18 N.J.Misc. 540.

Pa.—In re Dorrance's Estate, 163 A. 303, 309 Pa. 151, certiorari denied *Dorrance v. Commonwealth of Pennsylvania*, 53 S.Ct. 222, 287 U.S. 660, 77 L.Ed. 570, and 53 S.Ct. 507, 288 U.S. 617, 77 L.Ed. 990.

46. Ark.—Hillman v. Hillman, 138 S.W.2d 1051, 200 Ark. 340.

D.C.—Goodloe v. Hawk, 113 F.2d 753, 72 App.D.C. 287.

Mass.—Commonwealth v. Bogigian, 164 N.E. 472, 265 Mass. 531.

N.J.—In re Gilbert's Estate, 15 A.2d 111, 18 N.J.Misc. 540.

N.Y.—In re Trowbridge's Estate, 194 N.E. 756, 266 N.Y. 283.

Va.—State-Planters Bank & Trust Co. of Richmond v. Commonwealth, 6 S.E.2d 629, 174 Va. 289.

Wis.—In re Heymann's Will, 208 N.W. 913, 190 Wis. 97.

Temporary absence for special purpose see *infra* § 17.

Same rule as to "residence" or "legal residence"

Ky.—Pettit's Ex'x v. City of Lexington, 237 S.W. 391, 193 Ky. 679.

N.Y.—Perrin v. Perrin, 250 N.Y.S. 588, 140 Misc. 406.

Legality of object disregarded

N.Y.—Gasper v. Wales, 227 N.Y.S. 421, 223 A.D. 89.

47. U.S.—Rosenstiel v. Rosenstiel, D.C.N.Y., 368 F.Supp. 51, affirmed 503 F.2d 1397.

Ala.—Owens v. Ford, 451 So.2d 796.

La.—Succession of Barnes, App.Cir., 490 So.2d 630.

Neb.—State ex rel. Rittenhouse v. Newman, 204 N.W.2d 372, 189 Neb. 657.

N.J.—Lyon v. Glaser, 288 A.2d 12, 60 N.J. 259.

48. N.J.—Matter of Unanue, 605 A.2d 279, 255 N.J.Super. 362.

49. Ky.—Lebanon v. Biggers, 78 S.W. 213, 25 Ky.L.Rptr. 1528, 117 Ky. 430.

Pa.—Greenwood v. Hildebrand, 515 A.2d 963, 357 Pa.Super. 253, appeal denied 528 A.2d 602, 515 Pa. 594.

b. Temporary absence; residence for special purpose

c. Floating intention

a. In General

The intention of remaining indefinitely in the new abode, which is essential to the acquisition or change of domicile, excludes any definite intention to return to the place of previous domicile.

Library References

Domicile ⇐4(2).

The animus manendi, or intention of remaining indefinitely in the new abode, which is essential to the acquisition or change of domicile, excludes any definite intention to return to the place of the previous domicile.⁵¹

The original domicile is not changed even by a long absence, if there is any intention of returning.⁵² Nor is such domicile lost unless removal

Temporary purpose

Required intent to establish residency in state cannot be based upon a temporary purpose.

Mo.—Goeman v. Goeman, App.W.D., 833 S.W.2d 476.

50. N.J.—In re Paullin's Estate, Prerog., 109 A. 13, affirmed In re Paullin's Will, 113 A. 240, 92 N.J.Eq. 419.

N.Y.—Maloney v. Maloney, 22 N.Y.S.2d 334, affirmed 29 N.Y.S.2d 419, 262 A.D. 936, affirmed 41 N.E.2d 934, 288 N.Y. 532.

Changing domicile to give court jurisdiction

(1) Where a person seeks to acquire a domicile in order to give a certain court jurisdiction in divorce or other proceedings, he must have a bona fide, and not merely an ostensible intention to change his domicile to such place.

Nev.—Walker v. Walker, 198 P. 433, 46 Nev. 105.

(2) A removal, even if for the avowed purpose of giving a certain court jurisdiction, if accompanied by an intention of remaining permanently or indefinitely, is not wrongful.

U.S.—Wiemer v. Louisville Water Co., C.C.Ky., 130 F. 244.

51. U.S.—Prince v. New York Life Ins. Co., D.C.Mass., 24 F.Supp. 41.

Conn.—Foss v. Foss, 136 A. 98, 105 Conn. 502.

Md.—Wagner v. Scurlock, 170 A. 539, 166 Md. 284.

Mass.—Inhabitants of Town of Plymouth v. Inhabitants of Town of Kingston, 193 N.E. 576, 289 Mass. 57.

Miss.—Bilbo v. Bilbo, 177 So. 772, 180 Miss. 536.

Mo.—Nolker v. Nolker, 257 S.W. 798.

N.C.—In re Finlayson's Estate, 173 S.E. 902, 206 N.C. 362.

Pa.—Gearing v. Gearing, 90 Pa.Super. 192.

Va.—Talley v. Commonwealth, 103 S.E. 612, 127 Va. 516.

Inference of intent

Intent to change domicile, which requires intent not to return to old domicile, is to be inferred from facts and circumstances, not from self-serving representations.

W.Va.—White v. Manchin, 318 S.E.2d 470, 173 W.Va. 526.

52. U.S.—In re Wellberg, Bkrcty.Va., 12 B.R. 48.

Kan.—Stracklejohn v. Campbell, 12 P.2d 829, 136 Kan. 145.

from it is made with an intent not to return.⁵³ One may live outside his place of domicile without changing his domicile so long as he possesses the requisite intention of returning.⁵⁴

An ultimate intention to return may be sufficient,⁵⁵ and where the facts are conflicting as to a person's intent his original domicile is favored as the legal domicile.⁵⁶

Contingent intention.

Since the intention must be present and fixed, and not ultimate, a domicile is not changed by removing therefrom and locating in a new place with an intention to make the latter a permanent home at some future time,⁵⁷ or upon the happening of some future and contingent event.⁵⁸ Similarly a contingent intention to return or remove will not prevent the acquisition of a new domicile.⁵⁹

N.J.—In re Dorrance's Estate, 170 A. 601, 115 N.J.Eq. 268, supplemented 172 A. 503, 116 N.J.Eq. 204, sustained Dorrance v. Martin, 176 A. 902, 13 N.J.Misc. 168, affirmed 184 A. 743, 116 N.J.Law 362, certiorari denied 56 S.Ct. 949, 298 U.S. 678, 80 L.Ed. 1399, rehearing denied 56 S.Ct. 957, 298 U.S. 692, 80 L.Ed. 1410, and certiorari denied Camden Safe Deposit & Trust Co. v. Martin, 56 S.Ct. 949, 298 U.S. 678, 80 L.Ed. 1399, and 56 S.Ct. 950, 298 U.S. 678, 80 L.Ed. 1399.

Conduct showing intention

County commissioner's construction of apartment to replace trailer destroyed by tornado and his presence in apartment at least part of time showed intention of returning to original domicile, even though he spent substantial time at farm in different election district.

- W.Va.—State v. Stalnaker, 412 S.E.2d 231, 186 W.Va. 233.
53. Tex.—Commercial Standard Ins. Co. v. Nunn, Civ.App., 464 S.W.2d 415, error dismissed.
54. Pa.—Stambaugh v. Stambaugh, 329 A.2d 483, 458 Pa. 147.
55. U.S.—In re Carl, N.D.Ill., 142 B.R. 257.
56. U.S.—Moss v. National Life & Acc. Ins. Co., D.C.Mo., 385 F.Supp. 1291.
57. Conn.—Mills v. Mills, 179 A. 5, 119 Conn. 612.
- Ind.—Astley v. Capron, 89 Ind. 167.
- Tex.—Gallagher v. Gallagher, Civ.App., 214 S.W. 516.
58. Conn.—Mills v. Mills, 179 A. 5, 119 Conn. 612.
59. Ky.—Robinson v. Paxton, 276 S.W. 500, 210 Ky. 575.
60. Ala.—Ex parte State ex rel. Altman, 188 So. 685, 237 Ala. 642.
- Kan.—Stracklejohn v. Campbell, 12 P.2d 829, 136 Kan. 145.
- Ky.—Burr's Adm'r v. Hatter, 43 S.W.2d 26, 240 Ky. 721.
- La.—Brantley v. Smith, 6 La.App. 182.
- Mass.—Inhabitants of Town of Plymouth v. Inhabitants of Town of Kingston, 193 N.E. 576, 289 Mass. 57.
- N.J.—In re Gilbert's Estate, 15 A.2d 111, 18 N.J.Misc. 540.
- N.Y.—Unanue v. Unanue, 2 Dept., 532 N.Y.S.2d 769, 141 A.D.2d 31.
- Tenn.—Stratton v. Brigham, 2 Sneed 420, 34 Tenn. 420.
- Tex.—Los Angeles Airways, Inc. v. Lummis, Civ.App., 603 S.W.2d 246, error refused no reversible error, certiorari denied 102 S.Ct. 1610,

b. Temporary Absence; Residence for Special Purpose

Temporary absence from the place of one's domicile with the intention of returning thereto does not effect an acquisition or change of domicile.

If a person leaves his home or place of domicile, and resides elsewhere, for a mere temporary or special purpose, with an intention to return to or retain his domicile, there is no acquisition or change of domicile.⁶⁰ The rule is sometimes stated that mere temporary absence, however long, from one's fixed or permanent home or domicile will not effect a change of domicile.⁶¹

Residence for business, health, pleasure, or education.

Temporary residence, even if long, merely for the purpose of transacting business or of engaging in employment,⁶² or participating in a training pro-

455 U.S. 988, 71 L.Ed.2d 847, rehearing denied 102 S.Ct. 1997, 456 U.S. 939, 72 L.Ed.2d 459.

Similar rule for "residence"

- U.S.—U.S. v. The Penelope, D.C.Pa., 27 F.Cas.No.16,024, 2 Pet. Adm. 438.
- Okl.—Anthis v. Drew, 252 P. 11, 123 Okl. 18.
- Tenn.—Brown v. Hows, 42 S.W.2d 210, 163 Tenn. 178.
61. D.C.—District of Columbia v. Woods, App., 465 A.2d 385.
- Hawaii—In re Estate of Grant, 34 Hawaii 559.
- Ky.—Bartlett v. Buckner's Adm'r, 97 S.W.2d 805, 265 Ky. 747.
- Mass.—Inhabitants of Town of Plymouth v. Inhabitants of Town of Kingston, 193 N.E. 576, 289 Mass. 57.
- Minn.—Manthey v. Commissioner of Revenue, 468 N.W.2d 548.
- N.Y.—Sarraf v. Szunics, 503 N.Y.S.2d 513, 132 Misc.2d 97.
- Pa.—Zinn v. Zinn, 475 A.2d 132, 327 Pa.Super. 128.

Similar rule for residency

- Ill.—Hatcher v. Anders, 2 Dist., 453 N.E.2d 74, 72 Ill.Dec. 769, 117 Ill.App.3d 236.
62. U.S.—Pioneer Southwestern Stages v. Wicker, C.C.A.Cal., 50 F.2d 581.
- Vt.—Vitro v. Town of Carmel, D.C.N.Y., 433 F.Supp. 1110.
- Ill.—Fink v. Fink, 346 N.E.2d 415, 37 Ill.App.3d 604.
- Ia.—Hartley v. Hartley, App., 336 So.2d 291, writ denied 339 So.2d 21, writ issued 343 So.2d 204.
- Md.—Shenton v. Abbott, 15 A.2d 906, 178 Md. 526.
- Pa.—Bell v. Bell, 473 A.2d 1069, 326 Pa.Super. 237.
- W.Va.—State v. Stalnaker, 412 S.E.2d 231, 186 W.Va. 233.

Residence

- Same rule applies to "residence" in the sense of domicile.
- U.S.—U.S. v. Knight, D.C.Mont., 291 F. 129, affirmed 299 F. 571.
- Cal.—Harlan v. Industrial Accident Commission, 228 P. 654, 194 C. 352.
- Iowa—Taylor v. Independent School Dist. of Earlham, 164 N.W. 878, 181 Iowa 544.

gram,⁶³ or acquiring an education or some art or skill,⁶⁴ or for the sake of health⁶⁵ or pleasure,⁶⁶ with the intention of returning to the original home, is not sufficient for the acquisition or change of domicile. Neither is a domicile acquired by residence while on a visit,⁶⁷ or for the education of the party's children.⁶⁸ However, persons who are forced to leave their homes and travel to other places for reasons of health can become domiciled at their new abodes.⁶⁹

c. Floating Intention

Actual removal with intention to remain indefinitely creates a new domicile notwithstanding a floating intention to return to the former domicile at some future and indefinite time.

N.Y.—Hislop v. Taaffe, 125 N.Y.S. 614, 141 A.D. 40.
La.—Wellborn v. Jones, App. 2 Cir., 445 So.2d 787.

Performing duties of civil office

A change of residence to enable a person to perform the duties of a civil office, whether elective or appointive, does not of itself constitute a "change of domicile".

Md.—Shenton v. Abbott, 15 A.2d 906, 178 Md. 526.

Federal employee

One who comes to the District of Columbia and remains to render service to the government which requires his presence there may retain his domicile in the state from which he comes until the service terminates unless he gives clear evidence of his intention to forego his state allegiance.

U.S.—Sweeney v. District of Columbia, 113 F.2d 25, 129 A.L.R. 1370, certiorari denied District of Columbia v. Sweeney, 60 S.Ct. 1082, 310 U.S. 631, 84 L.Ed. 1402.

63. U.S.—Jong v. General Motors Corp., D.C.Cal., 359 F.Supp. 223.

64. N.C.—Hall v. Wake County Bd. of Elections, 187 S.E.2d 52, 280 N.C. 600.

65. U.S.—U.S. v. Knight, D.C.Mont., 291 F. 129, affirmed 229 F. 571.

Ariz.—Hiatt v. Lee, 61 P.2d 401, 48 Ariz. 320, 107 A.L.R. 444.

Hawaii—In re Estate of Grant, 34 Hawaii 559.

La.—Succession of Thompson v. Harrington, App. 3 Cir., 502 So.2d 229.

Md.—Shenton v. Abbott, 15 A.2d 906, 178 Md. 526.

Neb.—In re Meyers' Estate, 288 N.W. 35, 137 Neb. 60.

N.J.—Brueckmann v. Frignoca, 152 A. 780, 9 N.J.Misc. 128.

N.Y.—Equitable Trust Co. of New York v. Pratt, 193 N.Y.S. 152, 117 Misc. 708, affirmed 199 N.Y.S. 921, 206 A.D. 689.

Knowledge of inability to return

A change of residence for purpose of benefiting one's health does not usually effect a "change of domicile", and even the knowledge that one will never be able to return home on account of his illness does not necessarily establish a "change of domicile".

Md.—Shenton v. Abbott, 15 A.2d 906, 178 Md. 526.

66. Md.—Shenton v. Abbott, 15 A.2d 906, 178 Md. 526.

Residence

La.—Wellborn v. Jones, App. 2 Cir., 445 So.2d 787.

67. Ky.—Jones Adm'r v. Lay, 66 S.W. 720, 23 Ky.L. 2113.

When a person has actually removed to another place, which is his fixed present residence, with an intention of remaining there for an indefinite time, it becomes his place of domicile, notwithstanding he may have a floating intention to return to his former domicile at some future and indefinite time.⁷⁰

An intention to return to the former domicile at a remote or indefinite period will not control, if other facts, which constitute domicile, give the new residence the character of a permanent home or place of abode.⁷¹ However, an "indeterminate or floating intention" to return does not include an intention to return on the occurrence of some event which may reasonably be anticipated,⁷² as when the health of a relative has been restored.⁷³

68. Ga.—Alvaton Mercantile Co. v. Caldwell, 128 S.E. 781, 34 Ga. App. 151.

Neb.—In re Meyers' Estate, 288 N.W. 35, 137 Neb. 60.

N.J.—In re Dorrance's Estate, 170 A. 601, 115 N.J.Eq. 268, supplemented 172 A. 503, 116 N.J.Eq. 204, sustained Dorrance v. Martin, 176 A. 902, 13 N.J.Misc. 168, affirmed 184 A. 743, 116 N.J.Law 362, certiorari denied 56 S.Ct. 949, 298 U.S. 678, 80 L.Ed. 1399, rehearing denied 56 S.Ct. 957, 298 U.S. 692, 80 L.Ed. 1410, and certiorari denied Camden Safe Deposit & Trust Co. v. Martin, 56 S.Ct. 949, 298 U.S. 678, 80 L.Ed. 1399, and 56 S.Ct. 950, 298 U.S. 678, 80 L.Ed. 1399.

Same rule as to "residence"

Kan.—Stracklejohn v. Campbell, 12 P.2d 829, 136 Kan. 145.

69. U.S.—Stifel v. Hopkins, C.A.Ohio, 477 F.2d 1116, 23 A.L.R.Fed. 595—U.S. v. Luria, D.C.N.Y., 184 F. 643, affirmed 34 S.Ct. 10, 231 U.S. 9, 58 L.Ed. 101.

70. U.S.—Crowley v. Glaze, C.A.Colo., 710 F.2d 676.

Reynolds v. Ranta, D.C.Pa., 362 F.Supp. 333.

Cal.—Bragg v. Bragg, 90 P.2d 329, 32 C.A.2d 611.

D.C.—Goodloe v. Hawk, 113 F.2d 753, 72 App.D.C. 287.

Ga.—Campbell v. Campbell, 200 S.E.2d 899, 231 Ga. 214.

Ky.—Robinson v. Paxton, 276 S.W. 500, 210 Ky. 575.

La.—Succession of Webre, 136 So. 67, 172 La. 1104.

Md.—Shenton v. Abbott, 15 A.2d 906, 178 Md. 526.

Pa.—In re Dorrance's Estate, 163 A. 303, 309 Pa. 151, certiorari denied Dorrance v. Commonwealth of Pennsylvania, 53 S.Ct. 222, 287 U.S. 660, 77 L.Ed. 570, and 53 S.Ct. 507, 288 U.S. 617, 77 L.Ed. 990.

"Residence" or "legal residence"

U.S.—U.S. v. Knight, D.C.Mont., 291 F. 129, affirmed 299 F. 571.

Ky.—Hodges v. Murray, 41 S.W.2d 923, 240 Ky. 127.

71. U.S.—McHaney v. Cunningham, D.C.La., 4 F.2d 725.

Ga.—Cunningham v. Spurway, 178 S.E. 762, 50 Ga.App. 550.

72. Mo.—McDowell v. Friedman Bros. Shoe Co., 115 S.W. 1028, 135 Mo.App. 276.

73. Mo.—McDowell v. Friedman Bros. Shoe Co., 115 S.W. 1028, 135 Mo.App. 276.

III. CAPACITY TO ACQUIRE DOMICILE

A. GENERAL CONSIDERATIONS

§ 18. In General

Generally, every person *sui juris* may change his domicile at any time.

Library References

Domicile ⇨4(1, 2).

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following Preface.

Generally, every person who is *sui juris* and has the requisite mental capacity is at liberty to change his domicile at any time and acquire a domicile of his own choice,⁷⁴ the right to change a domicile being a natural right.⁷⁵

A person not *sui juris* cannot by his own act change his domicile,⁷⁶ and the domicile of every dependent person is determined by, and changes with, that of the person on whom he is dependent.⁷⁷

§ 19. Holder of Visa

The nature of the visa under which a United States citizen is admitted into a foreign country is an essential inquiry in determining his domicile. Aliens holding a nonimmigrant visa of

a specified class have the legal capacity to establish domicile in the United States.

Research Note

Capacity of aliens illegally in the United States to establish domicile is discussed *infra* § 37.

Library References

Domicile ⇨4(1, 2).

Where a person's move is to a foreign country, the nature of the visa under which admission is granted is an essential inquiry when determining domicile;⁷⁸ and his subjective intent is not dispositive of domicile if his limited visa of the foreign country is intended to restrict his intent, for an intent inconsistent with law is unrealistic and insufficient to establish a domicile.⁷⁹

An alien in the United States who is holding a nonimmigrant visa of a specified class has the legal capacity to change his domicile,⁸⁰ and nothing in the nature of such visa under the federal law would render its holder incapable as a matter of law of establishing domicile in a state.⁸¹

B. PARTICULAR PERSONS

1. Infants

§ 20. In General

An infant, being non *sui juris*, cannot fix or change his domicile unless emancipated. A legitimate child's domicile usually follows that of the father. In case of separation or divorce of parents, the child has the domicile of the parent who has been awarded the custody of the child.

Library References

Domicile ⇨5.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following Preface.

An infant, being non *sui juris*, is incapable of fixing or changing his domicile,⁸² unless he has

74. U.S.—Coppedge v. Clinton, C.C.A.Okl., 72 F.2d 531.

Unanue v. Caribbean Canneries, Inc., D.C.Del., 323 F.Supp. 63.

Iowa—Paulson v. Forest City Community School Dist. in Winnebago, 238 N.W.2d 344.

Ky.—Bailey v. Norman's Adm'r, 15 S.W.2d 1005, 228 Ky. 790.

Or.—Matter of Marriage of Pirouzkhar, 626 P.2d 380, 51 Or.App. 519.

Wis.—In re Village of Chenequa, 221 N.W. 856, 197 Wis. 163.

75. U.S.—Coppedge v. Clinton, C.C.A.Okl., 72 F.2d 531.

76. W.Va.—First Nat. Bank v. Tate, 178 S.E. 807, 116 W.Va. 138.

77. Cal.—In re Wickes Estate, 60 P. 867, 128 C. 270.

78. Md.—Comptroller of the Treasury v. Mollard, 455 A.2d 72, 53 Md.App. 631.

79. Md.—Comptroller of the Treasury v. Mollard, 455 A.2d 72, 53 Md.App. 631.

80. "G-4 Visa"

A nonimmigrant visa granted to officers or employees of international treaty organizations and members of immediate families.

U.S.—Elkins v. Moreno, Md., 98 S.Ct. 1338, 435 U.S. 647, 55 L.Ed.2d 614, certified question answered 397 A.2d 1009, 284 Md. 425.

