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25. *§ 23 Domicil of Person Mentally Deficient*

Client/Matter: -None-

Restat 2d of Conflict of Laws, § Scope

These volumes embody the Official Draft of Restatement Second of the Law of Conflict of Laws, approved for publication by the American Law Institute at the Annual Meeting of 1969. They supersede entirely the original Restatement of this subject published by the Institute in 1934. As those who followed the tentative drafts (1953 to 1965) and the three installments of the proposed official draft (1967 to 1969) will readily confirm, the new work is far more than a current version of the old. In basic analysis and technique, in the position taken on a host of issues, in the elaboration of the commentary and addition of Reporter's Notes, what is presented here is a fresh treatment of the subject.

It is a treatment that takes full account of the enormous change in dominant judicial thought respecting conflicts problems that has taken place in relatively recent years. The essence of that change has been the jettisoning of a multiplicity of rigid rules in favor of standards of greater flexibility, according sensitivity in judgment to important values that were formerly ignored. Such a transformation in the corpus of the law reduces certitude as well as certainty, posing a special problem in the process of restatement. Its solution lies in candid recognition that black-letter formulations often must consist of open-ended standards, gaining further content from reasoned elaboration in the comments and specific instances of application given there or inthe notes of the Reporter. That technique is not unique to Conflicts but the situation here has called for its employment quite pervasively throughout these volumes. The result presents a striking contrast to the first Restatement in which dogma was so thoroughly enshrined.

One illustration will suffice to make the point. The earlier Restatement treated choice of law in torts and contracts by articulating a closed set of rules derived from vested-rights analysis. The governing law in torts was determined by the place in which the injury occurred; that in contracts by the place in which the contract became binding or, when performance was in issue, where the contract was to be performed. Restatement Second supplants these rules by the broad principle that rights and liabilities with respect to the particular issue are determined by the local law of the State which, as to that issue, has "the most significant relationship" to the occurrence and the parties. The "factors relevant" to that appraisal, absent a binding statutory mandate, are enumerated generally (§ 6) to "include":

"(a) the needs of the interstate and international systems,

"(b) the relevant policies of the forum,

"(c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,

"(d) the protection of justified expectation,

"(e) the basic policies underlying the particular field of law,

"(f) certainty, predictability and uniformity of result, and

"(g) ease in the determination and application of the law to be applied."

To be sure, this mode of treatment leaves the answer to specific problems very much at large. There is, therefore, wherever possible, a secondary statement in black letter setting forth the choice of law the courts will "usually" make in given situations. These formulations are cast as empirical appraisals rather than purported rules to indicate how far the statements may be subject to revaluation in a concrete instance in light of the more general and

open-ended norm. The reader is thus alerted to the dynamic element in choice of law adjudication, without losing the degree of guidance past decisions may afford. That guidance is enhanced, moreover, by the further exposition in the comments and Reporter's Notes. The comments, it should be noted, no less than the black letter carry the approval of the Institute. The Notes, however, rest on the authority of the Reporter only, though they too have been before the Advisers and the Institute, whose criticism and suggestions the Reporter has invited and considered.

The retreat from dogma that is so pervasive a feature of this work has called for an important change in the form of many illustrations in the comments. When basic norms consist of standards so largely open-ended in their content, illustrations limited to situations where all courts would clearly reach the same result have little practical or pedagogical significance. It was therefore thought useful to encompass in the illustrations some of the more complicated problems, focusing upon the issues to be faced and factors to be weighed, while recognizing that there may be room for different resolutions. What is exemplified is thus the analysis and method of inquiry that the Institute approves, rather than the simple answers to simplistic questions. This is a technique that should be useful in restatement work in general, since it surmounts a difficulty hardly confined to this field.

The first restatement of Conflict of Laws took the Institute eleven years (1923 to 1934); the second, which more than doubles the length of the original, has taken more than seventeen. This is an enormous effort in what many lawyers still regard as an abstruse, elusive subject. The Institute is confident, however, that the product justifies the undertaking. Conflicts problems have a special urgency and difficulty in a federated nation and the point of view developed in Restatement Second has already had constructive influence on their solution by our courts. That influence will surely grow in coming years.

Though I have emphasized the differences between these volumes and the work that they supplant, I should make clear that there are elements of continuity as well. The continuity would be more visible had it been feasible to maintain the old section numbers for the treatment of equivalent material. It will, however, be discernible with the aid of the parallel tables in the Appendix volume, listing corresponding sections in Restatements First and Second, as well as corresponding sections in the present volumes and the earlier tentative drafts of Restatement Second. The Appendix also contains all of the material of Conflicts in succeeding volumes of Restatement in the Courts. The digests of opinions of appellate courts citing the first Restatement are classified under the section numbers of that work. The digest of citations of the tentative and proposed official drafts of Restatement Second are classified under the Section numbers of the present volumes, even when the present number differs from the earlier employed. It should be simple, therefore, to make a quick comparison of the old work and the new, to trace the new through its entire process of development and to appraise the support each formulation thus far has received in the decisions of the higher courts.

The Institute is grateful to Professor Willis L. M. Reese of Columbia University School of Law, who served as Reporter for this project, and to Professor Austin W. Scott of Harvard Law School, who added to his many contributions to restatement work by serving as Associate Reporter. Professor Scott prepared Chapter 10 on Trusts and participated as consultant and adviser with respect to other topics.

The Institute is also grateful to the able and industrious Committee of Advisers, whose help, creative as well as critical, was indispensable. Those who served in this capacity were: Edgar H. Ailes, Esq., of Detroit, Michigan; John G. Buchanan, Esq., of Pittsburgh, Pennsylvania, until 1957; Professor Elliot E. Cheatham of Columbia and later Vanderbilt University Law School; Professor Edwin D. Dickinson until his death in 1961; Professor Paul A. Freund of Harvard Law School; H. Eastman Hackney, Esq., of Pittsburgh, Pennsylvania, until his death in 1967; Judge William H. Hastie of Philadelphia, Pennsylvania; Peter H. Kaminer, Esq., of New York City; Judge Albert B. Maris of Philadelphia, Pennsylvania; Israel Packel, Esq., also of Philadelphia; Professor Clive Parry of Cambridge, England; Professor Monrad G. Paulsen, then of Columbia, until 1964; Professor Maurice Rosenberg of Columbia from 1964; Professor Donald T. Troutman of Harvard Law School; and in the special capacity of Advisers to the Council the late Howard F. Burns, Esq., of Cleveland, Ohio, and Mr. Justice R. Ammi Cutter of the Supreme Judicial Court of Massachusetts. When the final process of revision was begun in 1966, Professor Robert A. Leflar of the University of Arkansas School of Law and New York University and Chief Justice Roger J. Traynor of the Supreme Court of California (now retired) also participated as Advisers. Professor David F. Cavers of Harvard Law School, though unwilling to assume the commitment of an Adviser, attended three of the Advisory Committee meetings and

made helpful contributions to the revision. Moreover, as Director of the Institute until his death in 1962, Judge Herbert F. Goodrich of Philadelphia, Pennsylvania, a renowned student of the law of conflicts, played an active part in the conception and development of the entire project.

The Reporter had the benefit of the research assistance of Mrs. Alma Flesch from 1958 to 1962 and Mrs. Virginia Duncombe from 1962 to 1969. The institute shares his appreciation for their help.

Finally, I wish to acknowledge the abiding debt of the American Law Institute to the A. W. Mellon Educational and Charitable Trust of Pittsburgh, Pennsylvania, whose benefaction, which we have called the Judge Thomas Mellon Endowment, makes Restatement Second possible.

Herbert Wechsler

Director,

The American Law Institute.

December 31, 1970

Restat 2d of Conflict of Laws, § 1

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 1- Introduction

§ 1 Reason for the Rules of Conflict of Laws

The world is composed of territorial states having separate and differing systems of law. Events and transactions occur, and issues arise, that may have a significant relationship to more than one state, making necessary a special body of rules and methods for their ordering and resolution.

COMMENTS & ILLUSTRATIONS

Comment:

a. Ordinarily all legally significant aspects of a case are grouped within the state of the forum and the task of the court is to determine the rights and liabilities of the parties in accordance with its own local law. (For a definition of the term "local law", see § 4.)

b. Problems arise when legally significant aspects of a case are divided between two or more states. (For a definition of the term "state", see § 3.) Suppose that A injures B in state Y and B brings suit against A in state X to recover for his injuries. If the local law rules of X and Y differ in relevant respects, the X court may be called upon to decide whether to apply the rules of one state rather than the rules of the other. Questions may also arise regarding the recognition and enforcement by state Y of a judgment rendered in state X, or vice versa.

c. Broadly speaking, three views are possible in dealing with cases involving foreign elements. First, the court might refuse to hear all such cases. Second, the court might decide them all by its own local law. Lastly, special rules might be devised to deal with such cases in a manner designed to promote the smooth functioning of the international and interstate systems and to do justice to the parties. The third course is the one pursued by civilized nations, and these special rules constitute the subject matter of Conflict of Laws.

Cross Reference

Digest System Key Numbers:

Action 17

Restat 2d of Conflict of Laws, § 2

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 1- Introduction

§ 2 Subject Matter of Conflict of Laws

Conflict of Laws is that part of the law of each state which determines what effect is given to the fact that the case may have a significant relationship to more than one state.

COMMENTS & ILLUSTRATIONS

Comment:

a. Matters falling within the field of Conflict of Laws. Conflict of Laws covers an extremely wide area, embracing all situations where the affairs of men cut across state lines. Important matters falling within the scope of a state's Conflict of Laws rules include:

1. *Judicial jurisdiction and competence*. Each state has rules as to the types of cases involving foreign elements which its courts and other tribunals shall hear. These rules determine, for example, the extent to which the courts may, or do, exercise jurisdiction over persons who are not physically present in the state and over occurrences which take place elsewhere.

2. *Foreign judgments*. Each state has rules as to the effect its courts will give to judgments rendered in other states.

3. *Choice of law*. Each state has rules to determine which law (its own local law or the local law of another state) shall be applied by it to determine the rights and liabilities of the parties resulting from an occurrence involving foreign elements. These rules are commonly referred to as choice-of-law rules, because they do not themselves determine the rights and liabilities of the parties, but rather guide decision as to which local law rule will be applied to determine these rights and duties. Each state has its own methods and rules for determining whether particular issues in a suit involving foreign elements should be determined by its own local law rules or by those of another state. Important factors affecting these methods and rules are set forth in § 6. These methods and rules likewise determine whether the issue involved shall be decided according to the local law rule of the other state or according to the local law rule of the state selected by application of the other state's choice-of-law rules (see § 8).

Illustrations:

1. A, domiciled in state X, comes to state Y and, after remaining there for a time, seeks a divorce from B, his wife, who remains domiciled in X. Whether the Y courts will entertain A's action involves a question of Conflict of Laws.

2. Same facts as in Illustration 1 except that A has already obtained a divorce in state Y and has now returned to state X. B brings suit against him in X for separation and support. The effect which the X courts will accord the Y divorce in this action involves a question of Conflict of Laws.

3. An automobile is mortgaged in one state and then is brought into another state and sold by the mortgagor. What law shall be applied to determine the respective rights in the automobile of the chattel mortgagee and the purchaser is a question of Conflict of Laws.

4. A contract is made in one state to be performed in another state. What law shall be applied to determine its validity is a question of Conflict of Laws.

Comment:

b. Effect of the Constitution, Treaties and Laws of the United States. Certain provisions of the United States Constitution limit the power of the States of the United States in the field of Conflict of Laws and hence are themselves part of each State's Conflict of Laws rules (see § 3, Comment *c*). These provisions include:

The Full Faith and Credit Clause. This clause (Article IV, Section 1), in conjunction with its implementing statute *(28 U.S.C. § 1738),* sets forth the measure of respect which each State must give to the acts, records and judicial proceedings of a sister State.

The Due Process Clauses. The due process clause of the Fourteenth Amendment imposes limits beyond which a State of the United States may not extend the jurisdiction of its courts or the range of application of its law.

Analogous limitations upon the judicial and legislative jurisdiction of the United States are imposed by the due process clause of the Fifth Amendment.

The Privileges and Immunities Clause. This clause, which is contained in Article IV, Section 2, imposes limits upon the extent to which a State may discriminate against the citizens of a sister State.

The Equal Protection Clause. This clause, which is contained in the Fourteenth Amendment, imposes limits upon the extent to which a State may discriminate against persons "within its jurisdiction".

The Supremacy Clause. This clause (Article VI) requires the States to give effect to the Constitution, statutes and treaties of the United States and to authoritative decisions of the federal courts in areas of national law. See, e. g., *Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1964); Teamsters Local v. Lucas Flour Co., 369 U.S. 95 (1961); Clearfield Trust Co. v. United States, 318 U.S. 363 (1943); Garrett v. Moore-McCormack Co., 317 U.S. 239 (1942).*

The Commerce Clause. This clause (Article I, Section 8) imposes limits upon the power of a State to apply its local law to interstate transactions and upon the power of a State to determine what cases its courts shall hear.

llustrations:In Illustrations 5-9, X and Y are States of the United States.

5. A, who formerly lived in State X, acquires a domicil in State Y and there obtains a valid divorce from B, his wife. The Constitution requires the X courts to recognize the Y divorce.

6. A claim, based upon facts which occurred in State X, is sued upon in State Y. The Constitution of the United States may require the Y court to entertain the suit.

7. A statute of State X authorizes the X courts to assume jurisdiction over non-residents who have caused injury to person or property in the State. The power of X so to provide may be limited by the Constitution of the United States.

8. A suit is brought in State X to recover for injuries sustained in State Y. The power of the X court to apply X local law to determine the rights and liabilities of the parties may be limited by the Constitution of the United States.

9. A statute of State X provides that an action may be maintained in its courts against a foreign railroad company that maintains an agency within the State for the purpose of soliciting freight or passenger service over the railroad's lines in other States and that the summons in the action may be served on the soliciting agent. The power of X so to provide may be limited by the Constitution of the United States.

Comment:

c. Conflicts not dealt with in this Restatement. Certain types of conflicts that are not dealt with directly in the Restatement of this Subject are mentioned below:

Federal-State conflicts. In the United States, there is the ever-present problem of determining the respective spheres of authority of the law and courts of the nation and of the member States.

Intrastate conflicts. A state is customarily subdivided into a number of territorial divisions, as counties, cities, towns and villages. To the extent that these divisions have their own separate law and courts, their existence gives rise to problems analogous to those dealt with in the Restatement of this Subject.

Conflicts of personal (non-territorial) law. In some states, various racial or religious groups have their own distinct system of law. A remnant of such a system is to be found in the United States in the personal law of the Indian tribes.

Conflicts in time. The question occasionally arises whether a prior or subsequent law of a state should be applied, as, for example, when it is argued that a statute should be given a retroactive application.

Criminal law. No attempt is made in the Restatement of this Subject to deal fully with the special Conflict of Laws problems presented by criminal law. Many of the principles stated in this Restatement, however, are applicable to criminal law.

d. Public International Law. Public international law is dealt with only incidentally in the Restatement of this Subject. The rules stated in this Restatement do conform, however, to the requirements of public international law. By applying these rules, a state will not, in the absence of a treaty provision to the contrary, violate the obligations which it owes other states under public international law. For a discussion of the relationship between public international law and Conflict of Laws, see § 9 and the Introductory Note to Part I of the Restatement of the Foreign Relations Law of the United States.

Cross Reference

ALR Annotations:

Extraterritorial operation of limitation applicable to statutory cause of action, other than by reason of "borrowing statute". *95 A.L.R.2d 1162.*

Construction, application, and effect, with reference to statutory causes of action, of statute of forum which admits bar of statute of limitations of other state. *67 A.L.R.2d 216.*

Federal Constitution and conflict of laws as to rights not based on judgments. 74 A.L.R. 710, s. 100 A.L.R. 1143, 134 A.L.R. 1472.

Digest System Key Numbers:

Action 17

Restat 2d of Conflict of Laws, § 3

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 1- Introduction

§ 3 State Defined

As used in the Restatement of this Subject, the word "state" denotes a territorial unit with a distinct general body of law.

COMMENTS & ILLUSTRATIONS

Comment:

a. Each State of the United States is a state under the definition. So too, for example, are the District of Columbia, the Commonwealth of Puerto Rico and the Territories of Guam and the Virgin Islands.

b. The law of a state is not necessarily applicable in all its aspects to every person or place within the state. Thus, different classes of persons or different localities may be governed by different laws, or local subdivisions of a state may be allowed by the state to make certain laws applicable within their own boundaries. All such laws are part of the law of the state.

Illustration:

1. The City of Boston is authorized by the Massachusetts Legislature to make ordinances applicable within its territory. These ordinances are part of the law of Massachusetts.

Comment:

c. Distinction between "state" in the political sense and "state" in the sense here used. A distinction is to be noted between the use of the word "state" in the Restatement of this Subject and its use to designate a politically sovereign unit. A definition of the word "state" in the political sense is contained in § 4 of the Restatement of the Foreign Relations Law of the United States. In the political sense, the United States is a state. On the other hand, the United States is not a state within the meaning of the rule of this Section as to matters that are governed by the local law of the member States. The United States, however, is a state in the sense here used as to matters that are governed by federal law. A State of the United States is a state within the meaning of the rule of this Section except as to matters that are governed by federal law. These problems of classification arise because of the division of authority between State and federal powers under the Constitution of the United States. Such intergovernmental relations are not dealt with in the Restatement of this Subject. The United Kingdom is a state in the political sense. In the sense here used, however, England, Scotland and Northern Ireland are separate states.

d. Problems of applicable law resulting from dual sovereignty. The Congress of the United States under authority given in the Constitution (Article III) has established federal courts which may exercise jurisdiction either because of the nature of the claim or because of the diversity of citizenship of the parties. Except when federal law otherwise provides or requires, a federal court will apply the law, including the rules of Conflict of Laws, of the State in which the case is brought. A case involving a Conflict of Laws problem may raise questions of great difficulty as to the precise area of application of State or federal law. The solution of such questions is not within the scope of the Restatement of this Subject (see § 2, Comment *c*).

e. As used in the Restatement of this Subject, the word "state" is a generic term which covers any territorial unit with a distinct body of law, including a State of the United States.

When a State of the United States is referred to in the Restatement of this Subject, the word is begun with a capital letter. The word "nation" is usually used to designate a politically sovereign unit. This includes the United States of America. What constitutes a politically sovereign unit is a question of public international law and is not within the scope of the Restatement of this Subject.

REPORTER'S NOTES

Comment d: It was held in *Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938)* that when federal courts are required to apply State law the obligation extends to State decisional rules as well as to State statutes. In *Griffin v. McCoach, 313 U.S. 498 (1941)* and *Klaxon Co. v. Stentor Electric Mfg. Co., 313 U.S. 487 (1941),* this obligation was held to extend to State rules of choice of law. When a case is transferred from one District Court to another pursuant to § 1404a of the Judicial Code, the transferee forum is required to apply the choice-of-law rules of the State from which the case was transferred. *Van Dusen v. Barrack, 376 U.S. 612 (1964).*

The enactment of legislation has been recommended which would modify the rule of Griffin and Klaxon by authorizing the federal courts to apply their own choice-of-law rules in certain diversity cases involving multiple parties where the federal courts would be able to reach out-of-state parties who would not be subject to the jurisdiction of the State courts. See Study of the Division of Jurisdiction Between State and Federal Courts 40-43 (Tentative Draft No. 2, 1964) recommending the insertion in the Judicial Code of a proposed § 2344.

Under the Supremacy clause (Article VI) of the Constitution, national law, including the authoritative decisions of the federal courts, must be applied by federal and State courts alike in areas of national law. See, e. g., *State of Texas v. State of New Jersey, 379 U.S. 674 (1965); Banco Nacional de Cuba v. Sabbatino 376 U.S. 398 (1964); Teamsters Local v. Lucas Flour Co., 369 U.S. 95 (1962); Vanston Bondholders Protective Committee v. Green, 329 U.S. 156 (1946); Clearfield Trust Co. v. United States, 318 U.S. 363 (1943).*

National law sometimes requires application of State law as the rule of decision. See, e. g., Federal Tort Claims Act, 28 U.S.C. § 1346b; *Yiatchos v. Yiatchos, 376 U.S. 306 (1964); United States v. Brosnan, 363 U.S. 237 (1960); DeSylva v. Ballentine, 351 U.S. 570 (1956); Reconstruction Finance Corp. v. Beaver County, 328 U.S. 204 (1946); Blair v. Commissioner, 300 U.S. 5 (1937); United States v. Certain Property Located in the Borough of Manhattan, 306 F.2d 439 (2d Cir. 1962);* Friendly, In Praise of Erie -- and of the New Federal Common Law, 39 N.Y.U.L.Rev. 385 (1964).

Cross Reference

Digest System Key Numbers:

Action 17

Restat 2d of Conflict of Laws, § 4

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 1- Introduction

§ 4 Law Defined

(1) As used in the Restatement of this Subject, the "local law" of a state is the body of standards, principles and rules, exclusive of its rules of Conflict of Laws, which the courts of that state apply in the decision of controversies brought before them.

(2) As used in the Restatement of this Subject, the "law" of a state is that state's local law, together with its rules of Conflict of Laws.

COMMENTS & ILLUSTRATIONS

Comment:

a. For a general discussion of when the forum will look to the choice-of-law rules of a particular state, see § 8.

b. The "local law" of a State of the United States includes such rules of federal law as are binding upon it.

Cross Reference

Digest System Key Numbers:

Action 17

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Restat 2d of Conflict of Laws, § 5

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 1- Introduction

§ 5 Nature and Development of Conflict of Laws

The rules of Conflict of Laws, and especially the rules of choice of law, are largely decisional and, to the extent that this is so, are as open to reexamination as any other common law rules. The process of formulation and reexamination of these rules requires consideration not only of the specific policies of the relevant local law rules but also of the general policies relating to multistate occurrences.

COMMENTS & ILLUSTRATIONS

Comment:

a. Conflict of Laws a part of the law of a state. A state has the same freedom to adopt its own rules of Conflict of Laws as it has to adopt any other rules of law. Conflict of Laws rules, when adopted, become as definitely a part of the law as any other branch of the state's law. In some instances, the Constitution limits the freedom of States of the United States to adopt such rules of Conflict of Laws as they might otherwise wish to adopt (see § 2, Comment *b*).

b. Sources of Conflict of Laws. A court applies the law of its own state, as it understands it, including its own conception of Conflict of Laws. It derives this law from the same sources which are used for determining all its law: from constitutions, treaties and statutes, from precedent, from considerations of ethical and social need and of public policy in general, from analogy, and from other forms of legal reasoning. In restating this branch of the law, the same problems of generally accepted doctrine, of local peculiarity and of statutory modification are presented as in restating any other area of the law.

c. Evolution and change of rules of Conflict of Laws. In the United States, and in other Anglo-American countries, Conflict of Laws rules generally form part of the common law. Occasionally these rules are found in constitutions, statutes and treaties. To the extent that they are embodied in common law rules, Conflict of Laws rules are as subject to change by the courts as are other common law rules. Indeed, more drastic changes have recently been made in the common law rules of Conflict of Laws than in most other areas of the law, and it seems probable that this trend will continue. As experience accumulates, some existing Conflict of Laws rules may be modified and additional rules may be devised in order to cover narrower situations with greater precision and definiteness. The extent to which there have been changes in Conflict of Laws rules since the appearance of the original Restatement of this Subject is indicated in the various Sections and in the Reporter's Notes.

d. Underlying policies. The policies reflected by Conflict of Laws rules are essentially of two kinds: those which underlie the particular local law rules at issue and those which underlie multistate situations in general. An important objective in any choice-of-law case is to accommodate in the best way possible the policities underlying the potentially applicable local law rules of the states involved. Since multistate situations give rise to peculiar policies of their own, Conflict of Laws rules should reflect these policies.

Important factors underlying rules of choice of law are discussed in § 6.

Cross Reference

Digest System Key Numbers:

Action 17

End of Document

Restat 2d of Conflict of Laws, § 6

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 1- Introduction

§ 6 Choice-Of-Law Principles

(1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.

(2) When there is no such directive, the factors relevant to the choice of the applicable rule of law include

(a) the needs of the interstate and international systems,

(b) the relevant policies of the forum,

(c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,

(d) the protection of justified expectations,

(e) the basic policies underlying the particular field of law,

(f) certainty, predictability and uniformity of result, and

(g) ease in the determination and application of the law to be applied.

COMMENTS & ILLUSTRATIONS

Comment on Subsection (1):

a. Statutes directed to choice of law. A court, subject to constitutional limitations, must follow the directions of its legislature. The court must apply a local statutory provision directed to choice of law provided that it would be constitutional to do so. An example of a statute directed to choice of law is the Uniform Commercial Code which provides in certain instances for the application of the law chosen by the parties (§ 1-105(1)) and in other instances for the application of the law of a particular state (§§ 2-402, 4-102, 6-102, 8-106, 9-103). Another example is the Model Execution of Wills Act which provides that a written will subscribed by the testator shall be valid as to matters of form if it complies with the local requirements of any one of a number of enumerated states. Statutes that are expressly directed to choice of law, that is to say, statutes which provide for the application of the local law of one state, rather than the local law of another state, are comparatively few in number.

b. Intended range of application of statute. A court will rarely find that a question of choice of law is explicitly covered by statute. That is to say, a court will rarely be directed by statute to apply the local law of one state, rather than the local law of another state, in the decision of a particular issue. On the other hand, the court will constantly be faced with the question whether the issue before it falls within the intended range of application of a particular statute. The court should give a local statute the range of application intended by the legislature when these intentions can be ascertained and can constitutionally be given effect. If the legislature intended that the statute should be applied to the out-of-state facts involved, the court should so apply it unless constitutional considerations forbid. On the other hand, if the legislature intended that the statute should be applied only to acts taking place within the state, the statute should not be given a wider range of application.

Sometimes a statute's intended range of application will be apparent on its face, as when it expressly applies to all citizens of a state including those who are living abroad. When the statute is silent as to its range of application, the intentions of the legislature on the subject can sometimes be ascertained by a process of interpretation and construction. Provided that it is constitutional to do so, the court will apply a local statute in the manner intended by the legislature even when the local law of another state would be applicable under usual choice-of-law principles.

Comment on Subsection (2):

c. Rationale. Legislatures usually legislate, and courts usually adjudicate, only with the local situation in mind. They rarely give thought to the extent to which the laws they enact, and the common law rules they enunciate, should apply to out-of-state facts. When there are no adequate directives in the statute or in the case law, the court will take account of the factors listed in this Subsection in determining the state whose local law will be applied to determine the issue at hand. It is not suggested that this list of factors is exclusive. Undoubtedly, a court will on occasion give consideration to other factors in deciding a question of choice of law. Also it is not suggested that the factors mentioned are listed in the order of their relative importance. Varying weight will be given to a particular factor, or to a group of factors, in different areas of choice of law. So, for example, the policy in favor of effectuating the relevant policies of the state of dominant interest is given predominant weight in the rule that transfers of interests in land are governed by the law that would be applied by the courts of the situs (see §§ 223-243). On the other hand, the policies in favor of protecting the justified expectations of the parties and of effectuating the basic policy underlying the particular field of law come to the fore in the rule that, subject to certain limitations, the parties can choose the law to govern their contract (see § 187) and in the rules which provide, subject to certain limitations, for the application of a law which will uphold the validity of a trust of movables (see §§ 269-270) or the validity of a contract against the charge of commercial usury (see § 203). Similarly, the policy favoring uniformity of result comes to the fore in the rule that succession to interests in movables is governed by the law that would be applied by the courts of the state where the decedent was domiciled at the time of his death (see §§ 260 and 263).

At least some of the factors mentioned in this Subsection will point in different directions in all but the simplest case. Hence any rule of choice of law, like any other common law rule, represents an accommodation of conflicting values. Those chapters in the Restatement of this Subject which are concerned with choice of law state the rules which the courts have evolved in accommodation of the factors listed in this Subsection. In certain areas, as in parts of Property (Chapter 9), such rules are sufficiently precise to permit them to be applied in the decision of a case without explicit reference to the factors which underlie them. In other areas, such as in Wrongs (Chapter 7) and Contracts (Chapter 8), the difficulties and complexities involved have as yet prevented the courts from formulating a precise rule, or series of rules, which provide a satisfactory accommodation of the underlying factors in all of the situations which may arise. All that can presently be done in these areas is to state a general principle, such as application of the local law "of the state of most significant relationship", which provides some clue to the correct approach but does not furnish precise answers. In these areas, the courts must look in each case to the underlying factors themselves in order to arrive at a decision which will best accommodate them.