81. Md.—Toll v. Moreno, 397 A.2d 1009, 284 Md. 425.

82. U.S.—Mississippi Band of Choctaw Indians v. Holyfield, Miss., 109 S.Ct. 1597, 490 U.S. 30, 104 L.Ed.2d 29—Yarborough v. Yarborough, 54 S.Ct. 181, 290 U.S. 202, 78 L.Ed. 269, 90 A.L.R. 924.

Arredondo v. Brockette, C.A.Tex., 648 F.2d 425, affirmed 103 S.Ct. 1838, 461 U.S. 321, 75 L.Ed.2d 879.

been emancipated by his parents,⁸³ and an infant has been held unable to change his domicile even if emancipated.⁸⁴

The domicile of an infant accompanies legal custody.⁸⁵ During minority the domicile of an infant continues to be the same as that of the person from whom he took his domicile of origin, and changes

only with the domicile of that person.⁸⁶ However, it has been held that a minor child may be shown by the evidence to have adopted a domicile other than that of the child's parents.⁸⁷

The domicile of a legitimate child, during minority and until emancipation, ordinarily follows that of

Ariz.—Matter of Appeal in Maricopa County Juvenile Action No. A-27789, 680 P.2d 143, 140 Ariz. 7.

Ark.—Johnson v. Taylor, 215 S.W. 162, 140 Ark. 100.

Fla.—Florida Bd. of Regents of Dept. of Ed., Division of Universities v. Harris, App., 338 So.2d 215.

Ga.—McDowell v. Gould, 144 S.E. 206, 166 Ga. 670.

Ind.—Johnson v. Smith, 180 N.E. 188, 94 Ind.App. 619.

Kan.—Trammell v. Kansas Compensation Board, 46 P.2d 867, 142 Kan. 329.

Md.—Holly v. Maryland Auto Ins. Fund, 349 A.2d 670, 29 Md.App. 498.

Ky.—New Domain Oil & Gas Co. v. McKinney, 221 S.W. 245, 188 Ky. 183.

Mass.—Hershkoff v. Board of Registrars of Voters of Worcester, 321 N.E.2d 656.

Miss.—Thompson v. Mississippi Farm Bureau Mut. Ins. Co., 602 So.2d 855.

N.J.—Pieretti v. Pieretti, 176 A. 589, 13 N.J.Misc. 98.

N.Y.—Matter of Cathy C., 391 N.Y.S.2d 971, 89 Misc.2d 539.

N.C.—Hall v. Wake County Bd. of Elections, 187 S.E.2d 52, 280 N.C. 600.

Pa.—Harrison v. Harrison, 163 A. 62, 107 Pa.Super. 161.

S.C.—Cribbs v. Floyd, 199 S.E. 677, 188 S.C. 443.

Tenn.—McElhaney v. Chipman, App., 647 S.W.2d 643.

W.Va.—First Nat. Bank v. Tate, 178 S.E. 807, 116 W.Va. 138.

Similar rule for legal residence

Minor could not change her legal residence by her own volition.

Ga.—Davenport v. Aetna Cas. & Sur. Co. of Illinois, 241 S.E.2d 593, 144 Ga.App. 474.

Decision by parents

Cal.—In re Wanomi P., 2 Dist., 264 Cal.Rptr. 623, 216 C.A.3d 156, review denied, certiorari denied *Mic Mac Nation v. Giesler*, 111 S.Ct. 57, 498 U.S. 816, 112 L.Ed.2d 33.

83. Cal.—Lev v. College of Marin, 99 Cal.Rptr. 476, 22 C.A.3d 488.

Md.—Liberty Mut. Ins. Co. v. Craddock, 338 A.2d 363, 26 Md.App. 296.

Minn.—State ex rel. Carlson v. Hedberg, 256 N.W. 91, 192 Minn. 193.

N.Y.—Cohen v. Delaware, L. & W.R. Co., 269 N.Y.S. 667, 150 Misc. 450.

N.C.—Duke v. Johnston, 189 S.E. 504, 211 N.C. 171.

84. U.S.—Wiggins v. New York Life Ins. Co., D.C.Ky., 2 F.Supp. 365.

85. Ariz.—Matter of Appeal in Maricopa County Juvenile Action No. A-27789, 680 P.2d 143, 140 Ariz. 7.

Mass.—Gil v. Servizio, 375 N.E.2d 716, 375 Mass. 186.

Minn.—Ray v. Ray, 217 N.W.2d 492, 229 Minn. 192.

Neb.—In re Guardianship of La Velle, 230 N.W.2d 213, 194 Neb. 91.

Pa.—Commonwealth ex rel. Laws v. Laws, 378 A.2d 333, 249 Pa.Super. 355.

Wash.—In re Custody of Miller, 548 P.2d 542, 86 Wash.2d 712.

De facto care and custody

Child acquired domicile of resident who had de facto care and custody of the child for six years.

Ill.—Donlon v. Miller, 355 N.E.2d 195, 42 Ill.App.3d 64.

Legal care and custody

Domicile for a minor child is controlled by the person who is charged with the legal care and custody of him.

Tenn.—McElhaney v. Chipman, App., 647 S.W.2d 643.

Custody of both parents

Where husband and wife were legally married at time of institution of annulment proceedings in North Dakota, both parents had equal rights with respect to custody of their children and domicile of children who had been taken by wife to Washington prior to commencement of annulment proceedings in North Dakota, was in Washington.

Wash.—Weber v. Weber, 496 P.2d 576, 6 Wash.App. 722.

Legal guardian

Ariz.—St. Joseph's Hosp. and Medical Center v. Maricopa County, 688 P.2d 986, 142 Ariz. 94.

Loco parentis

If neither of infant's parents has legal custody, his domicile is that of person who stands in loco parentis to him.

Ariz.—Garay Uppen v. Superior Court of Pima County, App., 567 P.2d 1210, 116 Ariz. 81.

Residence

Fifteen-year-old girl who, along with putative father of her child, applied for marriage license under terms of statute requiring her to be a resident of the county in which she applied and who was living with her grandmother in one county but who was in legal custody of her mother who lived in another county was a resident of the county in which her mother lived.

Ind.—State ex rel. Leffingwell v. Superior Court No. 2 of Grant County, 321 N.E.2d 568, 262 Ind. 574.

Natural tutrix

Legal residence of a five-year-old child, who lived with his great grandparents during the week in order to attend a nearby school at request of his mother who paid the great grandparents' expenses incurred and who lived with mother on the weekends, remained with mother who was his natural tutrix.

La.—Vinet v. Haro, App., 281 So.2d 183, writ denied 283 So.2d 501.

86. U.S.—Ex parte Petterson, D.C.Minn., 166 F. 536.

Ga.—Squire v. Vazquez, 184 S.E. 629, 52 Ga.App. 712.

Iowa—In re Prehoda's Guardianship, 189 N.W. 719, 194 Iowa 308.

Ky.—New Domain Oil & Gas Co. v. McKinney, 221 S.W. 245, 188 Ky. 183.

S.C.—Cribbs v. Floyd, 199 S.E. 677, 188 S.C. 443.

87. U.S.—Dunlap by Wells v. Buchanan, C.A.Ark., 741 F.2d 165.

N.Y.—Matter of Adoption of Danielle, 387 N.Y.S.2d 48, 88 Misc.2d 78.

the father, while the latter is alive,⁸⁸ unless the father has voluntarily relinquished his parental authority.⁸⁹ The general rule applies regardless of the consent or desire of the parties,⁹⁰ and even though the child is not living with the father.⁹¹ The

mere separation of the parents does not affect the application of this rule.⁹²

Where parents are living apart, the minor's domicile is that of the parent with whom he lives;⁹³ but, where parents are separated by judicial decree or divorce, the minor's domicile follows that of the parent to whose custody it has been awarded.⁹⁴ A

88. U.S.—*Yarborough v. Yarborough*, 54 S.Ct. 181, 290 U.S. 202, 78 L.Ed. 269, 90 A.L.R. 924.

Arrendondo v. Brockette, C.A.Tex., 648 F.2d 425, affirmed 103 S.Ct. 1838, 461 U.S. 321, 75 L.Ed.2d 879.

Shishko v. State Farm Ins. Co., D.C.Pa., 553 F.Supp. 308, affirmed 722 F.2d 734 and Appeal of *Shishko*, 722 F.2d 734.

Ala.—*Higgenbotham v. State*, 103 So. 71, 20 Ala.App. 476.

Ariz.—*Garay Uppen v. Superior Court of Pima County*, 567 P.2d 1210, 116 Ariz. 81.

D.C.—*Deming v. U.S. ex rel. Ward*, 37 F.2d 818, 59 App.D.C. 188.

Fla.—*Minick v. Minick*, 149 So. 483, 491, 111 Fla. 469.

Ga.—*Mathis v. Sapp*, 208 S.E.2d 446, 232 Ga. 620.

Ky.—*Ferguson's Adm'r v. Ferguson's Adm'r*, 73 S.W.2d 31, 255 Ky. 230.

La.—*Deshotel v. Casualty Reciprocal Exchange*, App., 350 So.2d 283, writ denied 352 So.2d 1037.

Md.—*Holly v. Maryland Auto. Ins. Fund*, 349 A.2d 670, 29 Md.App. 498.

Mich.—*In re Volk*, 235 N.W. 854, 254 Mich. 25.

Minn.—*State ex rel. Carlson v. Hedberg*, 256 N.W. 91, 192 Minn. 193.

Mass.—*Martin v. Gardiner*, 134 N.E. 380, 240 Mass. 350.

Mo.—*Lankford v. Gebhart*, 32 S.W. 1127, 130 Mo. 621.

Neb.—*In re Guardianship of La Velle*, 230 N.W.2d 213, 194 Neb. 91.

N.J.—*Brown v. Brown*, 165 A. 643, 112 N.J.Eq. 600.

N.M.—*Worland v. Worland*, 551 P.2d 981, 89 N.M. 291.

N.Y.—*Mallina v. Mallina*, 4 N.Y.S.2d 27, 167 Misc. 343.

N.C.—*Davis v. Davis v. Maryland Cas. Co.*, 331 S.E.2d 744, 76 N.C.App. 102.

Pa.—*Alburger v. Alburger*, 10 A.2d 888, 138 Pa.Super. 339.

R.I.—*Greene v. Willis*, 133 A. 651, 47 R.I. 375.

S.C.—*Cribbs v. Floyd*, 199 S.E. 677, 188 S.C. 443.

Tex.—*Wright v. Wright*, Civ.App., 285 S.W. 909.

Parents

U.S.—*Mississippi Band of Choctaw Indians v. Holyfield*, Miss., 109 S.Ct. 1597, 490 U.S. 30, 104 L.Ed.2d 29.

Rosario v. I.N.S., C.A.2(N.Y.), 962 F.2d 220.

Linville v. Price, D.C.W.Va., 572 F.Supp. 345.

Ariz.—*St. Joseph's Hosp. and Medical Center v. Maricopa County*, 688 P.2d 986, 142 Ariz. 94.

Ind.—*State Election Bd. v. Bayh*, 521 N.E.2d 1313.

Mich.—*Ortman v. Miller*, 190 N.W.2d 242, 33 Mich.App. 451.

Miss.—*Thompson v. Mississippi Farm Bureau Mut. Ins. Co.*, 602 So.2d 855.

Neb.—*State ex rel. Frasier v. Whaley*, 234 N.W.2d 909, 194 Neb. 703.

Pa.—*Greenwood v. Hildebrand*, 515 A.2d 963, 357 Pa.Super. 253, appeal denied 528 A.2d 602, 515 Pa. 594.

S.D.—*Matter of Guardianship of D.L.L.*, 291 N.W.2d 278.

Tenn.—*McElhanev v. Chipman*, App., 647 S.W.2d 643.

Wash.—*Matter of Marriage of Forsyth*, 546 P.2d 117, 14 Wash.App. 909.

Several residences

La.—*Vinet v. Hano*, App., 281 So.2d 183, writ denied 283 So.2d 501.

Same rule as to residence

(1) Residence of unemancipated minor is that of his parents.

Ill.—*Connelly by Connelly v. Gibbs*, 445 N.E.2d 477, 68 Ill.Dec. 29, 112 Ill.App.3d 257.

Ind.—*State ex rel. Leffingwell v. Superior Court No. 2 of Grant County*, 321 N.E.2d 568, 262 Ind. 574.

Miss.—*In re Guardianship of Watson*, 317 So.2d 30.

(2) Temporary stay in relative's home does not negate minor's residency with parent.

La.—*Tucker v. State Farm Fire and Cas. Ins. Co.*, App. 2 Cir., 599 So.2d 447, writ denied 604 So.2d 1004.

(3) Under statute, provision relating to the determination of residence, unmarried minor son who had living parents was unable to acquire a residence other than that of his parents by any act or intent of his own.

Cal.—*Northwestern Nat. Cas. Co. v. Davis*, 153 Cal.Rptr. 556, 90 C.A.3d 782.

89. Ga.—*Mathis v. Sapp*, 208 S.E.2d 446, 232 Ga. 620.

90. N.Y.—*Cohen v. Delaware, L. & W.R. Co.*, 269 N.Y.S. 667, 150 Misc. 450.

91. Fla.—*Minick v. Minick*, 149 So. 483, 111 Fla. 469.

Mass.—*Martin v. Gardiner*, 134 N.E. 380, 240 Mass. 350.

N.Y.—*In re Thorne*, 148 N.E. 630, 240 N.Y. 444, reargument denied 150 N.E. 534, 241 N.Y. 513.

S.C.—*Cribbs v. Floyd*, 199 S.E. 677, 188 S.C. 443.

92. U.S.—*Yarborough v. Yarborough*, 54 S.Ct. 181, 290 U.S. 202, 78 L.Ed. 269, 90 A.L.R. 924.

Ky.—*Ferguson's Adm'r v. Ferguson's Adm'r*, 73 S.W.2d 31, 255 Ky. 230.

93. U.S.—*May v. Anderson*, Ohio, 73 S.Ct. 840, 345 U.S. 528, 97 L.Ed. 1221, 52 O.O. 45.

Ind.—*Matter of Adoption of T.R.M.*, 525 N.E.2d 298, rehearing denied, certiorari denied I.Q. v. D.R.L., 109 S.Ct. 2072, 490 U.S. 1069, 104 L.Ed.2d 636.

Md.—*Wakefield v. Little Light*, 347 A.2d 228, 276 Md. 333.

Mo.—*Matter of Jackson*, App., 592 S.W.2d 320.

N.M.—*Worland v. Worland*, 551 P.2d 981, 89 N.M. 291.

Pa.—*Liggitt v. Liggitt*, 384 A.2d 1261, 253 Pa.Super. 126.

Same rule as to residence

Ind.—*In re Marriage of Rinderknecht*, 367 N.E.2d 1128, 174 Ind.App. 382.

94. U.S.—*Bergen v. Bergen*, C.A.Virgin Islands, 439 F.2d 1008.

Pauley v. Pauley, D.C.Md., 58 F.R.D. 386.

parent has no power to change the domicile of a child while both are subject to a valid decree awarding the custody to the other parent,⁹⁵ and illegal removal of a child from a state does not change the child's domicile.⁹⁶ A child who is subject to child protective proceedings has the domicile of his parents who have the sole legal, if not actual physical, custody of the child.⁹⁷

Where the father forces the mother to leave him with the child,⁹⁸ or where he abandons them,⁹⁹ the domicile of the mother determines that of the child.

Where a minor is non compos mentis and so continues throughout his majority, his domicile remains continuously subject to the control of his father.¹

Adopted children; adoption proceedings.

The domicile of an adopted child during his minority follows the domicile of his adoptive parents.² However, a potential adoptee is not domiciled in the state of an adoption proceeding if the natural father is in another state.³ The surreptitious re-

moval of an infant from the state before an adoption proceeding is filed by a caretaker does not change the domicile of the infant.⁴

Marriage of minor.

The domicile of a male minor remains unaffected by his marriage.⁵ A female minor acquires the domicile of her husband.⁶

§ 21. After Death of Father or Custodial Parent

If the father dies during an infant's minority, the infant's domicile is that of the father at the time of death; thereupon the power to fix the infant's domicile devolves upon the mother. Upon the death of the parent having custody of the child, the child acquires the domicile of the surviving parent.

Library References

Domicile ⇌ 5.

If the father dies during an infant's minority, the infant's domicile is that of the father at the time of his death,⁷ but thereupon the power to fix the infant's domicile devolves upon the mother, and the

Alaska—Wilsonoff v. Wilsonoff, 514 P.2d 1264.
 Ariz.—Bowen v. Graham, App., 684 P.2d 165, 140 Ariz. 593.
 Colo.—People ex rel. Wagner v. Torrence, 27 P.2d 1038, 94 Colo. 47.
 D.C.—Alves v. Alves, App., 346 A.2d 736.
 Ill.—Crawley v. Bauchens, 300 N.E.2d 603, 13 Ill.App.3d 791, affirmed 312 N.E.2d 236, 57 Ill.2d 360.
 La.—Person v. Person, 135 So. 225, 172 La. 740.
 Md.—Struzinski v. Butler, 332 A.2d 713, 24 Md.App. 672.
 Mich.—In re Volk, 235 N.W. 854, 254 Mich. 25.
 Minn.—State ex rel. Larson v. Larson, 252 N.W. 329, 190 Minn. 489.
 Neb.—State ex rel. Frasier v. Whaley, 234 N.W.2d 909, 194 Neb. 703.
 N.Y.—Mallina v. Mallina, 4 N.Y.S.2d 27, 167 Misc. 343.
 N.C.—Davis by Davis v. Maryland Cas. Co., 331 S.E.2d 744, 76 N.C.App. 102.
 Ohio—Heiney v. Heiney, 321 N.E.2d 611, 40 Ohio App.2d 571, 69 O.O.2d 519.
 Or.—Dieringer v. Heiney, 497 P.2d 1201, 10 Or.App. 345.
 Pa.—In re Custody of Sagan, 396 A.2d 450, 261 Pa.Super. 384.

Same rule as to residence

Residence of a minor child of divorced parents is residence of custodial parent.

Ill.—In Interest of Gray, 4 Dist., 475 N.E.2d 1116, 86 Ill.Dec. 737, 131 Ill.App.3d 401, appeal denied.
 Neb.—Gosney v. Department of Public Welfare, 291 N.W.2d 708, 206 Neb. 137.
 Okl.—Cox v. Paulson, App., 534 P.2d 14.
 Wash.—Ehrich v. Ehrich, 499 P.2d 216, 7 Wash.App. 275.

Same rule as to legal residence

Since residence of father, who had right to custody of minor, was Marin County, minor's legal residence was Marin County.
 Cal.—In re Romona S., 134 Cal.Rptr. 881, 64 C.A.3d 945.

On temporary visitation

Children which were in Oklahoma only on basis of temporary visitation rights of father retained domicile in state of Florida which was domicile of mother to whose custody the child had been legally given.

Okla.—Grubbs v. Hunter, 573 P.2d 699.
 95. Mass.—Murphy v. Murphy, 404 N.E.2d 69, 380 Mass. 454.
 96. Mass.—Gil v. Servizio, 375 N.E.2d 716, 375 Mass. 186.
 97. N.Y.—Matter of Stanley R., 2 Dept., 542 N.Y.S.2d 734, 147 A.D.2d 284.
 98. N.C.—Ex parte Means, 97 S.E. 39, 176 N.C. 307.
 99. Ariz.—Garay Uppen v. Superior Court of Pima County, App., 567 P.2d 1210, 116 Ariz. 81.
 Ky.—Ferguson's Adm'r v. Ferguson's Adm'r, 73 S.W.2d 31, 255 Ky. 230.
 N.Y.—Brennan v. Kirwan, 360 N.Y.S.2d 532, 79 Misc.2d 554.
 N.C.—Davis by Davis v. Maryland Cas. Co., 331 S.E.2d 744, 76 N.C.App. 102.

1. N.J.—In re Collins' Estate, 165 A. 285, 11 N.J.Misc. 233.
2. Ind.—Miller v. Bode, 139 N.E. 456, 80 Ind.App. 338.
3. N.J.—Matter of Neuwirth's Estate, 382 A.2d 972, 155 N.J.Super. 410.

4. Removal by mother

Ill.—Donton v. Miller, 355 N.E.2d 195, 42 Ill.App.3d 64.
 5. U.S.—Wiggins v. New York Life Ins. Co., D.C.Ky., 2 F.Supp. 365.
 Tex.—Trammell v. Trammell, 20 Tex. 406.
 6. Fla.—Beekman v. Beckman, 43 So. 923, 53 Fla. 858.
 7. Ala.—Ex parte Fletcher, 142 So. 30, 225 Ala. 139.
 Ark.—Johnson v. Taylor, 215 S.W. 162, 140 Ark. 100.
 Ohio—In re Murray, 16 Ohio Dec. 612, 4 Ohio N.P.N.S. 233, affirmed 8 Ohio Cir.Ct.N.S. 498, 18 Ohio Cir.Dec. 652.

infant's domicile follows that of the mother, who may alter it at pleasure,⁸ provided the change is without fraudulent motives and not detrimental to the infant's rights.⁹ This power may be exercised only so long as the widow remains unmarried, and if she remarries the infant retains the domicile which he had before her remarriage;¹⁰ but there is some authority to the contrary, holding that remarriage does not affect the mother's right to fix her child's domicile.¹¹

The legal residence or domicile of the surviving, supporting parent is the domicile of an unmarried minor child.¹² Upon the death of the custodial parent, the child acquires the domicile of the surviving parent.¹³

§ 22. Children Out of Wedlock

Domicile of a child born out of wedlock is that of the mother, in the absence of abandonment or emancipation; but on legitimation the child acquires the father's domicile.

Library References

Domicile ⇔ 5.

Domicile¹⁴ or "residence"¹⁵ of an infant born out of wedlock is governed by that of the mother, in the absence of desertion or abandonment,¹⁶ or of eman-

ipation.¹⁷ However, on legitimation, by marriage of the parents or acknowledgment by the father, the child acquires the father's domicile.¹⁸

Indian children.