Statement of precise rules in many areas of choice of law is made even more difficult by the great variety of situations and of issues, by the fact that many of these situations and issues have not been thoroughly explored by the courts, by the generality of statement frequently used by the courts in their opinions, and by the new grounds of decision stated in many of the more recent opinions.

The Comments which follow provide brief discussion of the factors underlying choice of law which are mentioned in this Subsection.

d. Needs of the interstate and international systems. Probably the most important function of choice-of-law rules is to make the interstate and international systems work well. Choice-of-law rules, among other things, should seek to further harmonious relations between states and to facilitate commercial intercourse between them. In formulating rules of choice of law, a state should have regard for the needs and policies of other states and of the community of states. Rules of choice of law formulated with regard for such needs and policies are likely to commend themselves to other states and to be adopted by these states. Adoption of the same choice-of-law rules by many states will further the needs of the interstate and international systems and likewise the values of certainty, predictability and uniformity of result.

e. Relevant policies of the state of the forum. Two situations should be distinguished. One is where the state of the forum has no interest in the case apart from the fact that it is the place of the trial of the action. Here the only relevant policies of the state of the forum will be embodied in its rules relating to trial administration (see Chapter 6). The second situation is where the state of the forum has an interest in the case apart from the fact that it is the place of trial. In this latter situation, relevant policies of the state of the forum may be embodied in rules that do not relate to trial administration.

The problem dealt with in this Comment arises in the common situation where a statute or common law rule of the forum was formulated solely with the intrastate situation in mind or, at least, where there is no evidence to suggest that the statute or rule was intended to have extraterritorial application. If the legislature or court (in the case of a common law rule) did have intentions with respect to the range of application of a statute or common law rule and these intentions can be ascertained, the rule of Subsection (1) is applicable. If not, the court will interpret the statute or rule in the light of the factors stated in Subsection (2).

Every rule of law, whether embodied in a statute or in a common law rule, was designed to achieve one or more purposes. A court should have regard for these purposes in determining whether to apply its own rule or the rule of another state in the decision of a particular issue. If the purposes sought to be achieved by a local statute or common law rule would be furthered by its application to out-of-state facts, this is a weighty reason why such application should be made. On the other hand, the court is under no compulsion to apply the statute or rule to such out-of-state facts since the originating legislature or court had no ascertainable intentions on the subject. The court must decide for itself whether the purposes sought to be achieved by a local statute or rule should be furthered at the expense of the other choice-of-law factors mentioned in this Subsection.

f. Relevant policies of other interested states. In determining a question of choice of law, the forum should give consideration not only to its own relevant policies (see Comment *e*) but also to the relevant policies of all other interested states. The forum should seek to reach a result that will achieve the best possible accommodation of these policies. The forum should also appraise the relative interests of the states involved in the determination of the particular issue. In general, it is fitting that the state whose interests are most deeply affected should have its local law applied. Which is the state of dominant interest may depend upon the issue involved. So if a husband injures his wife in a state other than that of their domicil, it may be that the state of conduct and injury has the dominant interest in determining whether the husband's conduct was tortious or whether the wife was guilty of contributory negligence (see § 146). On the other hand, the state of the spouses' domicil is the state of dominant interest when it comes to the question whether the husband should be held immune from tort liability to his wife (see § 169).

The content of the relevant local law rule of a state may be significant in determining whether this state is the state with the dominant interest. So, for example, application of a state's statute or common law rule which would absolve the defendant from liability could hardly be justified on the basis of this state's interest in the welfare of the injured plaintiff.

g. Protection of justified expectations. This is an important value in all fields of the law, including choice of law. Generally speaking, it would be unfair and improper to hold a person liable under the local law of one state when he had justifiably molded his conduct to conform to the requirements of another state. Also, it is in part because of this factor that the parties are free within broad limits to choose the law to govern the validity of their contract (see § 187) and that the courts seek to apply a law that will sustain the validity of a trust of movables (see §§ 269-270).

There are occasions, particularly in the area of negligence, when the parties act without giving thought to the legal consequences of their conduct or to the law that may be applied. In such situations, the parties have no justified expectations to protect, and this factor can play no part in the decision of a choice-of-law question.

h. Basic policies underlying particular field of law. This factor is of particular importance in situations where the policies of the interested states are largely the same but where there are nevertheless minor differences between their relevant local law rules. In such instances, there is good reason for the court to apply the local law of that state which will best achieve the basic policy, or policies, underlying the particular field of law involved. This factor explains in large part why the courts seek to apply a law that will sustain the validity of a contract against the charge of commercial usury (§ 203) or the validity of a trust of movables against the charge that it violates the Rule Against Perpetuities (§§ 269-270).

i. Predictability and uniformity of result. These are important values in all areas of the law. To the extent that they are attained in choice of law, forum shopping will be discouraged. These values can, however, be purchased at too great a price. In a rapidly developing area, such as choice of law, it is often more important that good rules be developed than that predictability and uniformity of result should be assured through continued adherence to existing rules. Predictability and uniformity of result are of particular importance in areas where the parties are likely to give advance thought to the legal consequences of their transactions. It is partly on account of these factors that the parties are permitted within broad limits to choose the law that will determine the validity and effect of their contract (see § 187) and that the law that would be applied by the courts of the state of the situs is applied to determine the validity of transfers of interests in land (see § 223). Uniformity of result is also important when the transfer of an aggregate of movables, situated in two or more states, is involved. Partly for this reason, the law that would be applied by the courts of the state of a decedent's domicil at death is applied to determine the validity of his will in so far as it concerns movables (see § 263) and the distribution of his movables in the event of intestacy (see § 260).

j. Ease in the determination and application of the law to be applied. Ideally, choice-of-law rules should be simple and easy to apply. This policy should not be overemphasized, since it is obviously of greater importance that choice-of-law rules lead to desirable results. The policy does, however, provide a goal for which to strive.

k. Reciprocity. In formulating common law rules of choice of law, the courts are rarely guided by considerations of reciprocity. Private parties, it is felt, should not be made to suffer for the fact that the courts of the state from which they come give insufficient consideration to the interests of the state of the forum. It is also felt that satisfactory development of choice-of-law rules can best be attained if each court gives fair consideration to the interests of other states without regard to the question whether the courts of one or more of these other states would do the same. As to whether reciprocity is a condition to the recognition and enforcement of a judgment of a foreign nation, see § 98, Comment *e*.

States sometimes incorporate a principle of reciprocity into statutes and treaties. They may do so in order to induce other states to take certain action favorable to their interests or to the interests of their citizens. So, as stated in § 89, Comment *b*, many States of the United States have enacted statutes which provide that a suit by a sister State for the recovery of taxes will be entertained in the local courts if the courts of the sister State would entertain a similar suit by the State of the forum. Similarly, by way of further example, some States of the United States provide by statute that an alien cannot inherit local assets unless their citizens in turn would be permitted to inherit in the state of the alien's nationality. A principle of reciprocity is also sometimes employed in statutes to permit reciprocating states to obtain by cooperative efforts what a single state could not obtain through the force of its own law. See, e. g., Uniform Reciprocal Enforcement of Support Act; Uniform (Reciprocal) Act to Secure Attendance of Witnesses from Without a State in Criminal Proceedings; Interpleader Compact Law.

REPORTER'S NOTES

The rule of this Section was cited and applied in *Mitchell v. Craft, 211 So.2d 509 (Miss.1968).* Subsection (1) of the rule was cited and applied in *Oxford Consumer Discount Company v. Stefanelli, 102 N.J.Super. 549, 246 A.2d 460 (1968).*

See generally Leflar, Choice-Influencing Considerations in Conflicts Law, 41 N.Y.U.L.Rev. 267 (1966); Leflar, Conflicts Law: More on Choice-Influencing Considerations, 54 Calif.L.Rev. 1584 (1966); Traynor, Is This Conflict Really Necessary? 37 Texas L.Rev. 657 (1954); Cheatham and Reese, Choice of the Applicable Law, 52 Colum.L.Rev. 959 (1952); Reese, Conflict of Laws and the Restatement Second, 28 Law & Contemp. Prob. 679 (1963).

Cases where the court explicitly looked to similar factors in deciding a question of choice of law are *Clark v. Clark, 107 N.H. 351, 222 A.2d 205 (1966); Heath v. Zellmer, 35 Wis.2d 578, 151 N.W.2d 664 (1967).*

Comment k: On the subject of reciprocity, see Lenhoff, Reciprocity and the Law of Foreign Judgments, 16 La.L.Rev. 465 (1956); Lenhoff, Reciprocity in Function, 15 U. Pitt.L.Rev. 44 (1954); Lenhoff, Reciprocity: The Legal Aspect of a Perennial Idea, 44 Nw.U.L.Rev. 619, 662 (1952).

On rare occasions, the courts have incorporated the reciprocity principle into a common law rule of choice of law. See e. g., *Forgan v. Bainbridge, 34 Ariz. 408, 274 Pac. 155 (1928); Union Securities Co. v. Adams, 33 Wyo. 45 236 Pac. 513 (1925).*

Cross Reference

ALR Annotations:

Duty of courts to follow decisions of other states, on questions of common law or unwritten law, in which the cause of action had its situs. 73 A.L.R. 897.

Digest System Key Numbers:

Action 17

Restat 2d of Conflict of Laws, § 7

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 1- Introduction

§ 7 Characterization

(1) The classification and interpretation of legal concepts and terms involve questions of characterization, as the term is used in the Restatement of this Subject.

(2) The classification and interpretation of Conflict of Laws concepts and terms are determined in accordance with the law of the forum, except as stated in § 8.

(3) The classification and interpretation of local law concepts and terms are determined in accordance with the law that governs the issue involved.

COMMENTS & ILLUSTRATIONS

Comment:

a. Alternative terms. The process that is here called characterization is sometimes referred to as classification, qualification or interpretation.

b. Two aspects of characterization. Characterization is an integral part of legal thinking. In essence, it involves two things: (1) classification of a given factual situation under the appropriate legal categories and specific rules of law, and (2) definition or interpretation of the terms employed in the legal categories and rules of law. The factual situation must be classified to determine under what legal categories and rules of law it belongs. Likewise, the terms employed in the legal categories and rules of law must be interpreted in order that the factual situation may be placed under the appropriate categories and that the rules of law may properly be applied.

c. Differing meanings of same word. When the same legal term or concept appears in the local law of two states which are involved in a problem, and different meanings are given in these states to the term or concept, the meaning to be applied is that which prevails in the state whose local law governs the issue under the applicable choice-of-law rule (see Illustration 1). When the same legal term or concept appears both in the local law of a state and in its choice-of-law rules, the meaning which has been given the term or concept in local law does not determine the meaning to be given the term or concept in choice of law (see Illustrations 2 and 3).

d. Differing classifications of concept. On occasion the same legal concept may be classified in different ways in different bodies of law. Thus a concept, such as burden of proof, may be classified in different ways in the local law and in the choice-of-law rules of a single state (see Illustrations 2 and 3). A concept should be classified in the way it is classified in the body of law which the court is applying.

llustrations: 1. A sues B in tort in state F. State X is the state with the most significant relationship to the occurrence, and under the rule of § 145 its local law applies. X local law provides that A can recover only if B is guilty of "gross negligence". The term "gross negligence" also appears in F local law but is there given a different meaning. Since it is X local law which is being applied, the meaning given the term "gross negligence" in X local law will be used.

2. Defendant negligently injures plaintiff in state X, and in a suit brought in state F the question arises as to the burden of proof with respect to the issue of contributory negligence. Under X local law, the plaintiff has the burden of proving the absence of such negligence. An F statute, however, places the burden upon the defendant of proving that plaintiff was guilty of contributory negligence. This statute has previously been held by the F courts to be procedural in the sense that it can constitutionally be applied to an occurrence which took place prior to its enactment. On the other hand, the F courts have also previously held that, for purposes of

choice of law, the question of burden of proof is substantive in character and should be governed by the local law of the state of most significant relationship, which in this case is X. The F court will hold, in accordance with X local law, that the plaintiff has the burden of proving that he was not contributorily negligent.

3. Same facts as in Illustration 2 except that the F courts have never previously passed upon the question whether the burden of proof is substantive or procedural for choice-of-law purposes. The F court should not hold the question procedural merely because it has previously been so characterized in an F local law context. The F court should not do so unless it is convinced that the policy underlying the distinction between substance and procedure in choice-of-law dictates such result.

Comment:

e. Questions of constitutional law. Questions of characterization may involve issues of constitutional dimension which must be decided in accordance with constitutional law.

Illustrations:

4. It is consistent with the due process clause of the Fourteenth Amendment for a State to exercise judicial jurisdiction over an absent domiciliary (see § 29). In determining whether it may exercise jurisdiction over an absentee defendant on the ground of domicil, the court must determine if the defendant's domicil is in the State in the sense in which the term is used in the above-mentioned rule of constitutional law.

5. Under the rule announced by the Supreme Court of the United States, full faith and credit requires that questions affecting the relations of a fraternal beneficiary association to its members should be governed by the local law of the State where the association was organized. There is no such rule in the case of ordinary insurance companies. A State court must look to the relevant decisions of the Supreme Court of the United States in determining whether, for purposes of full faith and credit, a given association is a fraternal beneficiary association and, if so, which is the State of its organization.

Comment:

f. Whether a question of characterization should be determined by national or State law depends upon which of these two bodies of law governs the issue involved. So, in areas governed by national law, questions of characterization are determined by national law except where State law is referred to by national law as the rule of decision. See, e. g., *Yiatchos v. Yiatchos, 376 U.S. 306 (1964); United States v. Brosnan, 363 U.S. 237 (1960); De Sylva v. Ballentine, 351 U.S. 570 (1956); Reconstruction Finance Corp v. Beaver County, 328 U.S. 204 (1946); Blair v. Commissioner, 300 U.S. 5 (1937).* Federal courts must determine questions of characterization in accordance with State law in those instances where they are required by the rule of *Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938)* to look to State law for the rule of decision.