Where the domicile of the mother of a child born out of wedlock is on an Indian reservation, the child is domiciled on that reservation.¹⁹

§ 23. Orphans

An orphan's domicile remains that of the parents or of the parent who died last, until changed by residence elsewhere with a guardian or person in loco parentis.

Library References

Domicile ⇔ 5.

After the death of both parents, the domicile of an infant will remain that of the parents,²⁰ or of the parent who died last,²¹ subject to the rule as to the incapacity of the mother after remarriage, as discussed supra § 21, until changed by residence elsewhere with a guardian or person in loco parentis,²² including grandparents.²³

Infants whose parents are dead do not lose the domicile of their parents by being temporarily

8. Ind.—Johnson v. Smith, 180 N.E. 188, 94 Ind.App. 619.
 N.Y.—In re Thorne, 148 N.E. 630, 240 N.Y. 444, reargument denied 150 N.E. 534, 241 N.Y. 513.
 N.C.—Duke v. Johnston, 189 S.E. 504, 211 N.C. 171.
 Ohio—In re Murray, 16 Ohio Dec. 612, 4 Ohio N.P.N.S. 233, affirmed 8 Ohio Cir.Ct.N.S. 498, 18 Ohio Cir.Dec. 652.
 R.I.—Greene v. Willis, 133 A. 651, 47 R.I. 375.
 9. N.Y.—In re Thorne's Guardianship, 209 N.Y.S. 280, 212 A.D. 654, affirmed In re Thorne, 148 N.E. 630, 240 N.Y. 444, reargument denied 150 N.E. 534, 241 N.Y. 513.
 10. U.S.—Weedin v. Mon Hin, C.C.A.Wash., 4 F.2d 533.
 11. Tex.—Wheeler v. Hollis, 19 Tex. 522, 70 Am.D. 363, 33 Tex. 512.
 12. N.D.—B.R.T. v. Executive Director of Social Service Bd. North Dakota, 391 N.W.2d 594.
 13. Ga.—Abrams v. Daffron, 270 S.E.2d 278, 155 Ga.App. 182.
 Mo.—Bell v. Bell, App., 682 S.W.2d 892.
 14. U.S. Rosaico v. I.N.S., C.A.2(N.Y.), 962 F.2d 220.
 Ariz.—Matter of Appeal in Pima County Juvenile Action No. S-903, App., 635 P.2d 187, 130 Ariz. 202, certiorari denied Catholic Social Services of Tucson v. Pima County, 102 S.Ct. 1644, 455 U.S. 1007, 71 L.Ed.2d 875.
 Ind.—Glansman v. Ledbetter, 130 N.E. 230, 190 Ind. 505.
 N.M.—Matter of Adoption of Baby Child, App., 700 P.2d 198, 102 N.M. 735.
 N.C.—Thayer v. Thayer, 122 S.E. 307, 187 N.C. 573.
 Va.—Rogers v. Commonwealth, 11 S.E.2d 584, 176 Va. 355.
 15. Cal.—In re Guardianship of Sharp, 106 P.2d 244, 41 C.A.2d 79.
 16. Cal.—Harlan v. Industrial Accident Commission, 228 P. 654, 194 C. 352.

- Ind.—Glansman v. Ledbetter, 130 N.E. 230, 190 Ind. 505.
 17. Cal.—Harlan v. Industrial Accident Commission, 228 P. 654, 194 C. 352.
 18. Wash.—In re Adoption and Change of Name of a Minor, 71 P.2d 385, 191 Wash. 452.
 19. U.S.—Mississippi Band of Choctaw Indians v. Holyfield, Miss., 109 S.Ct. 1597, 490 U.S. 30, 104 L.Ed.2d 29.
 N.M.—Matter of Adoption of Baby Child, App., 700 P.2d 198, 102 N.M. 735.
 20. Ga.—Abrams v. Daffron, 270 S.E.2d 278, 155 Ga.App. 182.
 Ind.—Johnson v. Smith, 180 N.E. 188, 94 Ind.App. 619.
 Minn.—State ex rel. Carlson v. Hedberg, 256 N.W. 91, 192 Minn. 193.
 21. Ala.—Ex parte Fletcher, 142 So. 30, 225 Ala. 139.
 Ind.—Johnson v. Smith, 180 N.E. 188, 94 Ind.App. 619.
 Neb.—In re Guardianship of La Velle, 230 N.W.2d 213, 194 Neb. 91.
 Ohio—In re Murray, 16 Ohio Dec. 612, 4 Ohio N.P.N.S. 233, affirmed 8 Ohio Cir.Ct.N.S. 498, 18 Ohio Cir.Dec. 652.
 R.I.—Greene v. Willis, 133 A. 651, 47 R.I. 375.
 S.C.—Cribbs v. Floyd, 199 S.E. 677, 188 S.C. 443.
 22. Ala.—Loftin v. Carden, 83 So. 174, 203 Ala. 405.
 Neb.—In re Guardianship of LaVelle, 230 N.W.2d 213, 194 Neb. 91.
 N.M.—Montoya v. Collier, 512 P.2d 684, 85 N.M. 356.
 Ohio—In re Murray, 16 Ohio Dec. 612, 4 Ohio N.P.N.S. 233, affirmed 8 Ohio Cir.Ct.N.S. 498, 18 Ohio Cir.Dec. 652.
 23. Ohio—In re Murray, 16 Ohio Dec. 612, 4 Ohio N.P.N.S. 233, affirmed 8 Ohio Cir.Ct.N.S. 498, 18 Ohio Cir.Dec. 652.

cared for elsewhere by relatives;²⁴ and removal by strangers does not change an infant's domicile.²⁵ The domicile of an orphaned child is the place to which he is most closely related, absent some compelling reason to the contrary.²⁶

§ 24. Wards

An infant ward's domicile ordinarily follows the guardian's but does not necessarily do so. A ward, not being *sui juris*, cannot change his domicile by removal.

Research Note

The change of a ward's domicile by the guardian is considered in C.J.S. Guardian and Ward § 60.

Library References

Domicile ⇨5.

While it appears that an infant ward's domicile or residence ordinarily follows that of the guardian,²⁷

it does not necessarily do so,²⁸ so a guardian has been held to have no power to control an infant's domicile as against her mother.²⁹ Where a guardian is permitted to remove the child to a new location, the child will not be held to have acquired a new domicile if the guardian's authority does not extend to fixing the child's domicile.³⁰ Domicile of a child who is a ward of the court is the location of the court.³¹

Since a ward is not *sui juris*, he cannot change his domicile by removal,³² nor does the removal of the ward to another state or county by relatives or friends, affect his domicile.³³ Absent an express indication by the court, the authority of one having temporary control of a child to fix the child's domicile is ascertained by interpreting the court's orders.³⁴

2. Married Persons

§ 25. Married Men

Ordinarily a married man's domicile is where his wife or family resides, but he can establish a domicile elsewhere.

Library References

Domicile ⇨4(1, 2), 5.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following Preface.

Ordinarily a married man's domicile or residence is at the place where his wife or family resides;³⁵ but he can establish a domicile or legal residence in some other place.³⁶

A husband's domicile cannot be fixed by any election on the part of his wife.³⁷

§ 26. Married Women

A wife has the same capacity to acquire a domicile as does her husband, and she may acquire a domicile separate from her husband.

Research Note

Presumption as to the wife's domicile is discussed *infra* § 41

Library References

Domicile ⇨4(1, 2), 5.

A wife has the same capacity to acquire a domicile of choice as does her husband,³⁸ and the common-law concept that a wife, by operation of law, automatically is assigned the domicile of her husband is considered not to be applicable,³⁹ at least

24. Ky.—Mills' Guardian v. City of Hopkinsville, 11 S.W. 776, 11 Ky.L. 164.

Mo.—Lewis v. Castello, 17 Mo.App. 593.

25. Ga.—Taylor v. Jeter, 33 Ga. 195.

N.Y.—In re Willett, 24 N.Y.S. 506, 71 Hun 195.

26. N.M.—Montoya v. Collier, 512 P.2d 684, 85 N.M. 356.

27. Ind.—In re Perry, 148 N.E. 163, 83 Ind.App. 456.

Iowa—Jensen v. Sorenson, 233 N.W. 717, 211 Iowa 354.

Tenn.—State v. Graper, 4 S.W.2d 955, 155 Tenn. 565.

Handicapped child

N.Y.—Matter of Cathy C., 391 N.Y.S.2d 971, 89 Misc.2d 539.

28. Ky.—City of Louisville v. Sherley's Guardian, 80 Ky. 71.

29. Ky.—Garth v. City Sav. Bank, 86 S.W. 520, 120 Ky. 280, 27 Ky.L. 675.

30. Wash.—Matter of Adoption of Buehl, 555 P.2d 1334, 87 Wash.2d 649.

31. Wash.—Matter of Adoption of Buehl, 555 P.2d 1334, 87 Wash.2d 649.

32. Cal.—In re Henning's Estate, 60 P. 762, 128 C. 214.

33. Md.—Sudler v. Sudler, 88 A. 26, 121 Md. 46.

34. Wash.—Matter of Adoption of Buehl, 555 P.2d 1334, 87 Wash.2d 649.

35. Minn.—Eklund v. Supreme Council of the Royal Arcanum, 187 N.W. 826, 152 Minn. 20.

Tex.—Fidelity & Deposit Co. of Maryland v. First Nat. Bank, Civ.App., 113 S.W.2d 622, error dismissed.

36. Md.—Hill v. Niblett, 187 A. 869, 171 Md. 653.

N.J.—Carpino v. Carpino, 148 A. 615, 7 N.J.Misc. 1121.

37. Miss.—McHenry v. State, 80 So. 763, 119 Miss. 289.

38. N.Y.—Psaty v. Psaty, 402 N.Y.S.2d 779, 93 Misc.2d 454.

39. N.Y.—Psaty v. Psaty, 402 N.Y.S.2d 779, 93 Misc.2d 454.

not in all contexts.⁴⁰ A husband may not assert an overriding control of the choice of a matrimonial domicile;⁴¹ and a married woman may acquire a domicile separate from her husband.⁴²

On the other hand, in the absence of constitutional or statutory provision, it has been held that a wife's domicile generally follows that of her husband.⁴³ The domicile of the husband is that of the wife only when the husband provides a domicile where the wife may go and stay at her will,⁴⁴ and where the husband does not provide a marital home the wife does not give up her domicile on marrying.⁴⁵

Effect of husband's consent.

There is a conflict in the authorities as to whether a wife, living with her husband on amicable terms, can acquire an independent domicile with his consent;⁴⁶ some authorities deny her this right,⁴⁷ but others permit it.⁴⁸

§ 27. — Effect of Separation

- a. In general
- b. Under judicial decree

40. Minn.—Jones v. Jones, App., 402 N.W.2d 146.

41. N.Y.—Lansford v. Lansford, 2 Dept., 465 N.Y.S.2d 583, 96 A.D.2d 832.

Similar rule as to residence

Residence of a wife does not necessarily follow that of her husband but is to be determined according to the facts pertinent to her as an individual.

Fla.—Simpson v. Simpson, App., 339 So.2d 250.

42. U.S.—Williams v. State of North Carolina, N.C., 63 S.Ct. 207, 317 U.S. 287, 87 L.Ed. 279, 143 A.L.R. 1273.

In re Ring, E.D.Mo., 144 B.R. 446.

N.Y.—Sorensen v. Sorensen, 220 N.Y.S. 242, 219 A.D. 344.

43. U.S.—U.S. ex rel. Boraca v. Schlotfeldt, C.C.A.III., 109 F.2d 106.

Hofferbert v. City of Knoxville, Tennessee, D.C.Tenn., 470 F.Supp. 1001—Wilson v. Pickens, D.C.Okl., 444 F.Supp. 53.

Ala.—Powers Clothing Co. v. Smith, 81 So. 576, 202 Ala. 634.

Conn.—McDonald v. Hartford Trust Co., 132 A. 902, 104 Conn. 169.

Fla.—Bolles v. Bolles, App., 364 So.2d 813.

Md.—Liberty Mut. Ins. Co. v. Craddock, 338 A.2d 363, 26 Md.App. 296.

Minn.—Jones v. Jones, App., 402 N.W.2d 146.

Mo.—Bridges v. Bridges, App., 559 S.W.2d 753.

Nev.—Barber v. Barber, 222 P. 284, 47 Nev. 377, 39 A.L.R. 706.

N.J.—Brown v. Brown, 165 A. 643, 112 N.J.Eq. 600.

Marital domicile

Common law generally identifies wife's domicile with marital domicile.

Vt.—Shatkin v. University of Vermont, 346 A.2d 525, 133 Vt. 401.

a. In General

While a wife has the capacity to acquire a domicile separate from her husband, according to some authorities, the mere fact that a husband and wife are living apart does not prevent his domicile from fixing hers; but when he abandons her, or, by his conduct, justifies her in leaving him, she may acquire a separate domicile.

Library References

Domicile ⇨4(1, 2), 5.

A wife has the capacity to acquire a domicile separate from her husband, as discussed supra § 26. However, according to some authorities, the wife's domicile follows that of the husband in the absence of a judicial decree of separation or divorce;⁴⁹ such domicile is not affected by the mere fact that the husband and wife are living apart,⁵⁰ and a wife who is living apart without just cause can acquire no separate domicile of her own,⁵¹ except in exceptional circumstances.⁵²

Conversely, a married woman may acquire a separate domicile where there are just grounds for separation,⁵³ as where the wife has been abandoned

44. Ky.—Ferguson's Adm'r v. Ferguson's Adm'r, 73 S.W.2d 31, 255 Ky. 230.

Minn.—Gussman v. Rodgers, 251 N.W. 18, 190 Minn. 153.

45. Fla.—Ashmore v. Ashmore, App., 251 So.2d 15, certiorari dismissed 256 So.2d 513.

46. Tenn.—Younger v. Gianotti, 138 S.W.2d 448, 176 Tenn. 139, 128 A.L.R. 1413.

47. Pa.—Barning v. Barning, 46 Pa.Super. 291.

48. Del.—Burkhardt v. Burkhardt, 193 A. 924, 8 W.W.Harr. 492, 38 Del. 492.

N.J.—Floyd v. Floyd, 124 A. 525, 95 N.J.Eq. 661.

N.Y.—Weir v. Weir, 226 N.Y.S. 115, 131 Misc. 13.

Tenn.—Younger v. Gianotti, 138 S.W.2d 448, 176 Tenn. 139, 128 A.L.R. 1413.

Va.—Commonwealth v. Rutherford, 169 S.E. 909, 160 Va. 524, 90 A.L.R. 348.

49. Fla.—Bowmall v. Bowmall, 174 So. 14, 127 Fla. 747.

50. U.S.—U.S. ex rel. Boraca v. Schlotfeldt, C.C.A.III., 109 F.2d 106.

Ark.—Bruce v. Bruce, 3 S.W.2d 6, 176 Ark. 442.

Mo.—Hairs v. Hairs, 300 S.W. 540, 222 Mo.App. 941.

51. Ark.—Bruce v. Bruce, 3 S.W.2d 6, 176 Ark. 442.

Fla.—Browmall v. Browmall, 174 So. 14, 127 Fla. 747.

N.J.—Brown v. Brown, 165 A. 643, 112 N.J.Eq. 600.

52. Fla.—Minick v. Minick, 149 So. 483, 111 Fla. 469.

53. Ala.—Sparkman v. Sparkman, 100 So. 621, 20 Ala.App. 50.

Nonsupport as ground

La.—Carrier v. Carrier, App., 258 So.2d 115.

or deserted,⁵⁴ or forced by brutal treatment, misconduct, or other just cause to leave the husband.⁵⁵

b. Under Judicial Decree

A wife, living apart from her husband under a judicial decree of separation, or a divorced woman, may acquire a separate domicile.

Where husband and wife are living apart under a judicial decree of divorce or separation, the wife may acquire a separate domicile of her own which will remain unaffected by any change of residence

on the part of the husband.⁵⁶ A divorced woman may select her own domicile, whether she is divorced a vinculo matrimonii⁵⁷ or only a mensa et thoro.⁵⁸

The existing matrimonial domicile of a divorced woman continues until such time as she acquires her own domicile,⁵⁹ and, if at the time the decree was granted she was domiciled with her husband, she retains the domicile or settlement of the husband until she acquires a new one.⁶⁰

3. Incompetent Persons; Institutionalized Persons; Prisoners

§ 28. Incompetent Persons

Whether a person of partially unsound mind is precluded from establishing a domicile depends on the degree of mental impairment. An adult becoming mentally incompetent retains the domicile he had when he became incompetent and an incompetent minor's domicile follows his father's; but an incompetent's guardian or committee may change his domicile, at least within the state.

Library References

Domicile ⇐5.

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See WESTLAW Electronic Research Guide following Preface.

The mere fact that a person is of partially unsound mind does not necessarily preclude him from establishing his domicile, as the question must de-

pend entirely on the extent to which his reason has been impaired; in general, it may be stated that but a comparatively slight degree of understanding is required in order that his action may be recognized.⁶¹ However, a mentally incompetent person lacks the mental capacity to change his domicile,⁶² and therefore retains the domicile which he had when he became insane,⁶³ or when he became mentally disabled or incapacitated,⁶⁴ or when he was adjudged incompetent,⁶⁵ unless it is changed by some competent or authorized person or tribunal,⁶⁶ or until the restoration of his sanity.⁶⁷

A minor who becomes insane or mentally ill or deficient, being incapable of a voluntary change,

54. Ky.—Ferguson's Adm'r v. Ferguson's Adm'r, 73 S.W.2d 31, 255 Ky. 230.

Mass.—Corkum v. Clark, 161 N.E. 912, 263 Mass. 378.

N.J.—Floyd v. Floyd, 124 A. 525, 95 N.J.Eq. 661.

Ohio—Larrick v. Walters, 177 N.E. 642, 39 Ohio App. 363, 10 Ohio Law Abs. 508.

S.D.—In re Babcock's Estate, 266 N.W. 420, 64 S.D. 283.

55. Ky.—Ferguson's Adm'r v. Ferguson's Adm'r, 73 S.W.2d 31, 255 Ky. 230.

La.—Hobbs v. Fireman's Fund American Ins. Companies, App., 339 So.2d 28, application denied 341 So.2d 896, four cases.

N.J.—Brown v. Brown, 165 A. 643, 112 N.J.Eq. 600.

N.C.—Miller v. Miller, 172 S.E. 493, 205 N.C. 753.

Pa.—Starr v. Starr, 78 Pa.Super. 579.

S.D.—In re Babcock's Estate, 266 N.W. 420, 64 S.D. 283.

Similar rule as to residence

When a wife permanently leaves her husband under sufficient provocation, she is free to establish her own residence.

Tex.—Stacy v. Stacy, Civ.App., 480 S.W.2d 479.

56. Minn.—State ex rel. Larson v. Larson, 252 N.W. 329, 190 Minn. 489.

Domicile of divorcee

Domicile of divorcee was that of her new husband.

Ill.—Crawley v. Bauchens, 300 N.E.2d 603, 13 Ill.App.3d 791, affirmed 312 N.E.2d 236, 57 Ill.2d 360.

57. N.Y.—People ex rel. Campbell v. Dewey, 50 N.Y.S. 1013, 23 Misc. 267.

58. Vt.—Lariviere v. Lariviere, 147 A. 700, 102 Vt. 278.

59. N.Y.—Cocron v. Cocron, 375 N.Y.S.2d 797, 84 Misc.2d 335.

60. Pa.—Lake Dist. Overseers of Poor v. South Canaan Overseers of Poor, 87 Pa. 19.

61. U.S.—Coppedge v. Clinton, C.C.A.Okla., 72 F.2d 531—Chew v. Nicholson, D.C.Del., 281 F. 400.

Ga.—Stanfield v. Hursey, 136 S.E. 826, 36 Ga.App. 394.

N.J.—In re Collins' Estate, 165 A. 285, 11 N.J.Misc. 233.

62. Ga.—Sorrells v. Sorrells, 274 S.E.2d 314, 247 Ga. 9.

N.Y.—In re Aho, 360 N.Y.S.2d 47, 46 A.D.2d 673, modified on other grounds 347 N.E.2d 647, 39 N.Y.2d 241, 383 N.Y.S.2d 285.

63. N.C.—Lawson v. Langley, 191 S.E. 229, 211 N.C. 526, 111 A.L.R. 163.

Pa.—In re Edmundson, 173 A. 708, 113 Pa.Super. 472.

Tex.—Wilson v. Bearden, Civ.App., 59 S.W.2d 214, error refused.

Va.—Commonwealth v. Kernochan, 106 S.E. 367, 129 Va. 405, 30 A.L.R. 601.

64. Ga.—Wilson v. Willard, 358 S.E.2d 859, 183 Ga.App. 204.

65. N.Y.—Brown v. Brown, 381 N.Y.S.2d 803, 86 Misc.2d 71.

66. Va.—Commonwealth v. Kernochan, 106 S.E. 367, 129 Va. 405, 30 A.L.R. 601.

67. U.S.—McC Campbell v. McC Campbell, D.C.Ky., 13 F.Supp. 847.

like other infants, follows his father's or parents' domicile,⁶⁸ or settlement,⁶⁹ even after majority.

Where a person has not sufficient mind voluntarily to change his domicile, such change is not ordinarily effected by his removal,⁷⁰ as, for instance, to an asylum;⁷¹ or institution for treatment of mental illness;⁷² but the committee for an incompetent, or his guardian, may in good faith, change his domicile,⁷³ subject to the restraining power of the court,⁷⁴ and provided, according to some authorities, the change is intra-state.⁷⁵

Where the question of domicile has no bearing on the actions of an attorney in fact or the donee of a power of attorney to care for the donor, the attorney in fact does not have the authority to change such donor's domicile.⁷⁶

§ 29. Inmates of Institutions Other than Prisons

According to some authorities, inmates of institutions other than prisons can show that they have become domiciled within institutional confines even though they have been compelled to become institutionalized.

Library References

Domicile ⇨4(1, 2), 5.

The bare fact that a person has been compelled to relocate in a particular place does not ordinarily prevent him from becoming domiciled therein, as discussed supra § 14, and inmates of institutions

other than prisons can show that they have become domiciled within institutional confines even if they have been compelled by circumstances beyond their control to become institutionalized.⁷⁷

On the other hand, it has been held that, ordinarily, a patient or inmate of an institution does not gain or lose a domicile or residence, but retains the domicile he had when he entered the institution,⁷⁸ and that where the inmate pays his own way, is free to come and go, and has no other place of abode, his conduct may show an intent to establish the institution as his domicile.⁷⁹

§ 30. Prisoners

A person's domicile is generally not changed by involuntary confinement in a prison.

Library References

Domicile ⇨4(1, 2), 5.

Generally, a person's domicile is not changed by involuntary confinement in a penitentiary or other prison, but in such case his former domicile remains;⁸⁰ and his domicile does not change where although he intends to relocate in a place his intent does not coincide with his physical presence in such place.⁸¹ Accordingly, a pauper prisoner retains his former settlement or domicile.⁸²

On the other hand, a prison inmate should not be precluded from showing that he has developed the

68. Neb.—Gosney v. Department of Public Welfare, 291 N.W.2d 708, 206 Neb. 137.

N.J.—In re Collins' Estate, 165 A. 285, 11 N.J.Misc. 233.

69. Me.—Monroe v. Jackson, 55 Me. 55.

70. Iowa—Sullivan v. Kenney, 126 N.W. 349, 148 Iowa 361.

Without approval of court

Mother, who was appointed guardian of her incompetent son by California court, could not effectuate a change of son's domicile by bringing him to New York without approval of the California court.

N.Y.—Brown v. Brown, 381 N.Y.S.2d 803, 86 Misc.2d 71.

71. U.S.—Chew v. Nicholson, D.C.Del., 281 F. 400.

Ga.—Squire v. Vasquez, 184 S.E. 629, 52 Ga.App. 712.

72. Neb.—Gosney v. Department of Public Welfare, 291 N.W.2d 708, 206 Neb. 137.

73. U.S.—Smith v. Burt, D.C.La., 46 F.2d 336.

N.Y.—Brown v. Brown, 381 N.Y.S.2d 803, 86 Misc.2d 71.

Tex.—Wilson v. Bearden, Civ.App., 59 S.W.2d 214, error refused.

Change by conservator

A conservator who is a close and appropriate relative with natural instincts of acting in the best behalf of an incompetent may, without court order, change the incompetent's domicile if this is done in good faith and in the best interests of the conservatee.

N.Y.—Gibbs v. Berger, 399 N.Y.S.2d 304, 59 A.D.2d 282.

74. Neb.—Gosney v. Department of Public Welfare, 291 N.W.2d 708, 206 Neb. 137.

N.Y.—In re Kassler, 19 N.Y.S.2d 266, 173 Misc. 856.

75. Okl.—Laughlin v. Williams, 185 P. 104, 76 Okl. 246.

Va.—Commonwealth v. Kernochan, 106 S.E. 367, 129 Va. 405, 30 A.L.R. 601.

76. N.Y.—Matter of Estate of Wilhelm, 511 N.Y.S.2d 510, 134 Misc.2d 448.

77. U.S.—Stifel v. Hopkins, C.A.Ohio, 477 F.2d 1116, 23 A.L.R. Fed. 595.

78. N.Y.—Cott v. Westchester County Dept. of Social Services, 305 N.E.2d 483, 33 N.Y.2d 111, 350 N.Y.S.2d 401.

79. N.Y.—Casey v. Lavine, 388 N.Y.S.2d 159, 54 A.D.2d 250.

80. U.S.—Polakoff v. Henderson, D.C.Ga., 370 F.Supp. 690, affirmed 488 F.2d 977, rehearing denied 491 F.2d 1272.

Idaho—Duryea v. Duryea, 269 P. 987, 46 Idaho 512.

Ky.—Ferguson's Adm'r v. Ferguson's Adm'r, 73 S.W.2d 31, 255 Ky. 230.

Similar rule for residence

U.S.—Turner v. Kelley, D.C.Kan., 411 F.Supp. 1331.

81. U.S.—Honneus v. Donovan, D.C.Mass., 93 F.R.D. 433, affirmed 691 F.2d 1.

82. Mass.—Inhabitants of Whately v. Inhabitants of Hatfield, 82 N.E. 48, 196 Mass. 393.

intention to be domiciled at the place to which he has been forced to remove.⁸³

4. Public Officials and Employees; Members of Armed Services

§ 31. Public Officials and Employees

Generally, public officers and employees may establish domicile at the place where they are required to relocate.

Library References

Domicile ⇨4(1, 2), 5.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following Preface.

Generally, public officers or public employees who are required to change their residence upon assuming their duties may establish domicile at their new residence,⁸⁴ and municipal police officers can establish domiciles within the cities wherein they must live.⁸⁵

A person does not acquire a domicile in the District of Columbia by going there to live for an indefinite period of time while in the government service.⁸⁶ On the other hand, persons are domiciled in the District of Columbia who live there and have no fixed and definite intent to return and make their homes where they were formerly domiciled.⁸⁷

Ambassadors, consuls, and other public officials residing abroad in governmental service do not generally acquire a domicile in the country where their official duties are performed, but retain their original domicile,⁸⁸ although such officials may acquire a domicile at their official residence, if they

engage in business or commerce inconsistent with, or extraneous to, their public or diplomatic character.⁸⁹

§ 32. Members of Armed Services

The domicile of a member of the armed services generally remains unchanged, domicile being neither gained nor lost by his being temporarily stationed in line of duty at a particular place; but a new domicile may be acquired if fact and intent concur.

Library References

Domicile ⇨4(1, 2), 5.

The domicile of a person in the military or naval service of his country generally remains unchanged, domicile being neither gained nor lost by being temporarily stationed in the line of duty at a particular place, even for a period of years,⁹⁰ and even though he establishes his family where he is stationed.⁹¹ Also, a husband's military service is no legal barrier to the continuance of his wife's residence or domicile.⁹²

Generally, a person in the military service retains domicile or residence in the state from which he enters the service.⁹³ The reason for this rule is that a serviceman is subject to the orders of his superior officers.⁹⁴ However, he is not precluded as a matter of law from showing that he has established a domicile different from the one he

83. U.S.—Stifel v. Hopkins, C.A.Ohio, 477 F.2d 1116, 23 A.L.R. Fed. 595.

84. U.S.—Stifel v. Hopkins, C.A.Ohio, 477 F.2d 1116, 23 A.L.R. Fed. 595.

85. U.S.—Stifel v. Hopkins, C.A.Ohio, 477 F.2d 1116, 23 A.L.R. Fed. 595.

86. U.S.—District of Columbia v. Murphy, Dist. Col., 62 S.Ct. 303, 314 U.S. 441, 86 L.Ed. 329.

87. U.S.—District of Columbia v. Murphy, Dist. Col., 62 S.Ct. 303, 314 U.S. 441, 86 L.Ed. 329.

88. Ark.—Wheat v. Smith, 7 S.W. 161, 50 Ark. 266.

89. N.Y.—Arnold v. United Ins. Co., 1 Johns.Cas. 363.

90. U.S.—Furman v. General Dynamics Corp., D.C.N.Y., 377 F.Supp. 37.

In re Wellberg, Bkrcty.Va., 12 B.R. 48.

Ariz.—Jizmejian v. Jizmejian, 492 P.2d 1208, 16 Ariz.App. 270.

Ark.—Hilburn v. Hilburn, 696 S.W.2d 718, 287 Ark. 50.

Cal.—Johnston v. Benton, 239 P. 60, 73 C.A. 565.

Ga.—Dicks v. Dicks, 170 S.E. 245, 177 Ga. 379.

Iowa—Harris v. Harris, 215 N.W. 661, 205 Iowa 108.

Mass.—McLaughlin v. Feerick, 176 N.E. 779, 276 Mass. 180.

N.M.—Blessley v. Blessley, 577 P.2d 62, 91 N.M. 513.

Pa.—Zinn v. Zinn, 475 A.2d 132, 327 Pa.Super. 128.

Tex.—Carroll v. Jones, App. 2 Dist., 654 S.W.2d 54.

Wash.—Kankelborg v. Kankelborg, 90 P.2d 1018, 199 Wash. 259.

Same rule as to residence

N.Y.—Tickel v. Oddo, 320 N.Y.S.2d 268, 66 Misc.2d 386.

91. Iowa—Harris v. Harris, 215 N.W. 661, 205 Iowa 108.

92. N.Y.—Small v. Small, 409 N.Y.S.2d 379, 96 Misc.2d 469.

93. Ala.—Nora v. Nora, 494 So.2d 16.

Cal.—In re Marriage of Thornton, 185 Cal.Rptr. 388, 135 C.A.3d 500.

D.C.—Rudd v. Rudd, App., 278 A.2d 120.

Kan.—Perry v. Perry, 623 P.2d 513, 5 Kan.App.2d 636.

94. U.S.—Stifel v. Hopkins, C.A.Ohio, 477 F.2d 1116, 23 A.L.R.Fed. 595.

Cal.—In re Marriage of Thornton, 185 Cal.Rptr. 388, 135 C.A.3d 500.

had before he entered military service,⁹⁵ and he may acquire a new domicile if the circumstances show an intent to abandon his original domicile and

adopt the new one.⁹⁶ Thus, a new domicile may be acquired if both the fact and the intent concur.⁹⁷

5. Students; Clergymen

§ 33. Students

An adult student does not acquire a domicile at the educational institution where he resides, unless he intends to remain there indefinitely and not to resume his former home.

Library References

Domicile ⇨4(1, 2), 5.

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See WESTLAW Electronic Research Guide following Preface.

As a general rule, a student, although an adult, does not acquire a legal domicile at an educational institution where he resides with the ultimate intention of returning to his original home,⁹⁸ and, ordinarily, a student who pursues a course of study away from the place which has been his home does not thereby abandon one domicile and establish a new one.⁹⁹

On the other hand, an adult student who is independent of parental control and support may acquire a domicile at the place where such institution of learning is situated, if he regards the place as his home, or intends to remain there indefinitely, without any intention of resuming his former

home.¹ The fact that a person has been compelled to relocate in a place does not ordinarily prevent the acquisition of a domicile therein, as discussed supra § 14, and a student who is required to live in a particular place because of the location of the institution he is enrolled in, can establish a domicile in that place.²

§ 34. Clergymen

A clergyman's temporary residence at his cure does not necessarily fix his domicile there. He can, however, acquire a domicile there.

Library References

Domicile ⇨4(1, 2), 5.

While the domicile of a member of the clergy is doubtless established by long continued residence with intention to remain, or performance of his life work in one place,³ the temporary residence of a clergyman at his cure for the term of his ministerial appointment does not necessarily fix his domicile there.⁴

95. U.S.—Stifel v. Hopkins, C.A.Ohio, 477 F.2d 1116, 23 A.L.R.Fed. 595.

96. U.S.—Stifel v. Hopkins, C.A.Ohio, 477 F.2d 1116, 23 A.L.R.Fed. 595.

Pa.—Zinn v. Zinn, 475 A.2d 132, 327 Pa.Super. 128.

97. U.S.—Wise v. Bolster, D.C.Wash., 31 F.Supp. 856.

Cal.—Johnston v. Benton, 239 P. 60, 73 C.A. 565.

Iowa—Harris v. Harris, 215 N.W. 661, 205 Iowa 108.

Mo.—Trigg v. Trigg, 41 S.W.2d 583, 226 Mo.App. 284.

Wash.—Kankelborg v. Kankelborg, 90 P.2d 1018, 199 Wash. 259.

Act to carry out intent

Serviceman may gain domiciliary status in state while in military service if he has necessary intention to make home in state and performs some act to carry out such intention.

Ariz.—Jizmejian v. Jizmejian, 492 P.2d 1208, 16 Ariz.App. 270.

Rule as to residence

Under some circumstances, an adult member of the military services may select as his residence a place other than where he lived prior to entering the service.

Cal.—Northwestern Nat. Cas. Co. v. Davis, 153 Cal.Rptr. 556, 90 C.A.3d 782.

98. Mo.—Hall v. Schoenecke, 31 S.W. 97, 128 Mo. 661.

99. Md.—Bainum v. Kalen, 325 A.2d 392, 272 Md. 490.

N.Y.—Porcello v. Brackett, 446 N.Y.S.2d 780, 85 A.D.2d 917, affirmed 443 N.E.2d 491, 57 N.Y.2d 962, 457 N.Y.S.2d 243.

N.C.—Hall v. Wake County Bd. of Elections, 187 S.E.2d 52, 280 N.C. 600.

Residence

Students do not gain or lose residence simply because they are away from home.

N.Y.—Seitelman v. Lavine, 325 N.E.2d 523, 36 N.Y.2d 165, 366 N.Y.S.2d 101.

1. Md.—Bainum v. Kalen, 325 A.2d 392, 272 Md. 490.

Neb.—Berry v. Wilcox, 62 N.W. 249, 44 Neb. 82.

N.C.—Hall v. Wake County Bd. of Elections, 187 S.E.2d 52, 280 N.C. 600.

Domicile in dormitories

Eighteen-year-old voters are free to establish new domiciles in college dormitories.

Mass.—Hershkoff v. Board of Registrars of Voters of Worcester, 321 N.E.2d 656, 366 Mass. 570.

2. U.S.—Stifel v. Hopkins, C.A.Ohio, 477 F.2d 1116, 23 A.L.R.Fed. 595.

Blue v. National Fuel Gas Distribution Corp., D.C.Pa., 437 F.Supp. 715, affirmed 601 F.2d 573.

3. N.Y.—In re Riley's Estate, 148 N.Y.S. 623, 86 Misc. 628.

4. Ala.—Allgood v. Williams, 8 So. 722, 92 Ala. 551.

On the other hand, a member of a religious order who moves to a place pursuant to orders of his superiors can acquire a domicile in such place,

where he intends to live not permanently but until he is reassigned elsewhere or for an indefinite period.⁵

6. Other Persons

§ 35. Seamen

A seaman's domicile may be deemed to be that which he had when he adopted his career, or the place where he has property or business interests and stays when not at sea, or, if married, the place where his wife and family live.

Library References

Domicile ⇨5.

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Since the roving occupation of a mariner necessarily precludes the idea of his establishing any fixed domicile during his short stoppage in various ports, his abode as established on the adoption of his career may be deemed to continue unchanged, unless he fixes on a residence elsewhere which will be considered as his home.⁶ If a seaman is married, his domicile is usually the place where his wife and family dwell,⁷ particularly if he is a master of a vessel or man of substance having his business centered in one place,⁸ but if unmarried, he retains his original domicile where he went to sea, under the general rule.⁹

If a sailor has friends, property, or business interests in a certain place, and is in the habit of spending his time, when not at sea, at such place, that place may be regarded as his domicile.¹⁰

A foreigner may acquire a domicile in the United States by continuous employment in the merchant marine of this country for a period of years, with the avowed intention of acquiring such domicile.¹¹

§ 36. Fugitives from Justice; Absconding Debtors

A fugitive from justice may acquire a new domicile, although his purpose is to avoid arrest. An absconding debtor may

acquire a new domicile, if he intends to remain in the new location.

Library References

Domicile ⇨5.

A fugitive from justice who has acquired no domicile elsewhere retains the domicile which he has left;¹² but he may acquire a domicile in the place to which he removes, if he intends to remain there permanently or indefinitely, although his purpose is to avoid arrest.¹³

Absconding debtors.

A person leaving his domicile to avoid the effects of his pecuniary embarrassment, but with the intention of returning thereto, does not thereby change his domicile;¹⁴ but an absconding debtor who purchases land and lives on it, thereby evidencing an intention to remain, acquires a domicile.¹⁵ A debtor who has left his domicile with the intention of never returning thereto still retains such domicile until he has gained another elsewhere.¹⁶

§ 37. Other Particular Persons

Other particular persons have been held to satisfy the domicile standard.

Library References

Domicile ⇨4(1, 2).

A refugee who leaves his home on account of war or insurrection, in order to preserve his life or property, still retains his domicile in the place which he left,¹⁷ unless he shows an intention to acquire a new domicile of choice in the place where he has taken refuge;¹⁸ and he can establish domi-

5. U.S.—Krasnov v. Dinan, D.C.Pa., 333 F.Supp. 751, supplemented 339 F.Supp. 1357, affirmed 465 F.2d 1298.
 6. Ky.—Bailey v. Norman's Adm'r, 15 S.W.2d 1005, 228 Ky. 790.
 7. Me.—Inhabitants of Stockton v. Staples, 66 Me. 197.
 8. N.Y.—Sherwood v. Judd, 3 Bradf.Surr. 267.
 9. Md.—Howard v. Skinner, 40 A. 379, 87 Md. 556.
 Mass.—Thorndike v. Boston, 1 Metc. 242.
 10. Pa.—Guier v. O'Daniel, 1 Binn. 349, note.
 11. N.Y.—Matter of Bye, 2 Daly 525.

12. Mass.—Cobb v. Rice, 130 Mass. 231.
 13. Ala.—Young v. Pollak, 5 So. 279, 85 Ala. 439.
 14. U.S.—In re Filer, D.C.N.Y., 108 F. 209.
 15. Cal.—Eck v. Hoffman, 55 Cl. 501.
 16. N.H.—Ayer v. Weeks, 18 A. 1108, 65 N.H. 248.
 17. Miss.—Weaver v. Norwood, 59 Miss. 665.
 18. U.S.—White v. Brown, C.C.Pa., 29 F.Cas.No.17,538, 1 Wall.Jr. 217.

cile in the place in which he seeks asylum.¹⁹

Homeless persons; vagabond lifestyle.

Homeless individuals identifying a specific location which they consider their home base, to which they return regularly, manifest an intent to remain for the present, and a place from which they can receive messages and be contacted, satisfy the stringent domicile standard.²⁰ A citizen of the United States who is also a resident should not somehow find himself without a domicile in any particular state simply by taking up a vagabond lifestyle.²¹

IV. CONTINUANCE OR LOSS OF DOMICILE

§ 38. In General

A domicile continues until another is acquired; before a domicile can be considered lost or changed, a new domicile must be acquired by removal to a new locality with intent to remain there, and the old domicile must be abandoned without intent to return thereto.

Library References

Domicile ⇨4(1, 2).

19. U.S.—*Stifel v. Hopkins*, C.A.Ohio, 477 F.2d 1116, 23 A.L.R.Fed. 595.
20. U.S.—*Pitts v. Black*, D.C.N.Y., 608 F.Supp. 696.
21. U.S.—*Willis v. Westin Hotel Co.*, S.D.N.Y., 651 F.Supp. 598.
22. Cal.—*Cabral v. State Bd. of Control*, 169 Cal.Rptr. 604, 112 C.A.3d 1012.
- Illegal entry not bar**
- Illegal entry into country does not bar person from obtaining domicile within state.
- Ariz.—*St. Joseph's Hosp. and Medical Center v. Maricopa County*, 688 P.2d 986, 142 Ariz. 94.
23. U.S.—*Williams v. Williams*, D.C. Virgin Islands, 328 F.Supp. 1380.
24. N.J.—*Das v. Das*, 603 A.2d 139, 254 N.J.Super. 194.
25. N.Y.—*In re Lyon's Estate*, 191 N.Y.S. 260, 117 Misc. 189, affirmed 192 N.Y.S. 936, 200 A.D. 918.
- Okl.—*Strathmann v. Kinkelaar*, 233 P. 215, 105 Okl. 290.
26. D.C.—*Eisel v. Secretary of the Army*, 477 F.2d 1251, 155 U.S.App.D.C. 366.
- Me.—*Margani v. Sanders*, 453 A.2d 501.
27. U.S.—*Mississippi Band of Choctaw Indians v. Holyfield*, Miss., 109 S.Ct. 1597, 490 U.S. 30, 104 L.Ed.2d 29.
- Holmes v. Sopuch*, C.A.Mo., 639 F.2d 431.
- Hakkila v. Consolidated Edison Co. of New York, Inc.*, S.D.N.Y., 745 F.Supp. 988.
- Ala.—*Ex parte State ex rel. Altman*, 188 So. 685, 237 Ala. 642.
- Colo.—*Kay v. Strobeck*, 254 P. 150, 81 Colo. 144.
- Conn.—*Foss v. Foss*, 136 A. 98, 105 Conn. 502.
- D.C.—*Stallforth v. Helvering*, 77 F.2d 548, 64 App.D.C. 290, certiorari denied 56 S.Ct. 123, 296 U.S. 606, 80 L.Ed. 430.

Aliens illegally in the United States.

An adult alien of sound mind, who has entered the United States illegally, possesses the legal capacity to change his domicile from a foreign country to a state in the United States.²² Where an alien has misrepresented his true intent at the time he was granted entry to the United States, the fact that he may be illegally in the country and deportable would not preclude him from forming an actual intent to make his home in the United States²³ or change his domicile.²⁴

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See WESTLAW Electronic Research Guide following Preface.