Illustration:

6. By Section 10 of the Reconstruction Finance Corporation Act, the "real property", but not the "personal property", of the Corporation was made subject to taxation by the States or by subdivisions of the States. The Supreme Court of the United States has held that whether a given thing should be considered real property within the meaning of this provision should be determined in accordance with the local law of the State where the thing is situated. *Reconstruction Finance Corp. v. Beaver County, supra.*

Comment:

g. As to the characterization of the choice-of-law rules of another state, see § 8, Comment *f*.

REPORTER'S NOTES

Robertson, Characterization in the Conflict of Laws (1940), is the most extensive treatment of the subject. See also Cook, The Logical and Legal Bases of the Conflict of Laws 211-238 (1942); Falconbridge, Essays on the Conflict of Laws 50-72, 73-123, 282-316 (2d ed. 1954); Cormack, Renvoi, Characterization, and Preliminary Question in the Conflict of Laws, 14 S.Cal.L.Rev. 221 (1941).

Comment d: *Sampson v. Channell, 110 F.2d 754 (1st Cir.1940),* cert. den. *310 U.S. 650 (1940),* is an excellent case on characterization. In the course of its opinion, the court pointed out that the federal courts had characterized the issue of burden of proof as substantive in applying the rule of Swift v. Tyson, 16 Pet. (41 U.S.) 1 (1842), whereas most courts had characterized the same issue as procedural for choice-of-law purposes and in determining whether a statute changing a rule of burden of proof should be given retroactive application. The court found none of these authorities persuasive. It looked to the purpose underlying the rule

of *Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938)* and, having determined that the purpose of the rule was to insure substantial uniformity of result as between federal and State courts in the same State, held that this policy could best be served by characterizing burden of proof as substantive for Erie purposes.

Cases where a court was led astray by assuming that the meaning given a term in local law must be given the same meaning in Conflict of Laws include *Levy v. Steiger, 233 Mass. 600, 124 N.E. 477 (1919),* and *Attrill v. Huntington, 70 Md. 191 (1889),* rev'd, *Huntington v. Attrill, 146 U.S. 657 (1892).*

Comment e: Illustration 5 is based on the Supreme Court's decision in *Sovereign Camp v. Bolin, 305 U.S. 66 (1938).* Other Supreme Court cases which have held that a State cannot avoid constitutional limitations on choice of law by resort to characterization include *John Hancock Mutual Life Insurance Co. v. Yates, 299 U.S. 178 (1936)* ("remedy"); *Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 292 U.S. 143 (1934)* ("place of making"); *Home Insurance Co. v. Dick, 281 U.S. 397 (1930)* ("remedy").

Comment f: For a case where a federal court determined a question of characterization under State law, see *Brooks v. Eastern Air Lines, Inc., 253 F.Supp. 119 (N.D. Ga.1966).*

Cross Reference

Digest System Key Numbers:

Action 17

Restat 2d of Conflict of Laws, § 8

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 1- Introduction

§ 8 Applicability of Choice-Of-Law Rules of Another State (Renvoi)

(1) When directed by its own choice-of-law rule to apply "the law" of another state, the forum applies the local law of the other state, except as stated in Subsections (2) and (3).

(2) When the objective of the particular choice-of-law rule is that the forum reach the same result on the very facts involved as would the courts of another state, the forum will apply the choice-of-law rules of the other state, subject to considerations of practicability and feasibility.

(3) When the state of the forum has no substantial relationship to the particular issue or the parties and the courts of all interested states would concur in selecting the local law rule applicable to this issue, the forum will usually apply this rule.

COMMENTS & ILLUSTRATIONS

Comment:

a. As stated in § 4, the term "local law" is used in the Restatement of this Subject to refer to a state's law exclusive of its choice-of-law rules. Except when otherwise indicated, the word "law" is used to refer to a state's entire law, including its choice-of-law rules.

b. When forum will apply the choice-of-law rules of selected state. As stated in Subsection (1), the forum will usually apply the local law rules of the state selected in accordance with the rules of the Restatement of this Subject. The forum, however, will usually apply the choice-of-law rules of the selected state in determining the validity and effect of a transfer of interests in land (see § 223); in certain circumstances, the validity and effect of a transfer of interests in a chattel (see § 245); and succession to interests in movables (see §§ 260, 263). See also Comment *k* and § 13, Comment *c*.

Comment on Subsection (1):

c. When reference is to the "law" of the forum. When a court is directed by its choice-of-law rules to determine a particular issue in accordance with its own law, the word "law" means the local law of the forum. If, in this context, "law" were to be interpreted as meaning the entire law of the forum, the court would be referred to its own choice-of-law rules and would be back at the place where it began.

d. When reference is to "law" of another state. No such obvious answer exists when the court is referred by its applicable choice-of-law rule to the law of another state. Here the word "law", as it appears in the choice-of-law rule in question, imposes upon the court a problem of characterization (see § 7). It can be characterized as referring to the local law of the other state. If so, the matter at hand will not necessarily be decided as a court of the other state would have decided in the actual case. Rather, the result reached will be that which would have been reached by a court of the other state if the case had involved facts purely local to it. In the alternative, the word "law" in the particular choice-of-law rule can be characterized as referring to the entire law of the other state, including its choice-of-law rules. If so, the effort will be made to decide the case in the same way as a court of the other state would have decided on the very facts involved.

Illustration:

1. A, a national of state X who is domiciled in state Y, dies intestate leaving chattels in state X. A proceeding is brought in state X to determine how the chattels should be distributed. Under the X choice-of-law rule, the distribution of movables upon intestacy is determined by the "law" of the deceased's domicil at the time of death. Under the Y choice-of-law rule, on the other hand, the law of the deceased's nationality governs. The X

court must determine whether the word "law" in its choice-of-law rule refers to the local law or to the entire law of Y, including its choice-of-law rules. If the X court decides that the reference is to Y local law, it will decide the case in the same way as a Y court would have decided if A had been a Y national and if all other relevant contacts had been located in Y. On the other hand, if the X court decides that the reference is to the entire law of Y, including Y choice-of-law rules, it will seek to reach the same result as a Y court would have reached on the actual facts of the case.

Comment:

e. Interpretation of word "law" in choice-of-law rule of the forum. On rare occasions, the applicable choice-of-law rule of the forum will be explicit on the question whether the reference should be to the local law or to the entire law, including the choice-of-law rules, of another state. Section 9-103(3) of the Uniform Commercial Code is an example of such a rule, since it directs application of "the law (including the conflict of laws rules) of the jurisdiction where the property was when the security interest attached." When applying such a rule, the forum need only follow its explicit terms. Usually, however, a choice-of-law rule, whether contained in a statute or in the common law, will do no more than direct application of the "law" of a given state without further explanation. In such a case, the forum should interpret the word "law" in its choice-of-law rule in the light of that rule's underlying purpose. In other words, the forum should make the answer to the question whether the word "law" in its choice-of-law rule refers to the local or to the entire law, including the choice-of-law rules, of the given state depend upon which interpretation would be most likely to result in the attainment of the objective which the rule was designed to achieve.

f. Characterization. In order to decide a case in the same way as would have been decided by the courts of a given state, say X, the forum must classify the factual situation, as tort or contract, in the same way as the X courts would have classified the situation, and must give words appearing in the applicable rules of X the same meaning as would have been given them by the X courts (see § 7). This is true both of words appearing in the local law rules and in the choice-of-law rules of X. So, if under the applicable choice-of-law rule of X, the case would be decided by the "law" of some other state, which might be either the state of the forum or a third state, the forum must inquire whether the X courts would interpret the word "law" in their rule as referring to the local law or to the entire law, including the choice-of-law rules, of the other state. If the reference is to the local law of the other state, the forum will decide the case by application of that law. If, on the other hand, the reference is to the entire law, including the choice-of-law rules of the otherstate, the forum, subject to considerations of practicality and feasibility (see Comment *j*), will seek to decide the case by application of the same local law as the courts of the other state would have applied.

Illustration:

2. A, a citizen of State X, dies intestate while domiciled in Y, a foreign nation. A proceeding is brought in X to determine how movables left by A in X should be distributed. Under the X choice-of-law rule, the distribution of movables upon intestacy is determined by the "law" of the state of the deceased's domicil at the time of his death, and the word "law" is interpreted to mean the entire law of the domicil, including its choice-of-law rules (see § 260). Under the Y choice-of-law rules, the distribution of movables upon intestacy is determined by the "law" of the state of the deceased's nationality. The X court will seek to distribute the X movables in accordance with the local law that would have been applied by a Y court. Having first assured itself that the Y courts would have considered A to be an X citizen, the X court will next inquire whether the Y courts would interpret the word "law" in their choice-of-law rule as referring to the choice-of-law rules or to the local law of the state of nationality. If the latter interpretation has been adopted by the Y courts, the X court will distribute the X movables in accordance with X local law. If, however, the X court finds that the Y courts would interpret the word "law" as referring to the choice-of-law rules of the state of nationality, the X court will next inquire whether a Y court, upon having been referred to X by its choice-of-law rule and having ascertained that under the X choice-of-law rule the law of the domicil governs, would indulge in a conclusive presumption that the word "law" in the X rule refers only to local law and accordingly would apply its own (Y) local law to the ultimate decision of the case. If so, the X court will distribute the X movables in accordance with Y local law. If, however, the X court finds that the Y court would interpret the word "law" in the X rule in the same way an X court would, the X court will be faced with a dilemma. For the X court would be seeking to decide the case in the same way as a Y court, while the Y court in turn would try to reach the same result as a court of X. No solution along these lines being possible, the X court would have to abandon its attempt to decide the case in the same way as a Y

court would. Instead, the X court would have to seek other reasons for deciding whether to distribute the movables in accordance with the local law of X or of Y.

Comment on Subsection (2):

g. Rationale. The forum should not interpret the word "law" in its choice-of-law rule as referring to the entire law, including the choice-of-law rules of another state, unless the purpose sought to be achieved by the particular choice-of-law rule is that the forum should reach the same result on the very facts involved as would the courts of the other state. Achievement of this purpose can only be assured if the forum determines the rights and liabilities of the parties in accordance with the same local law as would have been applied by the courts of the selected state. The identity of this local law can only be ascertained by application of the latter state's choice-of-law rules.

h. When purpose of forum rule is attainment of same result. In at least two situations, the purpose underlying the forum's choice-of-law rule will be that the forum should reach the same result on the very facts involved as would the courts of the other state. This will usually be so when the other state clearly has the dominant interest in the issue to be decided and its interest would be furthered by having the issue decided in the way that its courts would have done. At least in part for this reason, questions relating to the validity and effect of a transfer of interests in land are determined as the courts of the situs would have done (see § 223). The second situation where the purpose underlying the choice-of-law rule of the forum will usually be attainment of the same result as would have been reached by the courts of the other state is where there is an urgent need that all states should apply a single law in resolving a certain question. Here the forum's choice-of-law rule may seek attainment of the same result as would have been reached by the courts of another state, not so much because the other state is the state of dominant interest as because that state will usually have as great an interest in the matter as any other and is also the state whose law is applied by the great majority of courts. Primarily for these reasons, the forum will apply the choice-of-law rules of the state of the decedent's domicil at death to determine questions relating to succession to interests in movables (see §§ 260, 263). The situations which call for application of the choice-of-law rules of the selected state can usually be explained by both reasons stated above. In the usual case, the selected state will be the state of dominant interest and also application by all states of a single law will be a matter of urgent importance.

i. Borrowing statutes of limitations. An analogous problem arises when the forum is directed by its borrowing statute (see § 142, Comment *f*) to hold an action barred if it would be barred under the statute of limitations of the state where the cause of action arose (say state X), and the X courts in turn would be directed by the X borrowing statute to hold the action barred if it would be barred under the statute of limitations of the state where the defendant was domiciled (say state Y). Whether the forum in these circumstances should look only to the local statutes of limitations of X or to the Y statutes of limitations as well should depend upon the purpose sought to be achieved by the forum borrowing statute. If the purpose of this statute is to have the action barred in the state of the forum if it would be barred in X, the forum should look to the Y statutes of limitations as well as to the X statutes. If the forum were to look only to the X statutes, it might entertain a suit which would be held barred in X by application of a Y statute.

j. Considerations of practicality and feasibility. The forum will not assume the burden of ascertaining and applying the choice-of-law rule of another state unless it feels reasonably assured that it can attain certain objectives by doing so. These objectives, as stated in Comment *h*, are attainment of the same result on the very facts involved as the courts of the other state would have reached and identical decision of certain questions by all courts, or, at least, by nearly all courts. These objectives cannot be attained in areas where choice-of-law rules are imprecise. For this reason, among others, the forum will not seek to apply foreign choice-of-law rules in the area of torts and contracts (see Chapters 7 and 8). On the other hand, the requirements of precision are met by rules calling for application of the law of the situs of land or of a chattel or of a person's domicil (see Comment *h*).

There will be occasions when the forum will not be able to determine with any confidence how a given choice-of-law question would be decided by the courts of another state. Situations of this sort can be expected to arise with some frequency, since the difficulties involved in ascertaining foreign law are likely to be felt most severely in the relatively undeveloped and uncertain field of choice-of-law. Sometimes it would be uncertain in the other state itself how a choice-of-law question would be decided by that state's courts. The forum will not assume the burden of attempting to apply the other state's rules of choice-of-law, if it has reason to suppose that it could not by this means obtain uniformity of result. The difficulties involved in applying foreign rules of choice-of-law

become magnified in situations where the forum would be compelled to ascertain and apply the choice-of-law rules of two or more states. This would be true when the choice-of-law rule of the state initially referred to refers in turn to the choice-of-law rules of a third state whose choice-of-law rules in turn might conceivably refer to the choice-of-law rules of still a fourth state.