The abandonment or change of domicile is a proceeding of a very serious nature,²⁵ and a person does not change his domicile by simply moving from place to place.²⁶ A domicile once acquired, whether by origin or choice, continues until a new domicile is actually acquired;²⁷ the acquisition of a

- Idaho—*In re Cooke's Estate*, 524 P.2d 176, 96 Idaho 48.
- Ill.—*O'Boyle v. Personnel Bd. of City of Chicago*, 1 Dist., 456 N.E.2d 998, 75 Ill.Dec. 177, 119 Ill.App.3d 648.
- Iowa—*Harris v. Harris*, 215 N.W. 661, 205 Iowa 108.
- Ky.—*Wheeler v. Burgess*, 93 S.W.2d 351, 263 Ky. 693.
- La.—*In re Kennedy*, App., 357 So.2d 905.
- Md.—*Bartell v. Bartell*, 357 A.2d 343, 278 Md. 12.
- Mass.—*Dane v. Board of Registrars of Voters of Concord*, 371 N.E.2d 1358, 374 Mass. 152.
- Mo.—*In re Ozias' Estate*, App., 29 S.W.2d 240.
- N.J.—*Matter of Unanue*, 605 A.2d 279, 255 N.J.Super. 362.
- N.C.—*In re Martin's Estate*, 117 S.E. 561, 185 N.C. 472.
- Okl.—*Youngblood v. Rector*, 259 P. 579, 126 Okl. 210.
- N.Y.—*Matter of Pingpank*, 2 Dept., 520 N.Y.S.2d 596, 134 A.D.2d 263.
- Pa.—*Alburger v. Alburger*, 10 A.2d 888, 138 Pa.Super. 339.
- Tenn.—*McElhanev v. Chipman*, App., 647 S.W.2d 643.
- Va.—*Rogers v. Commonwealth*, 11 S.E.2d 584, 176 Va. 355.
- Wis.—*In re Village of Chenequa*, 221 N.W. 856, 197 Wis. 163.

Clear manifestation of intent

An individual's original or selected domicile continues until there is a clear manifestation of an intent to acquire a new one.

- N.Y.—*Clute v. Chu*, 3 Dept., 484 N.Y.S.2d 239, 106 A.D.2d 841.

State citizenship

Person may not lose state citizenship without first acquiring a new domicile.

- U.S.—*Willis v. Westin Hotel Co.*, S.D.N.Y., 651 F.Supp. 598.

new domicile terminates the preceding one at the same instant,²⁸ since, as discussed supra § 5, a person can have but one domicile at any given time. So, before a domicile can be considered lost or changed, the acquisition of a new domicile must have been completely perfected by a concurrence of the factum of removal to a new locality and the animus to remain there,²⁹ and there must be an abandonment of, and an intent not to return to, the former domicile for where there is a purpose,

whether secret or open, to return, no loss or change will result.³⁰

Likewise, a "residence," "legal residence," or "place of abode" cannot be lost until another is acquired,³¹ and to effect a loss or change, there must be an abandonment of, and a removal from, the old location to the new with an intent to remain in the new locality, and not to return to the old.³² Only when abandonment has been proven is resi-

28. Mass.—McDaniel v. King, 5 Cush. 469.

29. U.S.—Sweeney v. District of Columbia, 113 F.2d 25, certiorari denied 60 S.Ct. 1082, 310 U.S. 631, 84 L.Ed. 1402.

Iowa—Gray v. Roth, App., 438 N.W.2d 25, certiorari denied 110 S.Ct. 88, 493 U.S. 825, 107 L.Ed.2d 53.

Kan.—Ford v. Peck, 225 P. 1054, 116 Kan. 74, rehearing denied 227 P. 527, 116 Kan. 481.

Md.—Pattison v. Firor, 126 A. 109, 146 Md. 243.

Mass.—Atwood v. Atwood, 8 N.E.2d 916, 297 Mass. 229.

Mo.—In re Marriage of Bradford, App., 557 S.W.2d 720.

Neb.—Mudge v. Mudge, 196 N.W. 706, 111 Neb. 403.

N.J.—Rinaldi v. Rinaldi, 118 A. 685, 94 N.J.Eq. 14.

N.Y.—In re Johnson's Will, 18 N.Y.S.2d 958, 259 A.D. 290, appeal denied 20 N.Y.S.2d 671, affirmed 31 N.E.2d 202, 284 N.Y. 733.

Va.—Guilfoil v. Hayes, 194 S.E. 804, 169 Va. 548.

30. U.S.—Majors v. Purnell's Pride, Inc., D.C.Miss., 360 F.Supp. 328.

Ala.—Ex parte State ex rel. Altman, 188 So. 685, 237 Ala. 642.

Ark.—State v. Red Oak Trust & Savings Bank, 267 S.W. 566, 167 Ark. 234.

Cal.—Ryder v. Ryder, 37 P.2d 1069, 2 C.A.2d 426.

Conn.—McDonald v. Hartford Trust Co., 132 A. 902, 104 Conn. 169.

Hawaii—In re Estate of Grant, 34 Hawaii 559.

Ill.—In re Estate of Elson, 2 Dist., 458 N.E.2d 637, 76 Ill. Dec. 237, 120 Ill.App.3d 649.

Ind.—Croop v. Walton, 157 N.E. 275, 199 Ind. 262, 53 A.L.R. 1386.

Ky.—Hite's Adm'r v. Hite's Ex'r, 97 S.W.2d 811, 265 Ky. 786.

La.—Succession of Webre, 136 So. 67, 172 La. 1104.

Me.—Gilmartin v. Emery, 160 A. 874, 131 Me. 236.

Md.—Shenton v. Abbott, 15 A.2d 906, 178 Md. 526.

Mass.—Rourke v. Hanchett, 134 N.E. 355, 240 Mass. 557.

Mo.—In re Ozias' Estate, App., 29 S.W.2d 240.

Neb.—In re Meyers' Estate, 288 N.W. 35, 137 Neb. 60.

N.J.—In re Dorrance's Estate, 170 A. 601, 115 N.J.Eq. 268, supplemented 172 A. 503, 116 N.J.Eq. 204, sustained Dorrance v. Martin, 176 A. 902, 13 N.J.Misc. 168, affirmed 184 A. 743, 116 N.J.Law, 362, certiorari denied 56 S.Ct. 949, 298 U.S. 678, 80 L.Ed. 1399, rehearing denied 56 S.Ct. 957, 298 U.S. 692, 80 L.Ed. 1410, and certiorari denied Camden Safe Deposit & Trust Co. v. Martin, 56 S.Ct. 949, 298 U.S. 678, 80 L.Ed. 1399, and 56 S.Ct. 950, 298 U.S. 678, 80 L.Ed. 1399.

N.Y.—In re Trowbridge's Estate, 194 N.E. 756, 266 N.Y. 283.

N.C.—In re Finlayson's Estate, 173 S.E. 902, 206 N.C. 362.

N.D.—McEwen v. McEwen, 197 N.W. 862, 50 N.D. 662.

Okl.—Youngblood v. Rector, 259 P. 579, 126 Okl. 210.

Va.—Talley v. Commonwealth, 103 S.E. 612, 127 Va. 516.

Wis.—Dromev v. Wisconsin Tax Commission, 278 N.W. 400, 227 Wis. 267, appeal dismissed 58 S.Ct. 1048, 304 U.S. 548, 83 L.Ed. 1520, rehearing denied 59 S.Ct. 58, 305 U.S. 669, 83 L.Ed. 434.

Facts showing abandonment

(1) Two most important factors in determining whether a person has abandoned a previously established domicile and acquired a new one are the place where the person actually lives and where he votes.

Md.—Dorf v. Skolnik, 371 A.2d 1094, 280 Md. 101.

(2) Person, originally a Maryland domiciliary, who went to school in California, subsequently taught in Tennessee and who then moved to Michigan, registered to vote in Michigan, signed a statement that he had established a Michigan residence, voted in Michigan, registered his automobile in Michigan, obtained a Michigan driver's license, filed Michigan resident income tax return, and listed Michigan as residence on federal income tax return, abandoned Maryland as his domicile and established a domicile in Michigan.

Md.—Bainum v. Kalen, 325 A.2d 392, 272 Md. 490.

Affirmative acts of abandonment

Affirmative acts of abandonment of Illinois residence must be proved to sustain abandonment.

Ill.—Davis v. Davis, 293 N.E.2d 399, 9 Ill.App.3d 922.

31. U.S.—Petition of Oganessoff, D.C.Cal., 20 F.2d 978.

Cal.—Huston v. Anderson, 78 P. 626, 145 C. 320.

Ill.—Coronet Ins. Co. v. Jones, 359 N.E.2d 768, 3 Ill. Dec. 909, 45 Ill.App.3d 232.

Iowa—Harris v. Harris, 215 N.W. 661, 205 Iowa 108.

Ky.—Robinson v. Paxton, 276 S.W. 500, 210 Ky. 575.

Mont.—Herrin v. Herrin, 63 P.2d 137, 103 Mont. 469.

N.J.—Brueckmann v. Frignoca, 152 A. 780, 9 N.J.Misc. 128.

N.Y.—Southern Tier Masonic Relief Assoc. v. Laudenback, 5 N.Y.S. 901.

N.D.—Mittelstadt v. Bender, 210 N.W.2d 89.

Tenn.—Coke v. Coke, App., 560 S.W.2d 631.

Wash.—Kankelborg v. Kankelborg, 90 P.2d 1018, 199 Wash. 259.

32. Ark.—Hillman v. Hillman, 138 S.W.2d 1051, 200 Ark. 340.

Cal.—Bragg v. Bragg, 90 P.2d 329, 32 C.A.2d 611.

Idaho—Reubelmann v. Reubelmann, 220 P. 404, 38 Idaho 159.

Ill.—In re Mulford, 75 N.E. 345, 217 Ill. 242.

Kan.—Roberts v. Robertson, 254 P. 1026, 123 Kan. 222.

Ky.—Commonwealth v. Ott, 4 S.W.2d 417, 233 Ky. 612.

Md.—Brafman v. Brafman, 125 A. 161, 144 Md. 413, certiorari denied 44 S.Ct. 633, 265 U.S. 588, 68 L.Ed. 1193.

Mont.—Herrin v. Herrin, 63 P.2d 137, 103 Mont. 469.

N.D.—State ex rel. Sathre v. Moodie, 258 N.W. 558, 65 N.D. 340.

Pa.—Alburger v. Alburger, 10 A.2d 888, 138 Pa.Super. 339.

Wis.—Carter v. Sommermeyer, 27 Wis. 665.

dence lost.³³

The mere intention to abandon a domicile or residence and acquire a new one avails nothing without actual removal to the new residence.³⁴

It seems that generally a domicile will not be lost by a constrained residence in a foreign country,³⁵ although voluntary exile may work a change of domicile.³⁶

Effect of temporary absence.

An established domicile is not lost merely by temporary absence therefrom, or temporary residence elsewhere,³⁷ however long continued,³⁸ even for a period of years.³⁹ However, a prolonged absence has not been considered temporary.⁴⁰

Death or abandonment of intention.

Since a domicile is not lost until another is actually acquired, no change of domicile takes place, and the former domicile continues, where death occurs in itinere,⁴¹ or where one who has left his domicile to relocate elsewhere dies while searching for a new place,⁴² or the intention to acquire a new domicile is abandoned while on a

journey to a new locality;⁴³ but there are authorities holding that the new domicile of choice is complete the moment the journey to it is started,⁴⁴ unless the domicile left is the domicile of origin.⁴⁵

§ 39. Removal of Family

Removal of one's family is an important element in a change of domicile; such removal, or a failure to remove, may or may not be decisive, according to circumstances.

Library References

Domicile ⇄4(1, 2).

The removal of one's family is said to be always an important, if not an essential, element in a change of domicile.⁴⁶ However, when it is evident by unequivocal acts that the intention to remove existed, the change of domicile is complete, although the family may remain temporarily in the place of former abode;⁴⁷ conversely, removal with one's family may not be conclusive of a change of domicile.⁴⁸

A man's personal presence at the new domicile is not necessary when the intent to change has been manifested and carried out by sending his wife and

33. Ill.—Hatcher v. Anders, 2 Dist., 453 N.E.2d 74, 72 Ill. Dec. 769, 117 Ill.App.3d 236.

34. Conn.—McDonald v. Hartford Trust Co., 132 A. 902, 104 Conn. 169.

Fla.—Wade v. Wade, 113 So. 374, 93 Fla. 1004.

Kan.—Harwi v. Harwi, 56 P.2d 449, 143 Kan. 710.

Pa.—May v. May, 94 Pa.Super. 293.

35. U.S.—Ennis v. Smith, D.C., 55 U.S. 400, 14 How. 400, 14 L.Ed. 472.

36. U.S.—Ennis v. Smith, D.C., 55 U.S. 400, 14 How. 400, 14 L.Ed. 472.

37. U.S.—Lange v. Penn Mut. Life Ins. Co., C.A.9(Ariz.), 843 F.2d 1175.

Willis v. Westin Hotel Co., S.D.N.Y., 651 F.Supp. 598.

Idaho—Reubelmann v. Reubelmann, 220 P. 404, 38 Idaho 159.

Ky.—Burr's Adm'r v. Hatter, 43 S.W.2d 26, 240 Ky. 721.

Mass.—Tuelle v. Flint, 186 N.E. 222, 283 Mass. 106.

Mo.—In re Ozias' Estate, App., 29 S.W.2d 240.

N.Y.—Pignatelli v. Pignatelli, 8 N.Y.S.2d 10, 169 Misc. 534.

Va.—State-Planters Bank & Trust Co. of Richmond v. Commonwealth, 6 S.E.2d 629, 174 Va. 289.

W.Va.—Lotz v. Atamaniuk, 304 S.E.2d 20, 172 W.Va. 116.

As abandonment

A temporary absence from the state, no matter how protracted, does not equate with abandonment.

Ill.—Hatcher v. Anders, 2 Dist., 453 N.E.2d 74, 72 Ill. Dec. 769, 117 Ill.App.3d 236.

38. U.S.—In re Kalpachnikoff, D.C. Pa., 28 F.2d 288.

D.C.—Stallforth v. Helvering, 77 F.2d 548, 64 App.D.C. 290, certiorari denied 56 S.Ct. 123, 296 U.S. 606, 80 L.Ed. 430.

Md.—Wagner v. Scurlock, 170 A. 539, 166 Md. 284.

N.Y.—In re Lohmann's Estate, 283 N.Y.S. 38, 157 Misc. 169, affirmed In re Lohmann's Adm'r, 290 N.Y.S. 135, 248 A.D. 714.

Pa.—Alburger v. Alburger, 10 A.2d 888, 138 Pa.Super. 339.

Va.—Talley v. Commonwealth, 103 S.E. 612, 127 Va. 516.

W.Va.—White v. Manchin, 318 S.E.2d 470, 173 W.Va. 526.

39. U.S.—Petition of Oganessoff, D.C.Cal., 20 F.2d 978.

Cal.—In re Peters' Estate, 12 P.2d 118, 124 C.A. 75.

Colo.—People v. Chrysler, 265 P. 92, 83 Colo. 355.

Md.—Shenton v. Abbott, 15 A.2d 906, 178 Md. 526.

N.Y.—In re Lohmann's Estate, 283 N.Y.S. 38, 157 Misc. 169, affirmed In re Lohmann's Adm'r, 290 N.Y.S. 135, 248 A.D. 714.

40. Absence of fifteen years

Absence of petitioner, who had been absent from state for approximately 15 years, was not a "temporary absence".

S.C.—Ravenel v. Dekle, 218 S.E.2d 521, 265 S.C. 364.

41. Iowa—In re Jones' Estate, 182 N.W. 227, 192 Iowa 78, 16 A.L.R. 1286.

42. Idaho—In re Cooke's Estate, 524 P.2d 176, 96 Idaho 48.

Mass.—Shaw v. Shaw, 98 Mass. 158.

44. W.Va.—Brown v. Beckwith, 51 S.E. 977, 58 W.Va. 140.

45. N.Y.—In re Grant's Estate, 144 N.Y.S. 567, 83 Misc. 257.

46. U.S.—Gilbert v. David, Conn., 35 S.Ct. 164, 235 U.S. 561, 59 L.Ed. 360.

47. Mass.—Emery v. Emery, 105 N.E. 879, 218 Mass. 227.

48. N.Y.—New York v. Beers, 148 N.Y.S. 438, 163 A.D. 495, affirmed 117 N.E. 1064, 221 N.Y. 627.

family there,⁴⁹ and under some circumstances it has been held that a change of domicile or residence was not consummated until the removal of the family to the new location.⁵⁰

§ 40. Reverter to Domicile of Origin

The domicile of origin easily reverts. Some authorities regard it as immediately reverting, regardless of intent to return thereto, on abandonment of a domicile of choice without acquiring a new one; but this view is opposed.

Library References

Domicile ⇨4(1, 2).

It is a maxim in the law of domicile that the domicile of origin easily reverts when lost.⁵¹ Under some authorities, in the case of a change from a domicile of choice to that of origin, the domicile of origin is acquired the moment the other is given up,⁵² provided the journey back is begun,⁵³ and it

has been held that, on the abandonment of a domicile of choice without acquiring a new domicile of choice, the domicile of origin immediately reverts, without regard to any definite intent to return to such original domicile,⁵⁴ provided there is a definite intent finally to abandon the acquired domicile of choice.⁵⁵

On the other hand, other authorities hold that a domicile of choice continues until a new domicile is acquired by the concurrence of fact and intent, even where the alleged new domicile is the domicile of origin;⁵⁶ and the doctrine of instant reversion to the domicile of origin, known as the English rule, has been held inapplicable as between the states of the United States,⁵⁷ or as between the United States and a foreign county with respect to a person who has renounced his allegiance to such country and secured citizenship here.⁵⁸

V. EVIDENCE; QUESTIONS OF LAW AND FACT

§ 41. Presumptions and Burden of Proof

- a. General rules
- b. Other presumptions

a. General Rules

There are rebuttable presumptions that the place where a person actually lives is his domicile and that a domicile, once established, continues until a change is shown, so that the burden of proving a change of domicile rests on the party alleging it.

Library References

Domicile ⇨7, 7.1, 8.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following Preface.

Domicile is presumed to follow residence;⁵⁹ in other words, the place of residence, where a person actually lives, is presumed to be, or is prima facie, his domicile,⁶⁰ and the rule applies not only in interstate habitation, but also where a citizen removes to a foreign country.⁶¹ As actual residence is merely one circumstance, the presumption raised thereby is not conclusive, but is rebuttable;⁶² and the burden of proof to rebut this presumption is on the person contending to the contrary.⁶³ However, the burden of establishing the fact of domicile is on the party who relies on it.⁶⁴

49. Tenn.—Hyder v. Hyder, 66 S.W.2d 235, 16 Tenn.App. 64.
50. Mich.—Cass v. Gunnison, 36 N.W. 45, 68 Mich. 147.
51. U.S.—Petition of Oganessoff, D.C.Cal., 20 F.2d 978.
Ky.—Bailey v. Norman's Adm'r, 15 S.W.2d 1005, 228 Ky. 790.
52. Tenn.—Hyder v. Hyder, 66 S.W.2d 235, 16 Tenn.App. 64.
53. Tenn.—Hyder v. Hyder, 66 S.W.2d 235, 16 Tenn.App. 64.
54. N.J.—In re Paullin's Estate, Prerog., 109 A. 13, affirmed 113 A. 240, 92 N.J.Eq. 419.
55. N.J.—Hibbert v. Hibbert, 65 A. 1028; 72 N.J.Eq. 778.
56. Iowa.—In re Jones' Estate, 182 N.W. 227, 192 Iowa 78, 16 A.L.R. 1286.
57. Iowa.—In re Jones' Estate, 182 N.W. 227, 192 Iowa 78, 16 A.L.R. 1286.
58. Iowa.—In re Jones' Estate, 182 N.W. 227, 192 Iowa 78, 16 A.L.R. 1286.
59. Ariz.—Jizmejian v. Jizmejian, 492 P.2d 1208, 16 Ariz.App. 270.
W.Va.—First Nat. Bank v. Tate, 178 S.E. 807, 116 W.Va. 138.
Domicile and residence distinguished see supra § 4.

60. U.S.—E.I. Du Pont De Nemours & Co. v. Byrnes, C.C.A.N.Y., 101 F.2d 14.
Gilbert v. Eli Lilly & Co., Inc., D.C.Puerto Rico, 56 F.R.D. 116.
Ala.—Nora v. Nora, 494 So.2d 16.
Ky.—Burr's Adm'r v. Hatter, 43 S.W.2d 26, 240 Ky. 721.
La.—Barrow v. Barrow, 106 So. 705, 160 La. 91.
Md.—Pattison v. Firor, 126 A. 109, 146 Md. 243.
N.J.—In re Gilbert's Estate, 15 A.2d 111, 18 N.J.Misc. 540.
Or.—Stewart v. Stewart, 242 P. 852, 117 Or. 157.
Tex.—Dodd v. Dodd, Civ.App., 15 S.W.2d 686.
61. Pa.—In re Hood, 21 Pa. 106.
62. Ariz.—Jizmejian v. Jizmejian, 492 P.2d 1208, 16 Ariz.App. 270.
Md.—Pattison v. Firor, 126 A. 109, 146 Md. 243.
Tex.—Dodd v. Dodd, Civ.App., 15 S.W.2d 686.
63. U.S.—E.I. Du Pont De Nemours & Co. v. Byrnes, C.C.A.N.Y., 101 F.2d 14.
Ariz.—Jizmejian v. Jizmejian, 492 P.2d 1208, 16 Ariz.App. 270.
64. N.J.—Michaud v. Yeomans, 278 A.2d 537, 115 N.J.Super. 200.

Continuance of domicile or residence.

A domicile⁶⁵ or residence,⁶⁶ when once established, is presumed to continue until a change is shown, and this presumption may be strengthened by a long-continued residence,⁶⁷ and is conclusive where no change is alleged or proved.⁶⁸ Residence elsewhere may rebut the presumption as to the continuance of the original domicile,⁶⁹ particularly when it is of such a length,⁷⁰ or is characterized by such circumstances,⁷¹ as to indicate an intention to adopt the new locality as a domicile. However, mere residence elsewhere will not rebut the presumption as to continuance unless it is inconsistent with an intent to return to the original domicile,⁷²

and a change of domicile cannot be inferred from a temporary absence.⁷³

The burden of proving a change of domicile⁷⁴ or residence⁷⁵ is on the party asserting such claim. However, if prima facie proof of an intention to acquire a new domicile is presented, the ultimate burden of persuasion is on the party asserting that domicile remained at the original place.⁷⁶

Original or domestic domicile favored.

Where facts are conflicting or where there is any reasonable doubt, the presumption is in favor of an original,⁷⁷ or former,⁷⁸ domicile, as against an acquired one, and of a domestic, as against a foreign, domicile.⁷⁹

65. U.S.—Bank One, Texas, N.A. v. Montle, C.A.1(Mass.), 964 F.2d 48, opinion after remand 974 F.2d 220.

Unanue v. Caribbean Canneries, Inc., D.C.Del., 323 F.Supp. 63.

Ariz.—Jizmejian v. Jizmejian, 492 P.2d 1208, 16 Ariz.App. 270.

Cal.—DeMigilo v. Mashore, 1 Dist., 6 Cal.Rptr.2d 267, 4 C.A.4th 1260.

Ill.—In re Estate of Elson, 2 Dist., 458 N.E.2d 637, 76 Ill.Dec. 237, 120 Ill.App.3d 649.

La.—Bergeron v. Bergeron, App. 4 Cir., 527 So.2d 433.

Mass.—Dane v. Board of Registrars of Voters of Concord, 371 N.E.2d 1358, 374 Mass. 152.

Minn.—Manthey v. Commissioner of Revenue, 468 N.W.2d 548.

N.J.—Lyon v. Glaser, 288 A.2d 12, 60 N.J. 259.

N.Y.—Bodfish v. Gallman, 378 N.Y.S.2d 138, 50 A.D.2d 457.

N.C.—Hall v. Wake County Bd. of Elections, 187 S.E.2d 52, 280 N.C. 600.

Ohio—Cleveland v. Surella, 572 N.E.2d 763, 61 Ohio App.3d 302, jurisdictional motion overruled 546 N.E.2d 1331, 46 Ohio St.3d 714.

Okl.—Suglove v. Oklahoma Tax Commission, 605 P.2d 1315.

Pa.—In re Street, 516 A.2d 791, 102 Pa.Cmwth. 155.

Continuance of existing domicile until acquisition of another see supra § 38.

66. Ill.—Hatcher v. Anders, 2 Dist., 453 N.E.2d 74, 72 Ill.Dec. 769, 117 Ill.App.3d 236.

Okl.—Moore v. Hayes, 744 P.2d 934.

Pa.—Civil Service Com'n v. Rogers, 544 A.2d 1115, 118 Pa.Cmwth. 226.

Tex.—Miller v. Miller, Civ.App., 575 S.W.2d 594.

67. N.Y.—In re Fischer's Estate, 271 N.Y.S. 101, 151 Misc. 74, affirmed 277 N.Y.S. 939, 243 A.D. 685.

68. N.Y.—Perkins v. Guaranty Trust Co. of New York, 8 N.E.2d 849, 274 N.Y. 250, reargument denied Perkins v. Perkins, 10 N.E.2d 589, 274 N.Y. 636, remittitur amended on other grounds 12 N.E.2d 571, 276 N.Y. 553.

69. W.Va.—First Nat. Bank v. Tate, 178 S.E. 807, 116 W.Va. 138.

70. U.S.—Shelton v. Tiffin, La., 47 U.S. 163, 6 How. 163, 12 L.Ed. 387.

71. Pa.—In re Hood, 21 Pa. 106.

72. Wash.—Polk v. Polk, 290 P. 861, 158 Wash. 242.

73. Ala.—Ex parte Weldon, Civ.App., 601 So.2d 115.

74. U.S.—State of Texas v. State of Florida, Fla. & Tex., 59 S.Ct. 563, 306 U.S. 398, 83 L.Ed. 817, 121 A.L.R. 1179.

Bank One, Texas, N.A. v. Montle, C.A.1(Mass.), 964 F.2d 48, opinion after remand 974 F.2d 220.

Gilbert v. Eli Lilly & Co., Inc., D.C.Puerto Rico, 56 F.R.D. 116.

Ark.—Stewart v. Stewart, 698 S.W.2d 516, 16 Ark.App. 164.

Ill.—O'Boyle v. Personnel Bd. of City of Chicago, 1 Dist., 456 N.E.2d 998, 75 Ill.Dec. 177, 119 Ill.App.3d 648.

La.—Bergeron v. Bergeron, App. 4 Cir., 527 So.2d 433.

Neb.—Gosney v. Department of Public Welfare, 291 N.W.2d 708, 206 Neb. 137.

N.J.—Citizens Bank & Trust Co. v. Glaser, 357 A.2d 753, 70 N.J. 72.

N.Y.—Wilke v. Wilke, 423 N.Y.S.2d 249, 73 A.D.2d 915.

Ohio—Le Sueur v. Robinson, 557 N.E.2d 796, 53 Ohio App.3d 9, jurisdictional motion overruled 534 N.E.2d 357, 39 Ohio St.3d 725.

Pa.—In re Estate of Getz, 611 A.2d 778, 148 Pa.Cmwth. 393.

W.Va.—State v. Stalnaker, 412 S.E.2d 231, 186 W.Va. 233.

75. Kan.—Perry v. Perry, 623 P.2d 513, 5 Kan.App.2d 636.

N.Y.—Davis v. Davis, 525 N.Y.S.2d 777, 138 Misc.2d 970.

N.D.—Keating v. Keating, 399 N.W.2d 872.

Wash.—Freund v. Hastie, 537 P.2d 804, 13 Wash.App. 731, review denied 86 Wash.2d 1001.

76. N.J.—Citizens Bank & Trust Co. v. Glaser, 357 A.2d 753, 70 N.J. 72.

77. U.S.—Petition of Oganessoff, D.C.Cal., 20 F.2d 978.

Herzog v. Herzog, D.C.Pa., 333 F.Supp. 477.

La.—Bergeron v. Bergeron, App. 4 Cir., 527 So.2d 433.

Me.—Margani v. Sanders, 453 A.2d 501.

N.Y.—In re Lyon's Estate, 191 N.Y.S. 260, 117 Misc. 189, affirmed 192 N.Y.S. 936, 200 A.D. 918.

Okl.—Strathmann v. Kinkolaar, 233 P. 215, 105 Okl. 290.

78. U.S.—Herzog v. Herzog, D.C.Pa., 333 F.Supp. 477.

Ky.—Johnson v. Harvey, 88 S.W.2d 42, 261 Ky. 522.

79. U.S.—Petition of Oganessoff, D.C.Cal., 20 F.2d 978.

Okl.—Suglove v. Oklahoma Tax Commission, 605 P.2d 1315.

Strength of presumption

The presumption against a foreign domicile is stronger than the general presumption against a change of domicile.

Intention to change.

The intention to change one's domicile may be presumed where absence is extensive,⁸⁰ but may be overcome by substantial evidence of intent to maintain the domicile.⁸¹

Domicile of married persons.

A husband and wife are presumed to have the same domicile,⁸² but such presumption may be rebutted by proof of contrary intent.⁸³

Domicile of infants.

The domicile of an infant is presumed to continue at the place of his birth,⁸⁴ or the residence of his parents⁸⁵ or the domicile of his custodial parent,⁸⁶ until it has been lawfully changed. The presumption may be overcome by facts showing a different condition;⁸⁷ and the burden of proof is on a minor to establish a change in his domicile.⁸⁸

b. Other Presumptions

There are presumptions as to the domicile of prisoners, students, public officials, members of an armed service, and other particular persons.

It is presumed that a prisoner cannot establish a new domicile in the county or state of his imprisonment because the relocation was involuntary.⁸⁹ However, this presumption can be overcome if the inmate is able to demonstrate relevant factors that

would corroborate a stated intention to reside in the county following release from prison.⁹⁰

Member of armed services.

The presumption that one's actual residence is his domicile does not arise when one is a member of an armed service, as he moves pursuant to orders and not by choice;⁹¹ his domicile is presumed to be the domicile which he had at the time of entering military service,⁹² but such presumption is rebuttable.⁹³

Clergymen.

It has been said that an ecclesiastic is presumed to be domiciled at the place of his cure.⁹⁴

Employees.

There is no presumption that a servant's domicile is that of his master.⁹⁵

Public officials.

A public official who discharges his duties is presumed to continue the domicile he had when elected.⁹⁶

Students.

An out-of-state student is presumed to lack the intention necessary to establish a new domicile,⁹⁷

N.Y.—Bodfish v. Gallman, 378 N.Y.S.2d 138, 50 A.D.2d 457.

80. U.S.—Causey v. Lockridge, D.C.S.C., 22 F.Supp. 692.

81. U.S.—Causey v. Lockridge, D.C.S.C., 22 F.Supp. 692.

82. La.—Messer v. London, 438 So.2d 546.

83. La.—Department of Corrections v. Pickens, App. 1 Cir., 468 So.2d 1310.

84. N.J.—In re Russell's Estate, 53 A. 169, 64 N.J.Eq. 313.

N.Y.—Ames v. Duryea, 6 Lans. 155, affirmed 61 N.Y. 609.

Status of parents

Presumption of domicile by birth includes children of those parents who might not easily be defined as citizens of the state in which the child is born.

U.S.—Gregg v. Louisiana Power and Light Co., C.A.La., 626 F.2d 1315.

85. Neb.—Wirsig v. Scott, 112 N.W. 655, 79 Neb. 322.

86. Mo.—Bell v. Bell, App., 682 S.W.2d 892.

N.Y.—Backstatter v. Backstatter, 320 N.Y.S.2d 613, 66 Misc.2d 331.

87. Neb.—Wirsig v. Scott, 112 N.W. 655, 79 Neb. 322.

88. N.J.—Hess v. Kimble, 81 A. 363, 79 N.J.Eq. 454.

89. Mich.—Fowler v. Fowler, 477 N.W.2d 112, 191 Mich.App. 318.

Capacity of a prisoner to acquire domicile see supra § 30.

90. Mich.—Fowler v. Fowler, 477 N.W.2d 112, 191 Mich. App. 318.

91. Tex.—Carroll v. Jones, App. 2 Dist., 654 S.W.2d 54.

Capacity of members of armed forces to acquire domicile see supra § 32.

92. Pa.—Boswell v. South Carolina Ins. Co., 509 A.2d 358, 353 Pa.Super. 108.

Tex.—Southern v. Glenn, App. 4 Dist., 677 S.W.2d 576, error refused no reversible error.

Retaining home state domicile

La.—Gowins v. Gowins, 466 So.2d 32.

93. Tex.—Southern v. Glenn, App. 4 Dist., 677 S.W.2d 576, error refused no reversible error.

Difficult to rebut

Although presumption is rebuttable, the task is a difficult one since it requires presentation of evidence that will be clear and unequivocal in the face of serviceman's contrary declarations.

U.S.—Vitro v. Town of Carmel, D.C.N.Y., 433 F.Supp. 1110.

94. N.Y.—In re Grant's Estate, 144 N.Y.S. 567, 83 Misc. 257.

Capacity of clergymen to acquire domicile see supra § 34.

95. U.S.—Delaware, L. & W.R. Co. v. Petrowsky, N.Y., 250 F. 554, 162 C.C.A. 570, certiorari denied 38 S.Ct. 427, 247 U.S. 508, 62 L.Ed. 1241.

96. La.—Messer v. London, 438 So.2d 546.

Capacity of public official to acquire domicile see supra § 31.

97. U.S.—Shishko v. State Farm Ins. Co., D.C.Pa., 553 F.Supp. 308, affirmed 722 F.2d 734 and Appeal of Shishko, 722 F.2d 734.

Capacity of students to acquire domicile see supra § 33.

and it is presumed that he is not domiciled in the college town to which he goes,⁹⁸ but such presumption is rebuttable.⁹⁹

§ 42. Admissibility

Domicile or residence may be shown only by evidence which is competent and admissible under the general rules of evidence, and may be proved by direct or circumstantial evidence.

Library References

Domicile ⇨9.

Domicile or residence may be shown only by evidence which is competent and admissible under the general rules of evidence.¹ Accordingly, irrelevant² or immaterial³ evidence is excluded on the question of domicile or the intention involved therein, as are hearsay⁴ and opinion⁵ evidence, and mere surmises of friends or connections.⁶

The fact as to the domicile of a person at a given time,⁷ together with the elements of residence and intention,⁸ may be proved by direct or circumstantial evidence.

Motive.

Motive for the change in residence is irrelevant in determining domicile.⁹

Direct testimony concerning intention.

The person whose domicile is the subject of inquiry may, if a competent witness, testify as to his own intent with respect to his domicile,¹⁰ whether he is a party to the action or not.¹¹ So it is

permissible to ask a person who has changed his residence as to the intent with which such change was made.¹² Direct testimony as to intention may be contradicted by evidence of inconsistent acts and declarations.¹³

Proper cross-examination upon the question of residence or intention is, of course, allowable.¹⁴

§ 43. — Declarations

Declarations of one whose domicile is in dispute may be considered on the question.

Library References

Domicile ⇨9.

It has been broadly held that declarations of a party whose domicile is in dispute,¹⁵ including declarations made before, at, and after the time of change of domicile,¹⁶ may be considered on the question of domicile or the intention involved therein; but according to other authorities declarations not contemporaneous with change of domicile are not admissible.¹⁷

It has been held that declarations, to be admissible, must have been made at a time when the party had no interest to make evidence and before any controversy, and declarations made for the purpose of creating evidence as to domicile should be rejected.¹⁸ However, it has also been held that the declaration of the person made before, at, and after the time the domicile is in dispute may be considered,¹⁹ and that a person may declare his choice of

98. N.C.—Hall v. Wake County Bd. of Elections, 187 S.E.2d 52, 280 N.C. 600.

99. N.C.—Hall v. Wake County Bd. of Elections, 187 S.E.2d 52, 280 N.C. 600.

1. U.S.—Petition of Oganessoff, D.C.Cal., 20 F.2d 978.

N.Y.—In re Lyon's Estate, 191 N.Y.S. 260, 117 Misc. 189, affirmed 192 N.Y.S. 936, 200 A.D. 918.

2. U.S.—Petition of Oganessoff, D.C.Cal., 20 F.2d 978.

Vt.—Dailey v. Town of Ludlow, 147 A. 771, 102 Vt. 312.

3. U.S.—Petition of Oganessoff, D.C.Cal., 20 F.2d 978.

4. U.S.—Petition of Oganessoff, D.C.Cal., 20 F.2d 978.

N.Y.—In re Stone's Estate, 240 N.Y.S. 398, 135 Misc. 736.

5. U.S.—Petition of Oganessoff, D.C.Cal., 20 F.2d 978.

Me.—City of Rockland v. Inhabitants of Union, 60 A. 705, 100 Me. 67.

6. S.C.—Colburn v. Holland, 35 S.C.Eq. 176.

7. N.C.—Hall v. Wake County Bd. of Elections, 187 S.E.2d 52, 280 N.C. 600.

8. Iowa—Farrow v. Farrow, 143 N.W. 856, 162 Iowa 87.

Vt.—In re Hanrahan's Will, 194 A. 471, 109 Vt. 108.

9. U.S.—Hawes v. Club Ecuestre El Comandante, C.A.Puerto Rico, 598 F.2d 698.

10. Cal.—Johnston v. Benton, 239 P. 60, 73 C.A. 565.

Iowa—Farrow v. Farrow, 143 N.W. 856, 162 Iowa 87.

Md.—Wagner v. Scurlock, 170 A. 539, 166 Md. 284.

N.C.—Hall v. Wake County Bd. of Elections, 187 S.E.2d 52, 280 N.C. 600.

R.I.—Root v. Root, 190 A. 450, 57 R.I. 436.

Tex.—Gallagher v. Gallagher, Civ.App., 214 S.W. 516.

11. Cal.—Johnston v. Benton, 239 P. 60, 73 C.A. 565.

12. Ill.—Wilkins v. Marshall, 80 Ill. 74.

13. Vt.—Hulett v. Hulett, 37 Vt. 581.

14. Conn.—Hartford v. Champion, 20 A. 471, 58 Conn. 268.

15. Cal.—Fenton v. Board of Directors of Groveland Community Services Dist., 5 Dist., 203 Cal.Rptr. 388, 156 C.A.3d 1107.

N.J.—Trust Co. of New Jersey v. Spalding, 4 A.2d 401, 125 N.J.Eq. 66.

Okl.—Youngblood v. Rector, 259 P. 579, 126 Okl. 210.

16. Wis.—In re Heymann's Will, 208 N.W. 913, 190 Wis. 97.

17. Vt.—Fulham v. Howe, 20 A. 101, 62 Vt. 386.

18. N.H.—Ayer v. Weeks, 18 A. 1108, 65 N.H. 248.

19. U.S.—In re Ring, Bktrcy.E.D.Mo., 144 B.R. 446.

domicile even for the sole purpose of making evidence to prove what his choice was.²⁰

Deceased persons.

The declarations of a deceased person may be admissible on the question of his domicile or the intention involved therein;²¹ but they should always be taken to point to a particular moment.²²

Oral declarations.

Oral declarations made by the party whose domicile is in dispute, as to the intent with which removal was accomplished, are held admissible in evidence in a contest to which he is a party, at least when part of the *res gestae*.²³ However, the admissibility of such declarations is said to be somewhat in the discretion of the court.²⁴

Written declarations.

Written declarations, whether contained in letters,²⁵ in the recitals of deeds²⁶ or wills,²⁷ or in other instruments, such as hotel registers,²⁸ are admissible evidence as to domicile, provided they are offered against the party making them or accompany or explain some relevant act, thus forming part of the *res gestae*.²⁹

§ 44. — Acts and Circumstances

A person's intention as to his domicile may be shown by his acts and conduct, or by other circumstances.

Library References

Domicile ⇨9.

A person's intention as to his domicile may be shown by his acts and conduct,³⁰ after, as well as before, the date in question,³¹ or by his omissions.³² Still more broadly, it has been said that intention may be shown by circumstances other than acts and declarations,³³ and that all the facts and circumstances gained with a change of domicile are admissible.³⁴ Factors that are relevant in determining one's intent as to his domicile include, in addition to those discussed *infra* this section, where he resides, whether he owns a home or pays rent, where his family and personal belongings are located, where he maintains affiliations with religious and social organizations, where he transacts business, and where he obtains a driver's license.³⁵

Exercise of political rights; holding public office.

The local exercise of political rights is competent evidence of domicile;³⁶ and the official records of election officers showing where a person registered or voted are admissible in evidence on the question of domicile,³⁷ provided his name was entered at his request.³⁸ Upon the same principle, a notification duly addressed and delivered warning an inhabitant to attend a district school meeting in a certain town was held admissible evidence of his domicile.³⁹

In proving the domicile of a person against whom the evidence is offered, it is competent to show that during the time in question he held a local public office,⁴⁰ such as treasurer of a certain school district,⁴¹ or highway inspector.⁴²

20. N.Y.—*In re Newcomb's Estate*, 84 N.E. 950, 192 N.Y. 238.

21. Ala.—*Holmes v. Holmes*, 103 So. 884, 212 Ala. 597.

N.Y.—*In re Stone's Estate*, 240 N.Y.S. 398, 135 Misc. 736.

22. N.Y.—*In re Curtis*, 178 N.Y.S. 286.

23. Me.—*Gilmartin v. Emery*, 160 A. 874, 131 Me. 236.

24. U.S.—*Doyle v. Clark*, C.C.Mich., 7 F.Cas.No.4,053, 1 Flipp. 536.

25. Iowa—*In re Murray's Estate*, 124 N.W. 193, 145 Iowa 368.

26. U.S.—*Rucker v. Bolles*, Cal., 80 F. 504, 25 C.C.A. 600.

27. U.S.—*Ennis v. Smith*, D.C., 55 U.S. 400, 14 How. 400, 14 L.Ed. 472.

28. N.Y.—*In re Curtiss' Will*, 250 N.Y.S. 146, 140 Misc. 185.

29. Vt.—*Coolidge v. Taylor*, 80 A. 1038, 85 Vt. 39.

30. D.C.—*Rosenberg v. Commissioner of Internal Revenue*, 37 F.2d 808, 59 App.D.C. 178.

Ga.—*Mayo v. Ivan Allen-Marshall Co.*, 180 S.E. 20, 51 Ga.App. 250.

N.Y.—*Application of Winkler*, 1 Dept., 567 N.Y.S.2d 53, 171 A.D.2d 474, appeal dismissed 577 N.E.2d 1061, 78 N.Y.2d 908, 573 N.Y.S.2d 469.

N.C.—*Gower v. Carter*, 139 S.E. 604, 194 N.C. 293.

Habits

Okl.—*Suglove v. Oklahoma Tax Commission*, 605 P.2d 1315.

31. Mich.—*Loeser v. Jorgenson*, 100 N.W. 450, 137 Mich. 220.

32. Mass.—*Cole v. Cheshire*, 1 Gray 441.

33. N.C.—*Gower v. Carter*, 139 S.E. 604, 194 N.C. 293.

34. Wis.—*In re Heymann's Will*, 208 N.W. 913, 190 Wis. 97.

35. U.S.—*U.S. v. Scott*, D.C.Ill., 472 F.Supp. 1073, affirmed 618 F.2d 109, certiorari denied 100 S.Ct. 1650, 445 U.S. 962, 64 L.Ed.2d 238—*Blue v. National Fuel Gas Distribution Corp.*, D.C.Pa., 437 F.Supp. 715, affirmed 601 F.2d 573.

N.Y.—*Unanue v. Unanue*, 2 Dept., 532 N.Y.S.2d 769, 141 A.D.2d 31.

36. U.S.—*Mitchell v. U.S.*, 88 U.S. 350, 21 Wall. 350, 22 L.Ed. 584.

U.S. v. *Scott*, D.C.Ill., 472 F.Supp. 1073, affirmed 618 F.2d 109, certiorari denied 100 S.Ct. 1650, 445 U.S. 962, 64 L.Ed.2d 238.

37. Md.—*Comptroller of treasury v. Lenderking*, 303 A.2d 402, 268 Md. 613.

38. Mass.—*Sewall v. Sewall*, 122 Mass. 156.

39. Mass.—*West Boylston v. Sterling*, 17 Pick. 126.

40. Mass.—*Cole v. Cheshire*, 1 Gray 441.

41. Vt.—*Buchanan v. Cook*, 40 A. 102, 70 Vt. 168.

42. Mass.—*Cole v. Cheshire*, 1 Gray 441.

Taxation.