In addition, there will be rare occasions when application of the choice-of-law rule of another state would not permit the forum to arrive at a solution of the case. This will be so, when the rule of the forum refers to the choice-of-law rules of another state and the applicable choice-of-law rule of this other state refers back to the choice-of-law rules of the forum (see Illustration 2). In such a situation the forum must abandon the attempt to apply the choice-of-law rules of the other state. Instead it must decide the case by applying the local law of a state of its own selection.

k. Indication of state interest. An important objective in choice-of-law is to accommodate insofar as possible the interests of the states involved. The state with the dominant interest should usually have its local law applied. On the other hand, there will ordinarily be little justification for applying the local law of a state which has little or no interest in the matter at hand. An indication of the existence of a state interest in a given matter, and of the intensity of that interest, can sometimes be obtained from an examination of that state's choice-of-law decisions. For example, the fact that a state's choice-of-law decisions provide for application of the local law of another state to determine a certain issue may afford some indication that the state has little or no interest in the application of its relevant local law rule in the resolution of that issue. On the other hand, the fact that a state's choice-of-law decisions call for application of its own local law rule may provide some evidence of the existence of an interest on the part of the state in the application of its rule in the resolution of the particular issue.

It should be made clear that in this instance a state's choice-of-law decisions are consulted for a reason entirely different from that which gives rise to the rules of Subsections (1) and (2). In this instance, the forum consults the choice-of-law decisions of one or more other states for whatever aid these decisions may give it in determining which states have interests involved and which one of those states should be the state of the applicable law. The rules of Subsections (1) and (2) do not come into play until a later stage in the proceeding, namely, after the forum has already determined which is the state of the applicable law. These rules then provide guidance to the forum in determining whether it should apply the local law or the choice-of-law rules of the selected state.

Illustration:

3. H and W, husband and wife, are domiciled in state X. In state Y, W is injured while riding in an automobile driven by H. W brings suit against H in X to recover for her injuries. Under the local law of X, H enjoys no interspousal immunity as against W. H does, however, have such immunity under the local law of Y. The X court ascertains that, if suit had been brought in Y, the Y court would have determined the issue of interspousal immunity in accordance with the local law of X, the state of the common domicil of the spouses (see § 169). This fact provides some indication that the interests of Y will not be infringed if the issue of interspousal immunity is determined in accordance with X local law.

Comment on Subsection (3):

l. Situations may arise where the state of the forum has no substantial relationship to the particular issue, the parties or the occurrence and where the courts of all interested states would apply the same local law in the decision of the issue. In such situations, the forum will usually apply the same local law in order to decide the issue in the way that it would have been decided by the courts of the interested states. The forum will only follow this course in situations where it is clear that the courts of all interested states would have applied the same local law in the decision of the issue. For example, the fact that the courts of the interested states have all announced the same generalized rule of choice of law -- as that rights and liabilities in tort are to be determined by the local law of the place of injury -- would be unlikely to convince the forum that all courts would apply the same local law rule in the given case unless all of these courts had previously determined that this generalized rule was to be applied to the particular issue involved. The forum is also unlikely to be convinced that the courts of all interested states would apply the same local law rule in a situation where one or more of these courts have not spoken on the issue in recent years. Here the forum might suspect that at least some of these courts, if faced with the issue at the present time, might apply a different choice-of-law rule. Furthermore, the forum would be unlikely to find that the courts of all interested states would apply the same local law rule

unless this could be established quickly and simply or unless the parties were willing so to stipulate. To permit elaborate proof to be entered on the subject might serve to protract the trial considerably as well as to complicate the issues. Also the forum might believe it unlikely that in a situation where elaborate proof is necessary it could eventually be established with reasonable certainty that the courts of all interested states would have applied the same local law

In situations where it can be established that the courts of all interested states would apply the same local law, this law will usually be applied by the forum. There will be rare situations, however, where this will not be the case. A possible example is where the courts of all interested states would apply a choice-of-law rule which does not further their local interests and which has been generally discarded by other states. Here the forum might apply the local law of the state selected by what it deemed to be the correct choice-of-law rule on the ground that application of this rule would not be prejudicial to the interests of any states and would aid in the development of sound rules of choice of law. Suppose, for example, that husband and wife, who are domiciled in state X, are involved in an automobile accident in state Y in which the wife is injured by reason of the husband's negligent operation of the automobile. Under X local law, spouses are liable to each other in tort although there is interspousal immunity under the local law of Y. Suppose further that in this case the courts of X and Y would have rendered judgment for the husband by application of the local law of Y, the place of injury. If, in this situation, the wife were to sue the husband to recover for her injuries in state F, it may be that the F court would enter judgment in her favor by application of X local law. To be sure, the F court, by doing so, would reach a result different from that which would be reached by the courts of X and Y. By applying the correct choice-of-law rule (§ 169), on the other hand, the F court would create a useful precedent and would not infringe in any way upon the local interests of X and Y.

REPORTER'S NOTES

The Supreme Court of the United States has held that under the Federal Tort Claims Act the reference is "to the whole law of the State where the act or omission occurred," including its choice-of-law rules. *Richards v. United States, 369 U.S. 1 (1962).*

Other cases in which courts have approved the application of the renvoi doctrine include *Green v. Van Buskirk, 5 Wall. (72 U.S.) 307 (1866), 7 Wall. (74 U.S.) 139 (1868)* (transfer of chattels); *Alaska Airlines v. Stephenson, 217 F.2d 295 (9th Cir. 1954)* (contracts); *Mason v. Rose, 176 F.2d 486 (2d Cir. 1949)* (dictum) (contracts); *Guernsey v. Imperial Bank of Canada, 188 Fed. 300 (8th Cir. 1911)* (negotiable instruments); *University of Chicago v. Dater, 277 Mich. 658, 270 N.W. 175 (1936)* (capacity of married woman to contract), but cf. *House v. Lefebvre, 303 Mich. 207, 6 N.W.2d 487 (1942)* where the court did not apply the renvoi doctrine in a similar situation); *In re Lando's Estate, 112 Minn. 257, 127 N.W. 1125 (1910)* (validity of marriage); *Dupuy v. Wurtz, 53 N.Y. 556 (1873)* (dictum) (formal validity of will of movables); *In re Schneider's Estate, 198 Misc. 1017, 96 N.Y.S.2d 652 (Surr.Ct.1950),* aff'd on rearg., *198 Misc. 1017, 100 N.Y.S.2d 37 (Surr.Ct.1950)* (succession to land); *Matter of Zietz, 198 Misc. 77, 96 N.Y.S.2d 442 (Surr.Ct.1950)* (administration of estates).

English cases applying the renvoi doctrine include *Collier v. Rivaz (1841), 2 Curt. 855, 163 E.R. 608* (formal validity of will of movables); In re The Duke of Wellington [1947] Ch. 506, [1948] Ch. 118 (succession to land -- land in foreign nation); Kotia v. Nahas [1941] A.C. 403 (succession to land -- land in forum); In re Ross [1930] 1 Ch. 377 (intrinsic validity of will of movables); In re Askew [1930] 2 Ch. 259 (existence of status of legitimacy); In re Annesley [1926] Ch. 692 (intrinsic validity of will of movables); Armitage v. Attorney General [1906] P. 135 (validity of decree of divorce).

For secondary authorities, see generally Briggs, The Need for the "Legislative Jurisdictional Principle" in a Policy Centered Conflict of Laws, 39 Minn.L.Rev. 517 (1955); Briggs, Renvoi in the Succession to Tangibles, 64 Yale L.J. 195 (1954); Briggs, Utility of the Jurisdictional Principle in a Policy Centered Conflict of Laws, 6 Vand.L.Rev. 667 (1953); Briggs, The Jurisdictional Choice-of-Law Relation in Conflicts Rules, 61 Harv.L.Rev. 1165 (1948); Briggs, The Dual Relationship of the Rules of Conflict of Laws in the Succession Field, 15 Miss.L.J. 77 (1943); Cormack, Renvoi, Characterization, Localization and Preliminary Question in the Conflict of Laws, 14 S.Cal.L.Rev. 221 (1941); Falconbridge, Essays on the Conflict of Laws, 137-263 (2d ed. 1954); Griswold, Renvoi Revisited, 51 Harv.L.Rev. 1165 (1938); 1 Rabel, Conflict of Laws 75-90 (2d ed. 1958); Rabel,

Suggestions for a Convention on Renvoi, 4 Int'l L.Q. 402 (1951); Weintraub, Conflicting Choice-of-Law Rules, 43 Iowa L.Rev. 519 (1958); Wolff, Private International Law 186-205 (2d ed. 1950).

Comment i: The few cases in point are divided. *Holmes v. Hengen, 41 Misc. 521, 85 N.Y.S. 35 (Sup.Ct.1903)* (applying the statute of limitations of Y, the state referred to by the X borrowing statutes); *Hobbs v. Firestone Tire & Rubber Co., 195 F.Supp. 56 (N.D.Ind.1961)* (refusing to apply the Y statute of limitations).

Comment k: See *Tramontana v. S. A. Empresa de Viacao Aerea Rio Grandense, 350 F.2d 468 (D. C. Cir. 1965);* Cavers, Re-Restating the Conflict of Laws: The Chapter on Contracts, XXth Century Comparative and Conflicts Law 347, 363-364 (1961); von Mehren, The Renvoi and Its Relation to Various Approaches to the Choice-of-Law Problem, XXth Century Comparative and Conflicts Law 380 (1961).

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Restat 2d of Conflict of Laws, § 9

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 1- Introduction

§ 9 Limitations on Choice of Law

A court may not apply the local law of its own state to determine a particular issue unless such application of this law would be reasonable in the light of the relationship of the state and of other states to the person, thing or occurrence involved.

COMMENTS & ILLUSTRATIONS

Comment:

a. Scope of section. This Section states a rule imposing limitations upon the power of a court to apply its own local law to create or affect legal interests. As to limitations upon the power of a court to apply the local law of another state, see Comment *g*. The rules relating to the jurisdiction of a state to determine an issue by its courts are stated in Chapter 3. As to the jurisdiction of a state to take action through its officials, see Comment *h*.

b. Jurisdiction and choice of law. At least two things are implied when the local law of a state is applied to create or affect legal interests. The first is that the state has jurisdiction to apply its local law. The second may be either that the state is the state of the applicable law under choice-of-law principles or, when the applicability of a statute of the forum is the point in issue, that a proper construction of the statute leads to its application in the given case. This Section is concerned only with the question of a state's jurisdiction, namely with the circumstances in which the local law of the state may be applied. Most of the later chapters of the Restatement of this Subject are directed to choice of law, that is, which of two or more states having jurisdiction shall be selected to furnish the law governing the particular issue. The range of application of a statute, questions of jurisdiction aside, involves a problem of statutory construction and is beyond the scope of the Restatement of this Subject. Thus, the rule of this Section states principles which determine, for example, whether the United States has jurisdiction to apply its antitrust statutes in a given case. This Restatement does not, however, consider the further question whether, assuming that jurisdiction exists, the antitrust statutes should in fact be applied, since this depends upon their construction.

c. Situation in the United States. In the United States, it would be a denial of due process for a court to apply the local law of its own State if this State has no jurisdiction. Application of this law under such circumstances would provide the basis for seeking review by the Supreme Court of the United States. *Home Insurance Co. v. Dick, 281 U.S. 397 (1930); Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 292 U.S. 143 (1934); Clay v. Sun Insurance Office, Ltd., 363 U.S. 207 (1960), 377 U.S. 179 (1964).*

Unless limited by a constitution, each state develops and applies its own rules of jurisdiction which in turn are based upon that state's notions of reasonableness. As to limitations imposed by international law, see Chapters 1 and 2 of the Restatement of the Foreign Relations Law of the United States.

d. Basic criterion. A state has jurisdiction to apply its local law to determine a particular issue if the issue is within the reasonable scope of the state's regulatory power. A state should not improperly impinge upon the interests of other states by applying its local law to determine an issue with which it has no sufficient concern. This factor is of peculiar importance in the United States. The question in this country is whether application of the local law of a State to determine a particular issue would be reasonable in the context of our federal system of government. *Hanson v. Denckla, 357 U.S. 235, 251 (1958).* Because of the needs of our federal system, the jurisdiction of a State of the United States to apply its local law may be more restricted in the interstate area

than is the jurisdiction of a nation to apply its local law in the international area. If this is so, it is because of the role played by the Constitution in the interstate area. In the international area, a court may protect the vital interests of its own state by refusing to recognize or enforce the judgment of another state which disregarded those interests; so a court of state X may refuse to recognize or enforce a judgment of state Y on the ground that the Y court applied Y local law in deciding the case in disregard of the superior interests of state X. The situation is different in the interstate area. Provided that the State where the judgment was rendered had jurisdiction to try the case in its courts and that the defendant was given adequate notice and adequate opportunity to be heard, the judgment, except as stated in § 103, must under full faith and credit be recognized and enforced in a sister State (see Chapter 3). And this is so even though the rendering court disregarded the vital interests of the sister State where recognition and enforcement of the judgment is sought by failing to apply the local law of that State in the decision of the case and applied instead its own local law. If the vital interests of the sister State are to be protected in such a case, it can only be on the ground that the State of rendition acted without jurisdiction in applying its own local law. If the State acted without such jurisdiction, reversal of the judgment can be sought on this ground in the Supreme Court of the United States. Only by means of such a reversal can the interests of the sister State be protected. For, except as stated in § 103, the judgment will be entitled to full faith and credit so long as it remains unreversed.

Whether an issue is within the reasonable scope of a state's regulatory power depends, among other things, upon the nature of the issue and upon the relationship of the state to the parties and to the occurrence involved. So a state has jurisdiction to apply its local law to regulate the provisions of a life insurance policy issued in the state to one of its domiciliaries by a foreign insurance company. It might not have jurisdiction, on the other hand, to apply its local law to regulate the provisions of a life insurance policy issued by a foreign insurance company to a person temporarily in the state but domiciled elsewhere.

For a statement of the factors underlying judicial jurisdiction, see § 27.

e. Meaning of "local law". The term, "local law," as used in this Section, includes both a state's decisional and statutory law, exclusive of its rules of Conflict of Laws (see § 4).

f. Jurisdictional bases. Discussed below are some of the principal jurisdictional bases for the application of the local law of a state. The existence of a given basis gives a state jurisdiction to apply its local law to create or affect certain of a person's legal interests. On the other hand, the existence of a basis will not give a state jurisdiction to apply its local law to create or affect all of a person's interests. Thus, the doing of an act provides a basis of jurisdiction over causes of action arising from that act; it may not do so as to causes of action arising from some other act. Just what interests a state may create or affect because of the existence of a particular basis of jurisdiction depends primarily upon the basic criterion of reasonableness described in Comment *d*.