Evidence that a party paid personal taxes, or a tax on personal property, is competent to prove his intention with respect to domicile at the place at which such tax was levied,⁴³ and evidence is likewise admissible that he was assessed for personal taxes,⁴⁴ or that he listed such property for taxation.⁴⁵ On the other hand, evidence that he did not list his property for taxation,⁴⁶ or was not assessed and paid no taxes,⁴⁷ or that he paid taxes on real property,⁴⁸ is not admissible.

§ 45. Weight and Sufficiency

Proof of domicile depends on whether all the facts and circumstances of the particular case, taken together, tend to establish it. Proof of a change of domicile must be clear and satisfactory.

Library References

Domicile ⇌ 10.

43. U.S.—*U.S. v. Scott*, D.C.Ill., 472 F.Supp. 1073, affirmed 618 F.2d 109, certiorari denied 100 S.Ct. 1650, 445 U.S. 962, 64 L.Ed.2d 238.

Ind.—*Croop v. Walton*, 157 N.E. 275, 199 Ind. 262, 53 A.L.R. 1386.

44. Ind.—*Croop v. Walton*, 157 N.E. 275, 199 Ind. 262, 53 A.L.R. 1386.

45. Ind.—*Croop v. Walton*, 157 N.E. 275, 199 Ind. 262, 53 A.L.R. 1386.

46. Ga.—*Worsham v. Legin*, 87 S.E. 1025, 144 Ga. 707.

47. Mo.—*In re Lankford's Estate*, 197 S.W. 147, 272 Mo. 1.

48. N.H.—*Chase v. Chase*, 29 A. 533, 66 N.H. 588.

49. Ariz.—*Jizmejian v. Jizmejian*, 492 P.2d 1208, 16 Ariz.App. 270.

N.Y.—*In re Beechwood*, 254 N.Y.S. 473, 142 Misc. 400.

Intent generally see supra § 14.

50. N.Y.—*Plant v. Harrison*, 74 N.Y.S. 411, 36 Misc. 649.

Ohio—*State ex rel. Kaplan v. Kuhn*, 11 Ohio S. & C.P. 321, 8 Ohio N.P. 197.

51. U.S.—*Porto Rico Ry., Light & Power Co. v. Cagnet*, C.C.A.Puerto Rico, 3 F.2d 21, certiorari denied 45 S.Ct. 511, 268 U.S. 691, 69 L.Ed. 1159.

Ariz.—*Jizmejian v. Jizmejian*, 492 P.2d 1208, 16 Ariz.App. 270.

Ill.—*In re Estate of Elson*, 458 N.E.2d 637, 76 Ill.Dec. 237, 120 Ill.App.3d 649.

La.—*Succession of Barnes*, App. 2 Cir., 490 So.2d 630.

Md.—*Shenton v. Abbott*, 15 A.2d 906, 178 Md. 526.

N.Y.—*In re Curtiss' Will*, 250 N.Y.S. 146, 140 Misc. 185.

N.C.—*Hall v. Wake County Bd. of Elections*, 187 S.E.2d 52, 280 N.C. 600.

Same rule as to residence

Ill.—*Rosenshine v. Rosenshine*, 377 N.E.2d 132, 17 Ill.Dec. 942, 60 Ill.App.3d 514.

52. U.S.—*National Artists Management Co., Inc. v. Weaving*, S.D.N.Y., 769 F.Supp. 1224.

Ark.—*Morris v. Garmon*, 686 S.W.2d 396, 285 Ark. 259.

Del.—*Bruce E.M. v. Dorothea A.M.*, 455 A.2d 866.

Hawaii—*Arakaki v. Arakaki*, 502 P.2d 380, 54 Haw. 60.

Md.—*Toll v. Moreno*, 397 A.2d 1009, 284 Md. 425.

Domicile is so essentially a question of intent, depending on the facts and circumstances of each particular case, that precedents, with necessarily varying facts, are of slight assistance;⁴⁹ a fact of controlling importance in one case may have but slight significance in relation to all the facts of another,⁵⁰ the determination of the place of domicile depending on the circumstances of each case.⁵¹ Proof of domicile, therefore, does not depend on any particular fact, but on whether all the facts and circumstances taken together tend to establish it;⁵² and all acts indicative of purpose must be carefully scrutinized.⁵³

Proof of a change of domicile must be clear and convincing,⁵⁴ compelling,⁵⁵ or very satisfactory⁵⁶ and various other and similar expressions have been used.⁵⁷ In doubtful cases, however, a slight

Mich.—*Curry v. Jackson Circuit Court*, 391 N.W.2d 476, 151 Mich. App. 754.

Mass.—*Commonwealth v. Davis*, 187 N.E. 33, 284 Mass. 41.

Minn.—*Manthey v. Commissioner of Revenue*, 468 N.W.2d 548.

Mo.—*In re Ozias' Estate*, App., 29 S.W.2d 240.

Neb.—*In re Meyers' Estate*, 288 N.W. 35, 137 Neb. 60.

N.Y.—*Matter of Estate of Gadway*, 3 Dept. 510 N.Y.S.2d 737, 123 A.D.2d 83.

N.C.—*Hall v. Wake County Bd. of Elections*, 187 S.E.2d 52, 280 N.C. 600.

Same rule as to legal residence

N.D.—*Dietz v. City of Medora*, 333 N.W.2d 702.

53. Mich.—*Curry v. Jackson Circuit Court*, 391 N.W.2d 476, 151 Mich.App. 754.

Va.—*State-Planters Bank & Trust Co. of Richmond v. Commonwealth*, 6 S.E.2d 629, 174 Va. 289.

54. U.S.—*Katz v. Goodyear Tire and Rubber Co.*, C.A.N.Y., 737 F.2d 238.

Brignoli v. Balch, Hardy & Scheinman, Inc., S.D.N.Y., 696 F.Supp. 37.

N.Y.—*Larkin v. Herbert*, 3 Dept., 586 N.Y.S.2d 679, 185 A.D.2d 607.

Pa.—*In re Estate of Getz*, 611 A.2d 778, 148 Pa.Cmwlth. 393.

Tex.—*Dodd v. Dodd*, Civ.App., 15 S.W.2d 686.

55. Mass.—*Commonwealth v. Davis*, 187 N.E. 33, 284 Mass. 41.

56. N.D.—*McEwen v. McEwen*, 197 N.W. 862, 50 N.D. 662.

Okl.—*Strathmann v. Kinkelaar*, 233 P. 215, 105 Okl. 290.

57. Positive and satisfactory

La.—*Succession of Caprito*, 468 So.2d 561, on remand *Succession of Caprito v. Mayhew*, 478 So.2d 243, writ denied 481 So.2d 1331, certiorari denied *Caprito v. Mayhew*, 106 S.Ct. 571, 474 U.S. 1020, 88 L.Ed. 555, concurring opinion 482 So.2d 618.

Beyond a reasonable doubt

Pa.—*Succession of McElwee*, App., 276 So.2d 391.

circumstance may turn the balance,⁵⁸ but not vague and uncertain evidence,⁵⁹ the question depending on the preponderance of evidence as between the contested places.⁶⁰

More evidence is required to show a loss of domicile of origin than of any other kind,⁶¹ but less evidence is required to prove a continuity of domicile than to establish a new domicile,⁶² and also less evidence is required to establish a change of domicile from one state to another than from one nation to another.⁶³

§ 46. — Declarations, Acts, and Circumstances

Declarations made by a person whose domicile is in dispute are to be given due credit as an index of his intention, written declarations being given more weight than oral ones.

- 58. Ill.—In re Estate of Elson, 458 N.E.2d 637, 76 Ill.Dec. 237, 120 Ill.App.3d 649.
- Va.—Cooper's Adm'r v. Commonwealth, 93 S.E. 680, 121 Va. 338.
- 59. Pa.—May v. May, 94 Pa.Super. 293.
- 60. Ill.—In re Estate of Elson, 2 Dist., 458 N.E.2d 637, 76 Ill.Dec. 237, 120 Ill.App.3d 649.
- Mass.—Commonwealth v. Bogigian, 164 N.E. 472, 265 Mass. 531.
- N.J.—Lyon v. Glaser, 288 A.2d 12, 60 N.J. 259.
- N.C.—Hall v. Wake County Bd. of Elections, 187 S.E.2d 52, 280 N.C. 600.
- Va.—State—Planters Bank & Trust Co. of Richmond v. Commonwealth, 6 S.E.2d 629, 174 Va. 289.

Same rule as to legal residence

- U.S.—Hofferbert v. City of Knoxville, Tennessee, D.C.Tenn., 470 F.Supp. 1001.
- 61. Ky.—Johnson v. Harvey, 88 S.W.2d 42, 261 Ky. 522.
- 62. Pa.—In re Pusey's Estate, 184 A. 844, 321 Pa. 248, certiorari denied Lavelly v. Young Women's Christian Ass'n of Pittsburgh, 57 S.Ct. 36, 299 U.S. 572, 81 L.Ed. 422, rehearing denied 57 S.Ct. 114, 299 U.S. 621, 81 L.Ed. 458.

Presumption of continuance of domicile see supra § 41.

Affirmative showing of abandonment

Once a domicile is determined or established, person retains his domicile at such place unless the evidence affirmatively shows an abandonment of that domicile.

- Md.—Dorf v. Skolnik, 371 A.2d 1094, 280 Md. 101.
- 63. N.Y.—Bodfish v. Gallman, 378 N.Y.S.2d 138, 50 A.D.2d 457.
- Okl.—Suglove v. Oklahoma Tax Commission, 605 P.2d 1315.
- 64. La.—Succession of Lauricella, App. 5 Cir., 571 So.2d 885.
- N.J.—Trust Co. of New Jersey v. Spalding, 4 A.2d 401, 125 N.J.Eq. 66.
- N.Y.—In re Stone's Estate, 240 N.Y.S. 398, 135 Misc. 736.

Similar rule as to residence

- N.Y.—Small v. Small, 409 N.Y.S.2d 379, 96 Misc.2d 469.
- 65. Mass.—Tuelle v. Flint, 186 N.E. 222, 283 Mass. 106.
- N.C.—Hall v. Wake County Bd. of Elections, 187 S.E.2d 52, 280 N.C. 600.
- Okl.—Youngblood v. Rector, 259 P. 579, 126 Okl. 210.
- 66. D.C.—Thorn v. Thorn, 28 App.D.C. 120.

Library References

Domicile ⇨ 10.

Statements and declarations made by a person whose domicile is in dispute,⁶⁴ whether oral⁶⁵ or in a letter,⁶⁶ will,⁶⁷ deed,⁶⁸ mortgage,⁶⁹ lease,⁷⁰ or other document,⁷¹ are to be considered in connection with the other facts of the case and given due credit as an index of his intention, written declarations being given greater weight than oral ones.⁷² However, declarations, whether of domicile or of intention concerning it, are not conclusive,⁷³ and they have been termed the lowest species of evidence.⁷⁴ It has been held that domicile or intention as to domicile is determined by actual facts,⁷⁵ and conduct,⁷⁶ and that the expressed intent need not be

- 67. Neb.—In re Meyers' Estate, 288 N.W. 35, 137 Neb. 60.
- N.J.—Matter of Unanue, 605 A.2d 279, 255 N.J.Super. 362.
- N.D.—Matter of Estate of Burshiem, 483 N.W.2d 175.
- Okl.—Youngblood v. Rector, 259 P. 579, 126 Okl. 210.
- Pa.—In re Estate of Getz, 611 A.2d 778, 148 Pa.Cmwlth. 393.
- 68. Md.—Shenton v. Abbott, 15 A.2d 906, 178 Md. 526.
- Okl.—Youngblood v. Rector, 259 P. 579, 126 Okl. 210.
- 69. Md.—Shenton v. Abbott, 15 A.2d 906, 178 Md. 526.
- 70. Md.—Shenton v. Abbott, 15 A.2d 906, 178 Md. 526.
- 71. Md.—Shenton v. Abbott, 15 A.2d 906, 178 Md. 526.
- Okl.—Youngblood v. Rector, 259 P. 579, 126 Okl. 210.
- 72. N.Y.—In re Betancourt's Estate, 258 N.Y.S. 649, 144 Misc. 173, affirmed Matter of Will of Betancourt, 260 N.Y.S. 990, 237 A.D. 811.
- 73. D.C.—Rosenberg v. Commissioner of Internal Revenue, 37 F.2d 808, 59 App.D.C. 178.
- La.—Succession of McElwee, App., 276 So.2d 391.
- Mass.—Feehan v. Trefry, 129 N.E. 292, 237 Mass. 169.
- N.J.—Matter of Unanue, 605 A.2d 279, 255 N.J.Super. 362.
- N.Y.—In re Lydig's Estate, 180 N.Y.S. 843, 191 A.D. 117.
- N.C.—Hall v. Wake County Bd. of Elections, 187 S.E.2d 52, 280 N.C. 600.
- Same rule as to residency**
- Wis.—Eastman v. City of Madison, App., 342 N.W.2d 764, 117 Wis.2d 106.
- 74. N.Y.—In re Beechwood, 254 N.Y.S. 473, 142 Misc. 400.
- Okl.—Youngblood v. Rector, 259 P. 579, 126 Okl. 210.
- 75. La.—Temple v. Jackson, App., 376 So.2d 972.
- Pa.—In re Lincoln, 590 A.2d 1335, 139 Pa.Cmwlth. 413.
- Objective facts**
- Domicile must be evaluated in terms of objective facts.
- U.S.—Wasson v. Northrup Worldwide Aircraft Services, Inc., D.C.Tex., 443 F.Supp. 400.
- 76. Pa.—In re Estate of Getz, 611 A.2d 778, 148 Pa.Cmwlth. 393.

given effect where it is at variance with facts.⁷⁷

Declarations are of no avail when they are conflicting⁷⁸ or indefinite,⁷⁹ or when they are evidently made for the purpose of creating evidence in favor of declarant,⁸⁰ after he has become appreciative of the consequences of a change of domicile.⁸¹ They must express an honest intention and not be made to conceal the real intention.⁸² The good faith of the party asserting a change of domicile should be considered, particularly in regard to his declarations of intent.⁸³

A party's statements of intent as to domicile are self-serving;⁸⁴ they are accorded little weight;⁸⁵ they must be weighed against any self-serving mo-

tives, and may be impeached by conduct.⁸⁶ Thus, declarations alone cannot prevail unless borne out by acts,⁸⁷ and not belied by objective indicia of actual residence and intent;⁸⁸ and the fact of one's domicile⁸⁹ and his intent as to domicile⁹⁰ must be determined from his conduct, acts and declarations. Where one's significant course of conduct is closely divided between two or more states, his statement of intent in favor of a state may tip the scales toward such state.⁹¹

More weight or importance will be given to a person's acts or conduct than to his declarations,⁹² and, when they are inconsistent, the acts will control.⁹³ Intent regarding domicile may be more

77. La.—*Brown v. Brown*, App., 378 So.2d 164.

78. Or.—*Pickering v. Winch*, 87 P. 763, 48 Or. 500.

79. N.Y.—*Cruger v. Phelps*, 47 N.Y.S. 61, 21 Misc. 252.

80. N.Y.—*Plant v. Harrison*, 74 N.Y.S. 411, 36 Misc. 649.

Subordinate to other evidence

Person's statement designed to create evidence of domicile should be received with caution, and, when in conflict with other evidence on subject, ought always be subordinated to it.

U.S.—*In re Ring, Bkrtcy.*E.D.Mo., 144 B.R. 446.

81. U.S.—*Canadian Pac. R. Co. v. Wenham*, C.C.N.Y., 146 F. 207.

82. N.Y.—*In re Newcomb's Estate*, 84 N.E. 950, 192 N.Y. 238.

83. Wash.—*In re Marriage of Strohmaier*, 659 P.2d 534, 34 Wash. App. 14.

84. U.S.—*White v. All America Cable & Radio, Inc.*, D.Puerto Rico, 642 F.Supp. 69.

85. Alaska—*Kjarstad v. State*, 703 P.2d 1167.

86. U.S.—*U.S. v. Scott*, D.C.Ill., 472 F.Supp. 1073, affirmed 618 F.2d 109, certiorari denied 100 S.Ct. 1650, 445 U.S. 962, 64 L.Ed.2d 238.

87. Ark.—*Charisse v. Eldred*, 477 S.W.2d 480, 252 Ark. 101.

D.C.—*Rosenberg v. Commissioner of Internal Revenue*, 37 F.2d 808, 59 App.D.C. 178.

Pa.—*Alburger v. Alburger*, 10 A.2d 888, 138 Pa.Super. 339.

Similar rule for residency

Mont.—*Lima School Dist. No. 12 and Elementary School Dist. of Beaverhead County v. Simonsen*, 683 P.2d 471, 210 Mont. 100.

Mere discussion

Mere discussion of change of domicile unaccompanied by acts evincing intention to abandon present domicile is insufficient to prove change of domicile.

N.Y.—*Matter of Pingpank*, 2 Dept., 520 N.Y.S.2d 596, 134 A.D.2d 263.

Formal declarations

So-called "formal declarations" of domicile such as voter registration or motor vehicle registrations have lost their importance in recent years as courts have recognized their self-serving nature.

N.Y.—*Wilke v. Wilke*, 423 N.Y.S.2d 249, 73 A.D.2d 915.

88. U.S.—*National Artists Management Co., Inc. v. Weaving*, S.D.N.Y., 769 F.Supp. 1224.

Objective factors showing intention

Twenty-year-old Pennsylvania college student was domiciliary of New York, not Pennsylvania, where, though he stated at trial that he

intended to finish school and seek employment in the area, objective factors strongly suggested that he had no intention of remaining in Pennsylvania.

U.S.—*Shishko v. State Farm Ins. Co.*, D.C.Pa., 553 F.Supp. 308, affirmed 722 F.2d 734 and Appeal of *Shishko*, 722 F.2d 734.

89. N.D.—*Matter of Estate of Burshiem*, 483 N.W.2d 175.

90. N.D.—*Matter of Estate of Burshiem*, 483 N.W.2d 175.

Pa.—*Watson v. Watson*, 364 A.2d 431, 243 Pa.Super. 23.

91. Rule as to residence

Kan.—*Matter of Phillips' Estate*, 604 P.2d 747, 4 Kan.App.2d 256.

92. U.S.—*E.I. Du Pont De Nemours & Co. v. Byrnes*, C.C.A.N.Y., 101 F.2d 14.

Alaska—*Kjarstad v. State*, 703 P.2d 1167.

D.C.—*Rosenberg v. Commissioner of Internal Revenue*, 37 F.2d 808, 59 App.D.C. 178.

Ky.—*Pettit's Ex'x v. City of Lexington*, 237 S.W. 391, 193 Ky. 679.

Md.—*Shenton v. Abbott*, 15 A.2d 906, 178 Md. 526.

Minn.—*Nagaraja v. Commissioner of Revenue*, 352 N.W.2d 373, on remand 1984 WL 2923, motion to amend denied *Willmus v. Commissioner of Revenue*, 1984 WL 2963.

N.Y.—*Will of Shindell*, 400 N.Y.S.2d 67, 60 A.D.2d 393, appeal dismissed *Matter of Shindell's Will*, 393 N.E.2d 1043, 47 N.Y.2d 749, 419 N.Y.S.2d 971, affirmed 431 N.E.2d 303, 55 N.Y.2d 655, 446 N.Y.S.2d 942.

Pa.—*Commonwealth ex rel. Fortney v. Bobrofskie*, 196 A. 489, 329 Pa. 44.

Tex.—*Gallagher v. Gallagher*, Civ.App., 214 S.W. 516.

Same rule as to residence

Ill.—*Connelly by Connelly v. Gibbs*, 445 N.E.2d 477, 68 Ill.Dec. 29, 112 Ill.App.3d 257.

Expression of desire

Expression of desire cannot supersede effect of conduct in determining domicile.

Pa.—*In re Dorrance's Estate*, 163 A. 303, 309 Pa. 151, certiorari denied *Dorrance v. Commonwealth of Pennsylvania*, 53 S.Ct. 222, 287 U.S. 660, 77 L.Ed. 570, and 53 S.Ct. 507, 288 U.S. 617, 77 L.Ed. 990.

93. Del.—*Coca-Cola International Corp. v. New York Trust Co.*, Ch., 8 A.2d 511, 24 Del.Ch. 163, reversed on other grounds *New York Trust Co. v. Riley*, 16 A.2d 722, 24 Del.Ch. 354, affirmed 62

satisfactorily shown by what is done than by what is said.⁹⁴ It is said in this connection that actions speak louder than words,⁹⁵ but, that the words are to be heard for what they are worth.⁹⁶

The purchase or sale of a burial lot may be taken into account,⁹⁷ but, if the facts are at all conflicting, such evidence will be given but slight consideration.⁹⁸ The place of burial is held immaterial or of little importance.⁹⁹

Testimony.

A person's testimony as to domicile must be given full and fair consideration but it is subject to the infirmity of self-serving declarations.¹ A child's domicile is established by the testimony of its mother.²

§ 47. — Residence; Membership in Church or Club

A person's residence or that of his family is a circumstance tending to prove domicile, and may be strong evidence, but is not conclusive, except in the absence of acts indicating a contrary

intention. Membership in local clubs or churches may be considered in determining domicile.

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A person's residence³ or that of his family⁴ is a circumstance tending to prove domicile, and may be strong evidence,⁵ or prima facie evidence⁶ of domicile.

Residence alone has been held not conclusive⁷ or insufficient;⁸ but, in the absence of any avowed intention, and of acts indicating a contrary intention, a long continued residence has been declared a controlling circumstance in determining domicile, and unavoidably conclusive in most cases;⁹ and evidence of actual residence in one place cannot be contradicted by an undisclosed intention to live in, or return to, another.¹⁰

Membership.