The doing of an act in a state is the most frequently asserted basis of jurisdiction. The local law of a state may be applied to prescribe legal consequences to acts done by a person within its territory. The local law of a state may also be applied to prescribe legal consequences to an act done by another in the state on a person's behalf if the person had either authorized the other to act on his behalf in the state or else had led some third person reasonably to believe that the other had such authority. The typical case is that of an agent acting in state Y under directions given him by the principal in state X. The same is true when the act is done pursuant to a person's apparent authority although it was not in fact authorized or directed by him. The local law of a state may be applied in still other circumstances to prescribe legal consequences to an act. "The power of the state to protect itself and its inhabitants is not limited by the scope of the doctrine of principal and agent". *Young v. Masci, 289 U.S. 253, 259 (1933).* It may not be essential to a state's jurisdiction over a person that the act has been done by the other on his behalf in the state; it may be enough if the person can be deemed responsible for the other's presence in the state or if he had a controlling influence upon the other's actions while there. A typical example is where a car owner in state X permits another to drive his car in state Y. Here Y local law may be applied to determine the car owner's liability for any accident in which his car may become involved while controlled by the other in Y. *Young v. Masci, supra.*

The local law of a state may also usually be applied to determine whether a person is liable for the effects within its territory of an act done by him elsewhere. *Young v. Masci, supra, at 258-259; United States v. Aluminum Company of America, 148 F.2d 416, 443 (2d Cir. 1945); Hunter v. Derby Foods, Inc., 110 F.2d 970, 972 (2d Cir. 1940).* This is so if the act was intended to take effect in the state or could reasonably have been

expected to have consequences there. Furthermore, a state may have jurisdiction to apply its local law even though it was neither intended nor foreseeable that the act would produce consequences there. Unless the chain of cause and effect has become too attenuated, it is not unreasonable to have the local law of this state applied to determine the rights and liabilities arising from such consequences.

The local law of a state may also be applied to determine whether a person is liable for his failure to perform an act within its territory if the application of this law would be reasonable. A failure to act has no legal consequence unless there was a duty to act. The question in each case is whether it is reasonable for a state to subject the person involved to a duty to act within its territory. This depends upon the precise issue involved and upon the extent of the person's relationship to the state.

Illustration:

1. By statute in state X, dogs must be kept muzzled at all times. In Y, an adjoining state, there is no such requirement. A, who lives in Y one mile from the X border, permits his dog to run unmuzzled. One day the dog crosses into X and there bites B. X local law may be applied to hold A liable on account of his failure to muzzle the dog as required by the X statute.

Comment f (cont.):

Other bases of jurisdiction depend upon a person's relationship to a state. With rare exceptions, a person is most closely related to the state of his domicil, and this state has jurisdiction to apply its local law to determine certain of his interests even when he is outside its territory. It may, for example, affect his status (see, *e. g.*, §§ 283, 287), subject him to various forms of taxation with respect to property situated outside the state, and forbid him to do certain things abroad. The state of a person's residence also has jurisdiction to apply its local law to determine certain of his interests even when he is outside its territory. This basis of jurisdiction is frequently relied upon in the field of income taxation. Likewise, the state of a person's nationality has jurisdiction to apply its local law to determine certain of his interests even when he is outside its territory. The extent of this jurisdiction is approximately the same as that which a state possesses over its absent domiciliaries. Thus, the United States may apply its criminal law to acts done by its nationals in other countries (*UnitedStates v. Bowman, 260 U.S. 94 (1922);* cf. *Blackmer v. United States, 284 U.S. 421 (1932))* and may tax its absent nationals upon property situated abroad (*United States v. Bennett, 232 U.S. 299 (1914))* and upon income derived therefrom. *Cook v. Tait, 265 U.S. 47 (1924).* An individual State of the United States also has jurisdiction to apply its local law in certain instances to its absent citizens. *Skiriotes v. Florida, 313 U.S. 69 (1941).*

A person's consent may provide another basis of jurisdiction. So if parties in their contract provide that their rights and obligations under the contract shall be determined in accordance with the local law of state X, this law may be so applied.

Still other bases of jurisdiction depend upon the relationship of a state to a thing. The local law of a state may be applied to determine the effect of an occurrence upon a person's interests in tangible things (whether immovable or movable) that are within its territory at the time of the occurrence. A state's local law may also be applied to determine a person's interests in tangible things (whether immovables or movables) that are outside of its territory to the extent that the application of this law would be reasonable. Whether application of a state's law would be reasonable depends upon the relationship of the state to the thing and upon the precise issue involved.

Illustration:

2. A dies domiciled in state X leaving chattels in states Y and Z. X local law may validly be applied to govern the distribution of these chattels.

Comment f (cont.):

Intangible things fall into two categories: those which are embodied in a document, such as a bond, stock certificate, check or promissory note, and those which are not so embodied. A document is a chattel and, by and large, the state where a document is situated has jurisdiction to apply its local law to affect interests that may be embodied therein (compare §§ 248, 249). Intangible things of the second kind, as simple contracts, debts and tort claims, lack physical substance and have no location in space. A state has jurisdiction to apply

its local law to affect interests in such a thing if it has a sufficient relationship to the thing to make application of its law reasonable.

Illustration:

3. In state X, A and B enter into a contract which by its terms is to be performed in X. A is domiciled in X while B is domiciled in state Y. B dies intestate. The local law of Y may be applied to determine how any sums that A may owe B under the contract shall be distributed among B's next of kin.

Comment f (cont.):

Compare the bases of jurisdiction set forth in Chapter 2 of the Restatement of the Foreign Relations Law of the United States.

g. Application of the local law of another state. There are similar restrictions upon the power of a state to apply the local law of another state. A court may not apply the local law of another state to determine a particular issue unless application of this law would be reasonable in the light of the relationship of this state and of other states to the person, thing or occurrence involved as to the particular issue. Whether application of the local law of another state would be reasonable depends upon the factors stated in Comments *d* and *f*.

h. Limitations on extraterritorial executive action. See generally §§ 20-25, 32, 34, 36-38, 44-62 of the Restatement of the Foreign Relations Law of the United States.

REPORTER'S NOTES

To date, the Supreme Court of the United States has usually left the States free to select their own choice-of-law rules in both interstate and international cases (see, e. g., *Pacific Employer Ins. Co. v. Industrial Accident Commission, 306 U.S. 493 (1939))* and has held that the doctrine of *Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938)* extends to State choice-of-law rules. *Griffin v. McCoach, 313 U.S. 498 (1941); Klaxon v. Stentor Electric Mfg. Co., 313 U.S. 487 (1941).* On occasion, however, the Supreme Court has held that the Constitution compels application of a particular choice-of-law rule. See, e. g., *Order of United Commercial Travelers of America v. Wolfe, 331 U.S. 586 (1947); United States v. Pink, 315 U.S. 203 (1942); John Hancock Mutual Life Ins. Co v. Yates, 299 U.S. 178 (1936);* see also *Clay v. Sun Insurance Office, Ltd., 363 U.S. 207 (1960), 377 U.S. 179 (1964).* The Supreme Court has also held that on occasion a State is required by the Constitution to entertain suit on a sister State cause of action. *First National Bank of Chicago v. United Air Lines, 342 U.S. 396 (1952); Hughes v. Fetter, 341 U.S. 609 (1951).*

Section 1-105 of the Uniform Commercial Code provides that, failing agreement of the parties, "this Act applies to transactions bearing an appropriate relation to this state."

As to the range of a state's jurisdiction to apply its criminal law, see Chapters 1 and 2 of the Restatement of the Foreign Relations Law of the United States; cf. § 1.03 of the Model Penal Code see also Williams, Venue and the Ambit of Criminal Law, 81 Law Q.Rev. 276, 395, 518 (1965), where it is stated (at p. 532) that "At the least, international law allows the courts of a state to punish any act committed abroad that takes effect or is intended to take effect within its territory."

Cross Reference

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Restat 2d of Conflict of Laws, § 10

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 1- Introduction

§ 10 Interstate and International Conflict of Laws

The rules in the Restatement of this Subject apply to cases with elements in one or more States of the United States and are generally applicable to cases with elements in one or more foreign nations. There may, however, be factors in a particular international case which call for a result different from that which would be reached in an interstate case.

COMMENTS & ILLUSTRATIONS

Comment:

a. Derivation of the rules in this Restatement. The rules in the Restatement of this Subject are derived, unless otherwise indicated, from cases with elements in one or more sister States. These interstate cases provide most of the relevant authority.

b. Intranational legal units other than States. The rules in the Restatement of this Subject usually apply to other intranational Conflict of Laws cases in the United States, as a case whose elements are divided between the District of Columbia and a given State.

c. International conflicts. The rules in the Restatement of this Subject are also usually applicable to cases with elements in one or more foreign nations. This is properly so since similar values and considerations are involved in both interstate and international cases (see §§ 1 and 2).

d. Some differences in factors. There are significant differences between interstate and international cases. Some of these are: (1) The variety of political and social and legal institutions in the nations of the world. (2) Within the United States, there are safeguards under the Constitution of the United States, such as the due process clause of the Fourteenth Amendment, which give a large measure of legal assurance of fairness of official action within each State. The lack of such safeguards in an international conflicts case may call for closer scrutiny or different treatment. (3) Within the United States, there are authoritative constitutional rules, as stated in § 2, Comment *b*, which do not bind courts of other nations and which may not apply to an international conflicts case in the United States. A court in the United States, in any event, should be guided by the policies of fairness and equality embodied in these constitutional rules in deciding an international case to which these rules are not strictly applicable. (4) A legal relationship under the local law of a foreign nation, such as polygamy or a novel kind of security interest, may be unknown to the local law of the forum State. The choice-of-law rules of an American State should permit, by application of general principles and by analogy, just and predictable decisions in noval situations such as this.

REPORTER'S NOTES

By and large, American courts and writers have not distinguished between international and interstate conflicts for choice-of-law purposes. Indeed some of the leading choice-of-law cases in this country involved international conflicts, and, so far as appears, this fact had no effect upon the ultimate decision. See, e. g., *Home Insurance Co. v. Dick, 281 U.S. 397 (1930); Babcock v. Jackson, 12 N.Y.2d 473, 191 N.E. 2d 279 (1963); Auten v. Auten, 308 N.Y. 155, 124 N.E.2d 99 (1954); Hutchinson v. Ross, 262 N.Y. 381, 187 N.E. 65 (1933).* One writer has urged separate treatment of international and interstate conflicts. Ehrenzweig, Conflict of Laws, 16-21 (1962); Ehrenzweig, Interstate and International Conflicts Law: A Plea for Segregation, 41 Minn.L.Rev. 717 (1957). See also Scoles, Interstate and International Distinctions in Conflict of Laws in the United States, 54 Calif.L.Rev. 1599 (1966).

On occasion, however, the fact that a case involves an international conflict may lead a court to a different result. So an American court will probably require more evidence to establish the acquisition of a domicil of choice by a United States citizen in a foreign nation than in a sister State. Coudert, Law of Domicile, 36 Yale L.J. 949, 965 (1927). Also an American court may on occasion be more reluctant to apply the local law of a foreign nation with standards and ideals different from ours than it would be to apply the local law of a sister State. See Cheatham, Book Review, 45 A.B.A.J. 1190 (1959); Cheatham, Griswold, Reese and Rosenberg, Cases and Materials on Conflict of Laws 694-695 (5th ed. 1964); cf. Cook, The Logical and Legal Bases of the Conflict of Laws, 33 Yale L.J. 457, 487 (1924). Likewise, proof of the law of a foreign nation may involve different procedures and problems than would proof of the law of a sister State. Cf. Nussbaum, Proof of Foreign Law in New York: A Proposed Amendment, 57 Colum.L.Rev. 348 (1957).

Some questions can arise only in international conflicts, as questions involving the domicil of refugees, the conversion of one currency into another, exchange controls and the effect of the act of state doctrine. As to the latter doctrine, see Restatement of the Foreign Relations Law of the United States, §§ 41-43.

Judgments present different problems. Sister State judgments are entitled to full faith and credit throughout this country. This is not true of judgments rendered in foreign nations. As a result, cases may be expected to arise where effect will be denied a foreign nation judgment rendered in circumstances in which a sister State judgment would be entitled to full faith and credit (see § 98).

Cross Reference

ALR Annotations:

Acquisition of domicil in countries (such as China, Turkey, and Egypt) granting extraterritorial privileges to foreigners. 39 A.L.R. 1155.

Digest System Key Numbers:

Action 17

International Law 10.8-10.25

Restat 2d of Conflict of Laws, § 11

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 2- Domicil > Topic 1- Meaning and General Requirements of Domicil

§ 11 Domicil

(1) Domicil is a place, usually a person's home, to which the rules of Conflict of Laws sometimes accord determinative significance because of the person's identification with that place.

(2) Every person has a domicil at all times and, at least for the same purpose, no person has more than one domicil at a time.

COMMENTS & ILLUSTRATIONS

Comment on Subsection (1):

a. Definition of domicil. A person's domicil is usually the place where he has his home. But some persons have no home in the ordinary sense while others have two or more. Certain persons also lack capacity to acquire a domicil of choice, and in such instances the law may assign them as their domicil a place where their home is not located (see §§ 22-23). The rule applicable to a person who has two or more dwelling places is stated in § 20.

b. Two problems involving domicil. One problem is to locate the place of a person's domicil. A second problem is to determine the legal consequences which flow from the fact that a particular place is a person's domicil. The first of these problems is the one to which this Chapter is devoted. The second is briefly discussed in Comments c and d and is dealt with more fully in later chapters of this Restatement.

c. Function of domicil in Conflict of Laws. A person may go to many different states during his lifetime. Yet it is desirable that some of his legal interests should at all times be determined by a single law. For this reason, each system of law endows every person with a "personal law" which follows him in his travels and determines certain of his most important legal interests. In Anglo-American countries, this is the law of the person's domicil; under other legal systems, it is the law of his nationality.

The functions served by domicil in Conflict of Laws fall into three broad categories. These are judicial jurisdiction; choice of law, particularly in matters where continuity of application of the same law is important, as family law and decedents' estates; and governmental benefits and burdens.

A state may exercise judicial jurisdiction to render through its courts a personal judgment against its domiciliaries whether or not they happen to be within its territory at the time of service of process (see § 29). The state where at least one of the spouses is domiciled at the time of suit may terminate their marriage by divorce (see § 71); such a state may likewise issue a decree of judicial separation (see § 75) or of annulment (see § 76). In the area of choice of law, the law of a person's domicil may determine such matters relating to his personal status as the validity of his marriage (see § 283) and his legitimacy (see § 287). The same law governs the transfer of his movable property upon death; it determines the validity of his will with respect to such property (see § 263) or its distribution in the event of intestacy (see § 260). With respect to governmental benefits and burdens, the state of a person's domicil allows him to vote and to hold public office and may support him in case of need. Conversely, this state may subject him to certain forms of personal taxes and may impose an inheritance tax upon all of his intangibles.

d. Function of domicil in intrastate matters. Domicil also plays an important role in intrastate matters. Under the local law of many states, the county or other political subdivision where a person is domiciled is the place where he may be sued (venue) and where substituted service may be made upon him, where his will may be offered

for probate upon his death, where he may vote and is entitled to school privileges or to a settlement under the poor laws, and where he may be subjected to certain forms of personal taxation.

e. Duration of domicil. In certain situations, a state may require that a person be domiciled in its territory for a specified period of time before its local law may be applied or its tribunals invoked. For example, it is customary for a state to require a period of domicil (usually referred to as "residence" in this context) in its territory before a petition for divorce may be filed there.

f. Place of domicil. The Restatementof this Subject is concerned primarily with interstate and international matters, not with intrastate matters. For purposes of Conflict of Laws, as the subject is dealt with in this Restatement, it is necessary to fix domicil only within a state, though for intrastate purposes it may be necessary to fix it within a local subdivision of a state. Domicil is usually fixed in a particular dwelling, in which case it would also be fixed in the city, county and state which contain the dwelling. On occasion, it may be impossible to fix domicil more definitely than in a city or state, either because it has never been fixed definitely in adwelling, or because it has once been so fixed and the dwelling has been given up or destroyed.

Illustrations:1. A dies intestate leaving chattels in states X and Y. In determining whether the chattels shall be distributed under the local law of X or of Y, it is necessary only to fix A's domicil within the territory of one of these states.

2. Under the local law of state X, the amount of tax on A's personal property and the place of payment depend on whether A is domiciled in one or another county of X. To determine these questions, it is necessary that A's domicil be fixed within the boundaries of a county.

g. Area of domicil. Domicil cannot be fixed in a broader unit than a territory having a separate system of law; otherwise the concept would not serve its essential purpose of designating the personal law of the individual involved. Thus, it is proper for purposes of Conflict of Laws to do no more than find that a person's domicil is in Norway, since that nation has a single body of law extending throughout its territory. On the other hand, it would usually be insufficient for Conflict of Laws purposes to find a person domiciled in the United States, since State law, and not national law, governs most of the matters with which the concept of domicil is concerned. Hence, it is necessary in this country to fix a man's domicil within the territory of a State.

Illustrations:3. Each unit of federal territory, including the District of Columbia, has its own law. A has his home in the city of Washington; his domicil is not in "federal territory" in general but in the District of Columbia.

4. The District of Columbia was originally formed of a portion north of the Potomac ceded by Maryland and a portion south of the Potomac, including Alexandria, ceded by Virginia. A different law prevailed in each portion of the District. The portion of the District south of the Potomac was afterwards retroceded to Virginia. While this portion was still part of the District of Columbia, A had his home in Alexandria; his domicil was not in the District of Columbia but in the southern portion of that District.

h. Relation between domicil and home. When a person has one home and only one home, his domicil is in the place where his home is, except as stated in § 16, Comment c and §§ 22-23, relating to domicil in a vehicle and to persons who lack legal capacity to acquire a domicil of choice.

Not all persons have homes, but every person must have a domicil (see Comment m). When a person has no home, the law still assigns him a domicil. As to the rule for determining domicil in such a case, see § 19. Some persons have more than one home; they nevertheless have but one domicil at a time. The rule for determining a person's domicil when he has two or more homes is stated in § 20.

i. Other meanings of domicil. Domicil is sometimes used in senses other than the sense set forth here. Among the more important of these are the following: "Matrimonial domicil" is frequently used to designate the state whose local law governs the respective rights of the spouses in each other's personal property. At one time, the term was also an important concept in divorce litigation and referred to the state where the spouses had their last common domicil. "Commercial domicil" appears in at least two contexts. In the field of taxation, it is sometimes used to indicate the state where a corporation, which has been incorporated elsewhere, maintains its main office and principal place of business. In the law of war, "commercial domicil" or "enemy domicil" is an expression frequently employed by the courts in determining whether enemy status should be attributed to a natural person or corporation. Here the term means actual and voluntary residence, or the carrying on of business, in a hostile country or in territory occupied by the enemy. "Domicil" is also used in many countries to

express a different legal conception as, for instance, the French doctrine of elected domicil at a person's place of business where legal service may be had upon him. Domicil in these different senses should be distinguished from domicil in the common law Conflict of Laws sense, which is the only meaning of domicil used in the Restatement of this Subject.

j. Nationality and citizenship. In Anglo-American countries, domicil is the most important place to which a person is related for legal purposes. It is not, however, the only such place. Thus the state of a person's nationality or citizenship usually has judicial jurisdiction to render through its courts a personal judgment against him at a time when he is outside its territory (see § 31); this state may also hold him subject to its law in important respects (see § 9, Comment f).

k. Use of word "residence". Statutes in the United States rarely speak in terms of domicil but use "residence" instead. Residence is an ambiguous word whose meaning in a legal phrase must be determined in each case. Frequently it is used in a sense equivalent to domicil. On occasion it means something more than domicil, namely, a domicil at which a person actually dwells. On the other hand, it may mean something else than domicil, namely, a place where the individual has an abode or where he has settled down to live for a period of time, but not necessarily with such an intention of making a home there as to create a domicil. The phrase "legal residence" is sometimes used as the equivalent of domicil.

In the absence of evidence of a contrary legislative intent, "residence" in a statute is generally interpreted:

As being the equivalent of domicil in statutes relating to judicial jurisdiction, voting, eligibility to hold office, exemptions (other than homestead) from the claims of creditors, liability for inheritance and poll taxes, and certain personal property taxes.

As meaning a domicil at which the person in question actually dwells in statutes relating to the competence of a divorce court and homestead exemption laws.

As meaning the place where a person dwells without regard to domicil in statutes relating to income taxation, attachment, school privileges and constructive service on nonresident motorists.

With respect to statutes relating to venue, the cases are divided as to whether residence is the equivalent of domicil or means the place where the person in question dwells without regard to domicil. In statutes relating to gaining a settlement under the poor laws, residence may mean a domicil, or a domicil at which the person in question dwells, or the place where he dwells without regard to domicil.

l. Corporations. When a domicil is assigned to a corporation, it is always in the state of incorporation. No useful purpose, however, is served by assigning a domicil to a corporation. Most of the uses which the concept of domicil serves for individuals (see Comments c and d) are inapplicable to corporations, which do not, for example, vote, marry, become divorced, beget or bear children and bequeath property. Certain problems, as judicial jurisdiction and the power to tax and to regulate, are common both to individuals and corporations. But unlike an individual, a corporation has a state of incorporation. This state may tax the corporation, exercise judicial jurisdiction over it and regulate its corporate activities. It is both inaccurate and unnecessary to explain the existence of these powers on the ground that the corporation has its domicil in the state of its incorporation.

Attribution of a domicil to a corporation may lead to complications and confusion and should be avoided. There is the danger that the word "resident" in a statute will be construed to mean domiciliary as applied to corporations for no other reason than that it has previously been given that meaning in the case of natural persons. For example, a corporation which does all its business in state X, and therefore is most closely related to that state, might be held not to be a "resident" of X within the meaning of a statute if it was incorporated in state Y and hence "domiciled" there. Results such as this may best be avoided by determining, without regard to the concept of domicil, what meaning such terms as "resident" and "non-resident" should bear as applied to corporations in order best to effectuate the purpose of the statute in which they appear.

As stated in Comment i, the term "commercial domicil" is sometimes used to designate a state where a corporation, although incorporated elsewhere, maintains its main office and principal place of business.

Comment on Subsection (2):

m. Necessity of a single domicil. Since the law of a person's domicil determines many of his important interests (see Comment c), it is essential that everyone have a domicil. Even though a person has no home, he must nevertheless have a domicil.

A person may have no more than one domicil at a time, at least for the same purpose. If this were not the case, and if a person might have domicils in two or more states at the same time and for the same purpose, the concept of domicil could not be used to select the state whose law governs certain of the person's important legal interests (see Comment n).

n. Domicil under the laws of different states. The issue as to the location of a person's domicil may arise in independent proceedings with different parties in two or more states. In such instances, conflicting conclusions are sometimes reached either because (1) the states involved have different rules on the subject of domicil or (2) even though the rules of domicil are the same, different inferences are drawn by the courts from the facts presented. Unless there is a common reviewing tribunal, each decision stands.

o. Domicil under the law of a single state. The question may arise whether, even under the law of a single state, a person may have one domicil for one purpose (as jurisdiction to give him a divorce) and another domicil for a second purpose (as jurisdiction to impose an inheritance tax upon all his intangibles). As a general proposition, the answer to this question is in the negative. The core of the domicil concept remains constant in all situations. With rare exceptions, the courts assume that the rules of domicil are the same for all purposes, and it is customary for them to cite indiscriminately in their opinions cases dealing with domicil for purposes other than the one immediately involved.

What has been said above, however, stands in need of elaboration. Domicil serves a large number of purposes, and undoubtedly somewhat different reasons and motivations underlie its use for certain of these purposes. It may therefore be expected that the courts will on occasion be either more or less inclined to find a person domiciled in a state for one purpose (as to give him a divorce) than for another purpose (as to subject him to substituted service or to certain forms of taxation). The extent to which actual court decisions are affected by this consideration is obscured by two factors: (1) even within a single state the courts do not always use identical language in stating the rules of domicil, particularly those relating to the required attitude of mind toward the place in question and (2) the rules, however phrased, are extremely general and flexible in operation. Domicil for diversity of citizenship purposes is governed by federal law and may differ from domicil in the local law of a state.

To reiterate, the core of domicil is everywhere the same. But in close cases, decision of a question of domicil may sometimes depend upon the purpose for which the domicil concept is used in the particular case.

p. Necessity of domicil in town or city. A person does not always have a domicil in a lesser political unit than a state. It may be that at a given time such a person is not domiciled in any municipal subdivision of a state although he is domiciled within the state (see Comment f).

Illustration:5. A abandons his home and starts for California where he intends to make his home for the rest of his life. Upon arriving at Sacramento, he decides to go to Los Angeles to make his home. He dies before arriving in Los Angeles. A may be found domiciled in California, but in no county or city in the State.

REPORTER'S NOTES

Changes: The only substantial change is the addition of the last sentence of the second paragraph of Comment *o*. Other changes are to amend the commentary so that it is sex-neutral.

Comment a: Compare the statement by Justice Holmes in *Bergner & Engel Brewing Co. v. Dreyfus, 172 Mass. 154, 157, 51 N.E. 531, 532 (1898)* that ". . . what the law means by domicile is the one technically pre-eminent headquarters, which, as a result either of fact or of fiction, every person is compelled to have in order that by aid of it certain rights and duties which have been attached to it by the law may be determined."

See also Scoles and Hay, Conflict of Laws 173-176 (1984).

Comment j: For a consideration of the relative advantages and disadvantages of domicil and nationality as connecting factors, see Scoles and Hay, Conflict of Laws 167-170 (1984); 1 Rabel, Conflict of Laws, Ch. 4 (2d ed. 1958).

Comment k: For a discussion of the various meanings of residence, see Reese and Green, That Elusive Word "Residence," 6 Vand.L.Rev. 561 (1953); McClean, The Meaning of Residence, 11 Int'l & Comp.L.Q. 1153 (1962); Beale, Residence and Domicil, 4 Iowa L.Bull. 3 (1918). See also *Manuel v. American Employers Insurance Co., 228 So.2d 321 (La.App.1969).*

Comment l: Among the writers who support the view that a corporation should not be assigned a domicil are Cook, The Logical and Legal Bases of the Conflict of Laws 207-210 (1942); Stevens, Corporations § 13 (2d ed. 1949); Francis, The Domicil of a Corporation, 38 Yale L.J. 335 (1929). See Note, 14 U.Det.L.J. 136 (1951).

Comment n: A single estate has been subjected to multiple inheritance taxation because of conflicting holdings as to the State in which the decedent was domiciled at the time of his death. *In re Dorrance's Estate, 115 N.J.Eq. 268, 170 A. 601 (1934),* aff'd *116 N.J.L. 362, 184 A. 743 (1936),* cert. den. *298 U.S. 678 (1936); In re Dorrance's Estate, 309 Pa. 151, 163 A. 303 (1932).* The Constitution, as a rule, does not afford protection against such conflicting holdings. Cory v. White, 457 U.S. 85 (1982); *Worcester County Trust Co. v. Riley, 302 U.S. 292 (1937).* In one case, the Supreme Court found that it had jurisdiction of an original bill filed by one of the contending States because the aggregate amount of taxes claimed by all the States involved exceeded the value of the estate. The Supreme Court then determined the State in which the decedent was domiciled at the time of his death and held that only this State could impose an inheritance tax upon all of the decedent's intangibles. *Texas v. Florida, 306 U.S. 398 (1939).* Cf. *California v. Texas, 457 U.S. 164 (1982).* See generally Farage, Multiple Domicils and Multiple Inheritance Taxes -- A Possible Solution, 9 Geo.Wash.L.Rev. 375 (1941); Tweed and Sargent, Death and Taxes are Certain -- But What of Domicile?, 53 Harv.L.Rev. 68 (1939).