In determining domicile, some consideration may be given to membership in local lodges and clubs¹¹

- S.Ct. 608, 315 U.S. 343, 86 L.Ed. 885, rehearing denied 62 S.Ct. 903, 315 U.S. 829, 86 L.Ed. 1223.
- D.C.—Rosenberg v. Commissioner of Internal Revenue, 37 F.2d 808, 59 App.D.C. 178.
- La.—Barrow v. Barrow, 106 So. 705, 160 La. 91.
- Or.—Pickering v. Winch, 87 P. 763, 48 Or. 500.
- Pa.—McCarthy v. Philadelphia Civil Service Commission, 339 A.2d 634, 19 Pa.Cmwlth. 383, affirmed 96 S.Ct. 1154, 424 U.S. 645, 47 L.Ed.2d 366.
- Va.—Bowen v. Commonwealth, 101 S.E. 232, 126 Va. 182.
- 94. Md.—Bainum v. Kalen, 325 A.2d 392, 272 Md. 490.
- 95. N.Y.—In re Trowbridge's Estate, 194 N.E. 756, 266 N.Y. 283.
- Pa.—In re Dorrance's Estate, 163 A. 303, 309 Pa. 151, certiorari denied Dorrance v. Commonwealth of Pennsylvania, 53 S.Ct. 222, 287 U.S. 660, 77 L.Ed. 570, and 53 S.Ct. 222, 287 U.S. 660, 77 L.Ed. 990.
- 96. N.Y.—In re Trowbridge's Estate, 194 N.E. 756, 266 N.Y. 283.

Words as evidence

Words may be evidence of man's intention to establish his domicile at particular place of residence; however, they cannot supply facts of his domicile there.

- La.—Gelpi v. Ben Development Co., Inc., App., 327 So.2d 485.
- 97. Mass.—Dallinger v. Richardson, 57 N.E. 224, 176 Mass. 77.
- 98. Wis.—Frame v. Thormann, 79 N.W. 39, 102 Wis. 653, affirmed 20 S.Ct. 446, 176 U.S. 350, 44 L.Ed. 500.
- 99. Pa.—In re Hood, 21 Pa. 106.
- 1. U.S.—Garner v. Pearson, D.C.Fla., 374 F.Supp. 580.
- 2. La.—Sharff v. Tanner, App. 2 Cir., 486 So.2d 1047.
- 3. Del.—Coca-Cola International Corp. v. New York Trust Co., Ch., 8 A.2d 511, 24 Del.Ch. 163, reversed on other grounds New York Trust Co. v. Riley, 16 A.2d 772, 24 Del.Ch. 354, affirmed 62 S.Ct. 608, 315 U.S. 343, 86 L.Ed. 885, rehearing denied 62 S.Ct. 903, 315 U.S. 829, 86 L.Ed. 1223.
- La.—Lorio v. Gladney, 97 So. 16, 153 La. 993.

- Md.—Toll v. Moreno, 397 A.2d 1009, 284 Md. 425.
- Mass.—Hutchins v. Browne, 147 N.E. 899, 253 Mass. 55.
- 4. Del.—Coca-Cola International Corp. v. New York Trust Co., Ch., 8 A.2d 511, 24 Del.Ch. 163, reversed on other grounds New York Trust Co. v. Riley, 16 A.2d 772, 24 Del.Ch. 354, affirmed 62 S.Ct. 608, 315 U.S. 343, 86 L.Ed. 885, rehearing denied 62 S.Ct. 903, 315 U.S. 829, 86 L.Ed. 1223.
- Mich.—Grable v. City of Detroit, 210 N.W.2d 379, 48 Mich.App. 368.
- Miss.—McHenry v. State, 80 So. 763, 119 Miss. 289.
- 5. U.S.—U.S. v. Scott, D.C.Ill., 472 F.Supp. 1073, affirmed 618 F.2d 109, certiorari denied 100 S.Ct. 1650, 445 U.S. 962, 64 L.Ed.2d 238.
- Del.—Coca-Cola International Corp. v. New York Trust Co., Ch., 8 A.2d 511, 24 Del.Ch. 163, reversed on other grounds New York Trust Co. v. Riley, 16 A.2d 772, 24 Del.Ch. 354, affirmed 62 S.Ct. 608, 315 U.S. 343, 86 L.Ed. 885, rehearing denied 62 S.Ct. 903, 315 U.S. 829, 86 L.Ed. 1223.
- Ga.—Stewman v. Magley, 227 S.E.2d 277, 138 Ga.App. 545.
- 6. U.S.—Krasnov v. Dinan, C.A.Pa., 465 F.2d 1298.
- N.J.—Lyon v. Glaser, 288 A.2d 12, 60 N.J. 259.
- 7. Ky.—Pettit's Ex'x v. City of Lexington, 237 S.W. 391, 193 Ky. 679.
- Md.—Toll v. Moreno, 397 A.2d 1009, 284 Md. 425.
- Mass.—Hutchins v. Browne, 147 N.E. 899, 253 Mass. 55.
- Tenn.—Hyder v. Hyder, 66 S.W.2d 235, 16 Tenn.App. 64.
- Tex.—Pittsburg Water Heater Co. of Texas v. Sullivan, 282 S.W. 576, 115 Tex. 417.
- 8. Pa.—In re Barclay's Estate, 103 A. 274, 259 Pa. 401.
- 9. Hawaii—Hurley v. Knudsen, 30 Hawaii 887, rehearing denied 30 Hawaii 911.
- 10. Cal.—Bragg v. Bragg, 90 P.2d 329, 32 C.A.2d 611.
- Mich.—Grable v. City of Detroit, 210 N.W.2d 379, 48 Mich.App. 368.
- 11. Ga.—Stewman v. Magley, 227 S.E.2d 277, 138 Ga.App. 545.
- N.Y.—Webster v. M.W. Kellogg Co., 153 N.Y.S. 800, 168 A.D. 443.

or churches.¹²

§ 48. — — — Voting, Holding Office, Serving on Jury, and Paying Taxes

Exercise of the elective franchise is important evidence of domicile, and may be the highest, but is not conclusive. Other factors of some weight, but not conclusive, are failure or refusal to vote, holding a local office, service on a jury, and payment of taxes.

Library References

Domicile ⇨10.

The place of exercise of the elective franchise is important evidence on the question of domicile;¹³ it may even be the highest evidence,¹⁴ and has been called the most important of all the formal acts to be scrutinized in ascertaining a person's domicile.¹⁵ However, as a general rule it is not conclusive,¹⁶ and, when overbalanced by other circumstances, the fact of registering or voting may be of slight, or lessened, importance.¹⁷ While registering to vote is not the exclusive proof of domicile, it is strong evidence,¹⁸ but, it is given little consideration in determining a change of domicile absent any showing of an existing pattern of voting practices.¹⁹

The fact that a person has failed or refused to vote at a particular place has been regarded as

evidence tending to show that he is not domiciled there,²⁰ but, the contrary has been held where he never registered to vote anywhere.²¹

Other analogous factors which have been considered of some weight in determining domicile are holding a local office,²² although this is not conclusive.²³

The payment of taxes²⁴ including taking homestead exemptions from taxes,²⁵ may be evidence of domicile, although it is not conclusive,²⁶ as may the act of having one's name placed on the assessor's blotter.²⁷ The address on a tax statement is basically valueless in determining domicile.²⁸

Service on a jury has been held a factor in determining domicile.²⁹

§ 49. — — — Ownership, Lease, Purchase, or Sale of Property

The ownership, lease, or sale of real property, and the sale or retention of personal property are factors to be considered in determining domicile; but buying land for speculative purposes is of no weight.

Library References

Domicile ⇨10.

12. Ky.—Helm's Trustee v. Commonwealth, 122 S.W. 196, 135 Ky. 392.

13. U.S.—Baker v. Keck, D.C.Ill., 13 F.Supp. 486.

Ark.—Charisse v. Eldred, 477 S.W.2d 480, 252 Ark. 101.

Cal.—In re Marriage of Thornton, 185 Cal.Rptr. 388, 135 C.A.3d 500.

Md.—Toll v. Moreno, 397 A.2d 1009, 284 Md. 425.

Mo.—In re Marriage of Bradford, App., 557 S.W.2d 720.

Neb.—In re Meyers' Estate, 288 N.W. 35, 137 Neb. 60.

N.J.—McCormack v. McCormack, 129 A. 212, 3 N.J.Misc. 624.

N.Y.—Limburg v. Snyder, 1 N.Y.S.2d 741, 253 A.D. 844, affirmed 14 N.E.2d 822, 277 N.Y. 725.

W.Va.—First Nat. Bank v. Tate, 178 S.E. 807, 116 W.Va. 138.

Similar rule as to legal residence

Neb.—State ex rel. Rittenhouse v. Newman, 204 N.W.2d 372, 189 Neb. 657.

14. Md.—Wagner v. Scurlock, 170 A. 539, 166 Md. 284.

15. Neb.—In re Meyers' Estate, 288 N.W. 35, 137 Neb. 60.

N.Y.—In re Curtiss' Will, 250 N.Y.S. 146, 140 Misc. 185.

16. U.S.—Baker v. Keck, D.C.Ill., 13 F.Supp. 486.

Ark.—Charisse v. Eldred, 477 S.W.2d 480, 252 Ark. 101.

Cal.—In re Spencer's Estate, 245 P. 176, 198 C. 329.

Ky.—Ledford v. Ledford, 130 S.W.2d 788, 279 Ky. 340.

Md.—Comptroller of Treasury v. Lenderking, 303 A.2d 402, 268 Md. 613.

Mo.—In re Ozias' Estate, App., 29 S.W.2d 240.

Neb.—In re Meyers' Estate, 288 N.W. 35, 137 Neb. 60.

N.J.—McCormack v. McCormack, 129 A. 212, 3 N.J.Misc. 624.

N.Y.—In re Lydig's Estate, 180 N.Y.S. 843, 191 A.D. 117.

Pa.—Commonwealth ex rel. Fortney v. Bobrofskie, 196 A. 489, 329 Pa. 44.

17. Cal.—In re Spencer's Estate, 245 P. 176, 198 C. 329.

Md.—Comptroller of Treasury v. Lenderking, 303 A.2d 402, 268 Md. 613.

18. Ill.—Matter of Jackson's Estate, 363 N.E.2d 919, 6 Ill.Dec. 972, 48 Ill.App.3d 1035.

19. U.S.—Boston Safe Deposit and Trust Co. v. Morse, S.D.N.Y., 779 F.Supp. 347.

20. N.J.—Valentine v. Valentine, 48 A. 593, 61 N.J.Eq. 400.

21. Cal.—Johnston v. Benton, 239 P. 60, 73 C.A. 565.

22. N.Y.—Hammond v. Hammond, 93 N.Y.S. 1, 103 A.D. 437.

23. Md.—Gable v. Mays, 17 A. 565.

24. U.S.—Leave v. Boston Elevated Ry. Co., D.C.Mass., 14 F.Supp. 775.

N.Y.—In re Lydig's Estate, 180 N.Y.S. 843, 191 A.D. 117.

Vt.—City of Barre v. Town of Bethel, 145 A. 410, 102 Vt. 22.

25. Miss.—Gadd v. Thompson, 517 So.2d 576.

26. U.S.—Leave v. Boston Elevated Ry. Co., D.C.Mass., 14 F.Supp. 775.

N.Y.—In re Lydig's Estate, 180 N.Y.S. 843, 191 A.D. 117.

Vt.—City of Barre v. Town of Bethel, 145 A. 410, 102 Vt. 22.

27. N.J.—In re Paullin's Will, 113 A. 240, 92 N.J.Eq. 419.

28. N.Y.—Davis v. Davis, 525 N.Y.S.2d 777, 138 Misc.2d 970.

29. La.—Villere v. Butman, 23 La. Ann. 515.

A factor to be considered in the determination of domicile, although it is not decisive,³⁰ is the ownership³¹ or lease³² of real property, when coupled with either actual or intended residence thereon by the person in question. However, ownership of real property, without more, does not constitute establishment of a domicile;³³ and purchasing a home is not necessarily conclusive evidence as to domicile.³⁴ The mere fact that a fee simple interest in residential property may exist in another place is not determinative of whether a new domicile has been established.³⁵

The sale or disposition of all property in a particular locality, and particularly of a dwelling house, is strong evidence of a change of domicile, when accompanied by actual removal.³⁶ However, the sale of residence and a move elsewhere does not, without more, prove that a change of domicile has occurred.³⁷ The sale or retention of personal property may have considerable weight in determining domicile.³⁸

The actual commencement to build a costly dwelling has been considered an important fact in determining domicile,³⁹ but merely examining a house with an alleged view of purchasing it is entitled to slight weight;⁴⁰ and buying land for speculative purposes is of no weight.⁴¹

The lease of a dwelling as a place of temporary sojourn during travel is of little or no importance in determining domicile,⁴² but, the lease of a dwelling abroad may be of sufficient weight to establish a

domicile, in connection with other evidence of intent to remain permanently.⁴³

Living at a hotel, apartment house, or lodgings is a circumstance to be considered, and its apparently temporary nature is not conclusive against domicile.⁴⁴ The retention of leased premises until the termination of the lease, although entitled to consideration, does not preclude a change of domicile;⁴⁵ nor will the fact that a person's lease has not expired at the time of his removal, even when coupled with the fact of leaving considerable property and household effects at the place of former abode, be deemed sufficient to negative a clearly shown intent to change the domicile.⁴⁶

§ 50. Questions of Law and Fact

The existence or nonexistence of a domicile in a given locality is a mixed question of law and fact when the facts are conflicting; when the facts are settled, the question of domicile is one of law. Commonly, the question as to what shall be considered a party's domicile or residence is said to be a question of fact rather than of law, the ascertainment of such facts as the party's intention being for the jury.

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The existence or nonexistence of a domicile or residence in a given locality, where the facts are conflicting,⁴⁷ is a mixed question of law and fact.⁴⁸ Where the evidence is not in conflict,⁴⁹ or when the facts are settled,⁵⁰ the question of domicile or residence is one of law. Commonly, however, the question as to what shall be considered the domicile or residence of a party is said to be,⁵¹ or to be

30. Mass.—Commonwealth v. Davis, 187 N.E. 33, 284 Mass. 41.
 31. Mass.—Commonwealth v. Davis, 187 N.E. 33, 284 Mass. 41.
 32. U.S.—Canadian Pac. R. Co. v. Wenham, C.C.N.Y., 146 F. 207.
 33. La.—Ober v. Bounds, App. 3 Cir., 528 So.2d 247.
 34. N.M.—Blessley v. Blessley, 577 P.2d 62, 91 N.M. 513.
 35. Wis.—Matter of Tressing's Estate, 273 N.W.2d 271, 86 Wis.2d 502.
 36. Ga.—Redfearn v. Hines, 51 S.E. 407, 123 Ga. 391.
 37. N.Y.—In re Chrisman's Will, 350 N.Y.S.2d 468, 43 A.D.2d 771.
 38. Ill.—Smith v. People, 44 Ill. 16.
 39. N.J.—Duke v. Duke, 62 A. 466, 70 N.J.Eq. 135, affirmed 65 A. 1117, 72 N.J.Eq. 940.
 40. N.Y.—Plant v. Harrison, 74 N.Y.S. 411, 36 Misc. 649.
 41. Ill.—Hayes v. Hayes, 74 Ill. 312.
 42. Mass.—Sears v. Boston, 1 Metc. 250.
 43. N.Y.—In re Cruger's Will, 73 N.Y.S. 812, 36 Misc. 477.
 44. Mass.—Emery v. Emery, 105 N.E. 879, 218 Mass. 227.
 45. N.Y.—Aetna Nat. Bank v. Kramer, 126 N.Y.S. 970, 142 A.D. 444.
 46. Ill.—Behrensmeier v. Kreitz, 26 N.E. 704, 135 Ill. 591.
 47. Ga.—Smiley v. Davenport, 229 S.E.2d 489, 139 Ga.App. 753.

48. U.S.—National Artists Management Co., Inc. v. Weaving, S.D.N.Y., 769 F.Supp. 1224.
 Ala.—Ex parte State ex rel. Altman, 188 So. 685, 237 Ala. 642.
 Cal.—Fenton v. Board of Directors of Groveland Community Services Dist., 5 Dist., 203 Cal.Rptr. 388, 156 C.A.3d 1107.
 D.C.—Rosenberg v. Commissioner of Internal Revenue, 37 F.2d 808, 59 App.D.C. 178.
 Fla.—MacQueen v. MacQueen, 179 So. 725, 131 Fla. 448.
 Ga.—Stewman v. Magley, 227 S.E.2d 277, 138 Ga.App. 545.
 Me.—Margani v. Sanders, 453 A.2d 501.
 N.Y.—Matter of Brunner's Estate, 363 N.E.2d 346, 41 N.Y.2d 917, 394 N.Y.S.2d 621.
 Pa.—In re Estate of Getz, 611 A.2d 778, 148 Pa.Cmwlt. 393.
 Tex.—Fidelity & Deposit Co. of Maryland v. First Nat. Bank, Civ.App., 113 S.W.2d 622, error dismissed.
 Va.—Talley v. Commonwealth, 103 S.E. 612, 127 Va. 516.
 49. Ga.—Pugh v. Jones, 206 S.E.2d 650, 131 Ga.App. 600.
 50. Mich.—Hartzler v. Radeka, 251 N.W. 554, 265 Mich. 451.
 51. U.S.—Philadelphia & R. Ry. Co. v. Sherman, N.Y., 230 F. 814, 145 C.C.A. 124.
 Rosenstiel v. Rosenstiel, D.C.N.Y., 368 F.Supp. 51, affirmed 503 F.2d 1397.

mainly,⁵² or primarily,⁵³ or necessarily,⁵⁴ one of fact, rather than of law.⁵⁵ So far as it involves questions of fact, including the ascertainment of the intention of the party, the question is to be determined by the verdict of the jury,⁵⁶ under proper instructions from the court,⁵⁷ or by the findings of the court;⁵⁸ such determination is conclusive, unless clearly against the weight of the evidence.⁵⁹

According to some authorities, the question of domicile should not be determined by the court as a matter of law except in plain and palpable cases.⁶⁰ Other authorities, however, hold that the court has discretion to decide domicile on its own without a hearing, even when a jury trial has been requested.⁶¹

Ark.—Charisse v. Eldred, 477 S.W.2d 480, 252 Ark. 101.

Cal.—Dreher v. Superior Court of Riverside County, 12 P.2d 671, 124 C.A. 469.

Conn.—Foss v. Foss, 136 A. 98, 105 Conn. 502.

D.C.—Rosenberg v. Commissioner of Internal Revenue, 37 F.2d 808, 59 App.D.C. 178.

Ga.—Myers v. Wheeler, 213 S.E.2d 850, 233 Ga. 933.

Kan.—Teter v. Corley, 584 P.2d 651, 2 Kan.App.2d 540.

La.—Eagle v. Eagle, App. 3 Cir., 477 So.2d 1293.

Md.—Comptroller of the Treasury Income Tax Div. v. Haskin, 472 A.2d 70, 298 Md. 681.

Mass.—Chevalier v. Chevalier, 399 N.E.2d 45, 9 Mass.App.Ct. 80.

Mo.—State ex rel. Goldberg v. Hutson, App., 655 S.W.2d 815.

Mont.—Kroehnke v. Gold Creek Mining Co., 55 P.2d 678, 102 Mont. 21.

N.Y.—Pignatelli v. Pignatelli, 8 N.Y.S.2d 10, 169 Misc. 534.

N.D.—Matter of Estate of Burshiem, 483 N.W.2d 175.

Okl.—Moore v. Hayes, 744 P.2d 934.

Pa.—Petition of Knauer, 134 A. 463, 287 Pa. 115.

S.C.—St. Clair v. St. Clair, 178 S.E. 493, 175 S.C. 83.

52. U.S.—Carrasco-Favela v. Immigration & Naturalization Service, C.A.Tex., 563 F.2d 1220.

Garner v. Pearson, D.C.Fla., 374 F.Supp. 580.

Mass.—Commonwealth v. Davis, 187 N.E. 33, 284 Mass. 41.

53. Ill.—In re Estate of Elson, 2 Dist., 458 N.E.2d 637, 76 Ill.Dec. 237, 120 Ill.App.3d 649.

54. N.Y.—Wilke v. Wilke, 423 N.Y.S.2d 249, 73 A.D.2d 915.

55. U.S.—Philadelphia & R. Ry. Co. v. Sherman, N.Y., 230 F. 814, 145 C.C.A. 124.

D.C.—Rosenberg v. Commissioner of Internal Revenue, 37 F.2d 808, 59 App.D.C. 178.

N.Y.—Pignatelli v. Pignatelli, 8 N.Y.S.2d 10, 169 Misc. 534.

56. U.S.—Philadelphia & R.R. Co. v. Skerman, N.Y., 247 F. 269, 159 C.C.A. 363.

Ala.—Shikle v. Louisville & N.R. Co., 95 So. 358, 209 Ala. 83.

Ga.—Fisher v. Muzik, 412 S.E.2d 548, 201 Ga.App. 861, certiorari denied.

Mich.—Hartzler v. Radeka, 251 N.W. 554, 265 Mich. 451.

Minn.—Converse v. Glenn, 202 N.W. 732, 162 Minn. 513.

Okl.—Burke v. Burke, 249 P. 1110, 119 Okl. 254.

57. D.C.—Rosenberg v. Commissioner of Internal Revenue, 37 F.2d 808, 59 App.D.C. 178.

58. Conn.—Foss v. Foss, 136 A. 98, 105 Conn. 502.

Mass.—Commonwealth v. Bogigian, 164 N.E. 472, 265 Mass. 531.

N.Y.—In re Beechwood, 254 N.Y.S. 473, 142 Misc. 400.

Okl.—Burke v. Burke, 249 P. 1110, 119 Okl. 254.

Pa.—Petition of Knauer, 134 A. 463, 287 Pa. 115.

59. Okl.—Burke v. Burke, 249 P. 1110, 119 Okl. 254.

60. Ga.—Milton v. Wilkes, 262 S.E.2d 624, 152 Ga.App. 362.

61. U.S.—St. Onge v. McNeilus Truck and Mfg., Inc., D.Minn., 645 F.Supp. 280.

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