Comment o: So far as is known, there is no authority directed squarely to the question whether the meaning of domicil is always the same for all purposes. The question could only be decided in the unlikely situation where the same court was asked to determine the location of a person's domicil at a given time for two or more purposes. It has been held that domicil for diversity of citizenship purposes is governed by federal law and may differ from domicil in the local law of a state. See, e.g., *Stifel v. Hopkins, 477 F.2d 1116, 1124 (6th Cir. 1973);* Wright, Federal Courts 146-147 (4th ed. 1983).

It has been said that "while there may be only one domicile for any particular purpose in the law it does not necessarily follow that the same concept of domicile will inevitably be the same in different areas of the law." *Gladwin v. Power, 21 A.D.2d 665, 249 N.Y.S.2d 980* (1st Dep't 1964). In that case, it was held that a person could have a domicil within the meaning of the New York Election Law in a place different from that in which she lived with her family. Other decisions which suggest by way of dictum that the meaning of domicil may vary somewhat from purpose to purpose are: *Woolridge v. McKenna, 8 Fed. 650, 683-684 (D.Tenn. 1881); McDonald v. Hartford Trust Co., 104 Conn. 169, 132 Atl. 902 (1926); First Nat. Bank v. Balcom, 35 Conn. 351 (1868); Smith v. Croom, 7 Fla. 81, 150 (1857)* ("The term domicile has a variety of significations dependent upon its various applications."); *In re Estate of Jones, 192 Iowa 78, 81, 182 N.W. 227, 229 (1921)* ("Definitions given in regard to the method of ascertaining the domicile for one purpose are not always applicable in ascertaining the domicile for another purpose."); *Abington v. Inhabitants of North Bridgewater, 23 Pick. (40 Mass.) 170, 177 (1839)* (". . . a man can have only one domicil, for one purpose, at one and the same time."); *Dupuy v. Wurtz, 53 N.Y. 556 (1873); In re Lyon's Estate, 117 Misc. 189, 191 N.Y.S. 260 (Surr.Ct. 1921).*

See also Cook, The Logical and Legal Bases of the Conflict of Laws 194-210 (1942); Reese, Does Domicil Bear a Single Meaning?, 55 Colum.L.Rev. 589 (1955); Ehrenzweig, Conflict of Laws 240 (1962).

Comment p: See *Winans v. Winans, 205 Mass. 388, 91 N.E. 394 (1910);* Stumberg, Conflict of Laws 21-24 (3d ed. 1963).

Restat 2d of Conflict of Laws, § 12

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 2- Domicil > Topic 1- Meaning and General Requirements of Domicil

§ 12 Home Defined

Home is the place where a person dwells and which is the center of his domestic, social and civil life.

COMMENTS & ILLUSTRATIONS

Comment:

a. Meaning of "home." As used in the Restatement of this Subject, "home" may mean either (1) a house or other structure or (2) a geographical area, as in the statement "California is my home" (see also Illustrations 2 and 3). The first meaning is the one used more frequently. Only on comparatively rare occasions will an area be the home of a person who has no fixed place of abode there.

b. Place where person dwells. The term "place where a person dwells" is used because it has no legal connotation and is not confined to any physical sort of living quarters. The dwelling place may be a single room or apartment, or a house or other structure. At times, it may be no more definitely fixed than in a city or county or state (see Illustrations 2 and 3).

c. Factors important in determining home. In determining whether a dwelling place is a person's home, consideration should be given to:

1. Its physical characteristics;
2. The time he spends therein;
3. The things he does therein;
4. The persons and things therein;
5. His mental attitude toward the place;
6. His intention when absent to return to the place;
7. Other dwelling places of the person concerned, and similar factors concerning them.

d. Physical characteristics. No special physical characteristics are necessary. A person usually has his home within the four walls of a house, apartment or room. If a person lives in a tent, vessel, trailer or other moving vehicle, such tent, vessel or vehicle may be his home. To prove it to be such, however, the other elements showing it to be a home, especially the mental attitude of the person concerned toward the permanency of the conditions, must be more pronounced than would be necessary if the usual physical characteristics of a home existed.

It is possible that a home may be acquired in a moving vehicle, but it must be remembered that the idea of home involves a notion of settlement in a place, which is largely incompatible with constant movement. A moving vehicle can be considered a person's home only by finding that he has settled down in the vehicle, and that the movement of the vehicle does not interfere with settled life in it (see § 16, Comment *c*).

Illustrations:

1. A is in legal possession of certain land. He erects a tent on the land in which he sleeps, eats and does all the things usually done in a dwelling house. He has no intention of living anywhere else. These facts considered by themselves would warrant the conclusion that A's home is in the tent.

2. A sells his house in Pennsylvania in which he has had a home and moves to California. He intends to live always in hotels in that State, but he has no intention of remaining long in any one hotel or of living in the same hotel each year. California is A's home.

3. Upon his appointment to a government position in Washington, D. C., A purchases a house in that city and sells the one in which he had lived in state X. A regards his stay in Washington, D. C., as a temporary one, continues to vote in X and intends to return there to live. State X is A's home.

Comment:

e. The time spent therein. No definite amount of time spent in a place is essential to make that place a home, but the fact that a person lives for a considerable time in a place tends to show that the place is his home.

Illustration:

4. A is a naval officer. His family lives in a house in state X. A is away much of the time and often for more than a year at one time. These absences in themselves do not prevent the house in X from being A's home.

Comment:

f. The things done therein. It is usual for a person to eat and sleep in his home. A person may have his home in a place where he never eats, especially when all other elements that ordinarily go with a home exist. It is unlikely, though conceivable, that a person will have a home in a place in which he never sleeps. The fact that a person does business in a place, or has business contacts with a place, is not an important element in fixing his home there. Though a person does business in a place and spends more than half his time there, it is presumably not his home if he does not sleep there.

g. The persons and things therein. The fact that a person's family lives with him in a dwelling place is strong evidence that the dwelling place is his home. If, in addition, the person concerned has his clothing, furniture, pictures, books and other personal belongings in the place, the evidence that it is his home is strengthened; it is not conclusive, since he and his family may be living there temporarily without the intention of having a home there.

h. Mental attitude towards the place. A person's mental attitude toward the dwelling place in respect to its character and permanency is an important factor in determining whether the place is or is not his home. Such mental attitude, however, is not always conclusive.

Illustrations:

5. A was born and reared in state X, where he owns the home in which he was born. He keeps the house ready for occupancy. His business compels him to live for the greater part of the time in state Y, but he goes to X when possible for week-ends and vacations, always speaking of X with affection, and of the house there as his home. These facts tend to show that the house in X is A's home.

6. A was born and reared in state X. A lives with his family in a house in state Y for ten months in the year. For two months he and his family live in a hotel in X. A detests Y, and always speaks of X with affection, deeply regretting that there is no prospect of his being able to live anywhere else than in Y for the greater part of each year. These facts tend to show that the house in Y is A's home.

Comment:

i. Intention when absent to return to the place. The intention to return to a dwelling place whenever one is absent from that place is an important element indicating that the place is one's home. A person may regard a place as his home, though he intends to be absent for long intervals; an intention to make a place one's home is not necessarily an intention to remain in that place constantly.

j. Elements connected with other dwelling places of the person concerned. Whether a dwelling place is a person's home may depend on his relationship to other places in which he lives.

Illustration:

7. A lives entirely in hotels, remaining each year for nine months in a hotel in state X, always occupying the same room. These facts tend to show that the room is A's home.

Comment:

k. The rule for determining the domicil of a person with two homes is stated in § 20.

REPORTER'S NOTES

See 1 Beale, Conflict of Laws 124-128 (1935); Stumberg, Conflict of Laws 18-19 (3d ed. 1963).

Cross Reference

Digest System Key Numbers:

Domicile 1

Restat 2d of Conflict of Laws, § 13

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 2- Domicil > Topic 1- Meaning and General Requirements of Domicil

§ 13 Domicil -- By What Law Determined

In applying its rules of Conflict of Laws, the forum determines domicil according to its own standards.

COMMENTS & ILLUSTRATIONS

Comment:

a. Generally speaking, the rules of domicil stated in this Chapter are accepted in states where the common law prevails. In other legal systems, the concept may be given a somewhat different meaning. Even common law states differ at times in their phrasing or interpretation of the rules of domicil.

In the United States, rules of domicil are at times controlled by the Constitution. Such constitutional requirements are reflected in the rules stated in this Chapter (see Comment *e*).

b. Application of forum's rules of domicil. The rules of domicil stated in this Chapter are rules of Conflict of Laws. The forum applies its own rules of domicil except when it is applying the Conflict of Laws rules of another state (see Comment *c*). The forum's rules of domicil are applied when domicil is a fact necessary to the judicial jurisdiction of the state of the forum (see Illustration 1), or to the jurisdiction of the state of the forum to apply its local law to create or affect legal interests, or to the power of one of its courts or officials to act (see Illustration 2). The forum also applies its own rules of domicil when passing upon the judicial jurisdiction of another state (see Illustration 3). In the field of choice of law where the particular interest involved is governed by the local law of the person's domicil (see § 11, Comment *c*), the forum likewise applies its own rules of domicil to identify the state of the applicable law (see Illustration 4).

Illustrations:

1. A, who is domiciled in state X, marries B, a citizen of state Y, and goes with him to Y to live. B, the husband, deserts A and she then returns to X and there seeks a divorce. Under both X and Y law, a court may not grant a divorce unless at least one of the spouses is domiciled within its territory. Under Y law, A's domicil is in Y since there a married woman lacks legal capacity to acquire a domicil apart from that of her husband. A contrary rule prevails in X. The X court will apply its own rule in determining whether A is domiciled in X.

2. A statute of state X authorizes the service upon an X domiciliary outside the state of a court order requiring him to appear as a witness before the X legislature or any committee thereof. Such an order is served in state Y upon A who does not obey it. In subsequent contempt proceedings brought in X, A contends that the service of the court order upon him was ineffective since he was domiciled in Y at the time. In determining whether A was a domiciliary of X within the meaning of the statute, the X court will apply its own rules of domicil.

3. A, who is domiciled in state X, marries B, a citizen of state Y, and goes with him to Y to live. B, the husband, deserts A and she then returns to X and makes her home in that state. Seven years later, a contract action is brought against A in the courts of Y and service by publication is made upon her on the ground that she is still a domiciliary of Y. Judgment by default is rendered against A in Y. Under both X and Y law, the judicial jurisdiction of Y to render a judgment through its courts against A in these circumstances depends upon whether A retained her domicil in Y. Under Y law, a wife lacks legal capacity to acquire a domicil separate from that of her husband. Under X law, however, A's domicil is in that state. The Y judgment rendered against A will be refused enforcement in X for lack of judicial jurisdiction on the part of Y.

4. A dies intestate leaving chattels in states X, Y and Z. A proceeding to determine how the chattels located in Z are to be distributed is brought in a court of that state. Under Z's choice-of-law rule, this question is governed by the law of A's last domicil. To identify this state, the Z court will apply its own rules of domicil. Unless it does so, the court will have no means of knowing whether the solution of the question is to be found in the law of X, Y, Z or a fourth state.

Comment:

c. Use of foreign state's rules of domicil. The foreign state's rules of domicil are applied when (1) the issue is the power of one of its courts or officials to act, as opposed to the jurisdiction of that state itself, and (2) under its law this power depends upon domicil. This is so because the question involves the extent of the authority vested in the particular court or official by the foreign state.

Illustration:

5. A statute of state X provides that the will of a decedent must be probated in the county in which he was domiciled at the time of his death. A dies domiciled in X and his will is offered for probate in county Y. The validity of this probate is subsequently attacked in a proceeding brought in state Z on the ground that A died domiciled in some county of state X other than Y. In passing upon this question the Z court will apply the X rules of domicil.

Comment c (cont.):

More complicated problems may arise in the field of choice of law. One situation is where the issue is governed by the law of the domicil under the choice-of-law rule of the forum. Here, as stated in Comment *b*, the court will apply its own rules of domicil in order to identify the state to whose law it will look for a solution of the problem. If the state so identified as the domicil is the state of the forum itself, the court will apply its own local law. When, however, the state so identified is not the state of the forum, the question arises whether the court will look only to that state's local law or whether it will also look to that state's choice-of-law rules, including those relating to domicil, in an attempt to reach the same result a court of that state would have reached in the very case at hand. If the latter course is chosen and if under that state's choice-of-law rules the case is likewise governed by the law of the domicil, the forum will ultimately apply that state's rules of domicil. It will do so because it can be assured in no other way of deciding the case in the same way a court of that state would have decided.

Whether the forum will choose the first course or the second depends, as stated in § 8, upon the policy underlying its choice-of-law rule. If this policy is that the case should be decided without regard to the choice-of-law rules of the other state, the court will look only to the local law of the latter. If, on the other hand, the policy is that the same result should be reached as a court of the other state would have reached in the very case at hand, the court will look to the latter state's choice-of-law rules (including those relating to domicil), and it will apply those rules if by so doing uniformity of result can be achieved.

Illustration:

6. A was born in state X where his father was domiciled at the time of his birth. After arriving at majority, A acquired a domicil of choice in state Y. Having decided to move his home from Y to X, A left Y and started on the return journey. He was killed in itinere before reaching X. A died intestate leaving chattels in state Z, and a proceeding is brought in Z to determine how these chattels should be distributed. Under the choice-of-law rules of X, Y and Z, this question is governed by the law of A's domicil at death. By the X rules of domicil, A's domicil at death was in Y. By the rules of domicil of Z, A's domicil was in X. Under the intestacy law of X, half of A's personal property would go to his widow and the remainder would be divided among his children. Under the intestacy law of Y, the widow would receive one-third of this property and the children two-thirds. The policy underlying Z's choice-of-law rule is that, if possible, the property should be distributed in the same way as would have been done by the courts of the state where the decedent was domiciled at the time of his death. Having been led in the first instance to state X by means of its own rules of domicil, the Z court will next inquire whether the identical result, as would have been reached by the X courts, may be attained by applying X's rules of domicil and, if it determines that this is the case, will then proceed to apply the X rules so as ultimately to decide the case according to the intestacy law of Y.

Comment c (cont.):

There is one situation where the rules of domicil of the second state should usually be applied. This is where the domicil of the person involved is in either one of two states whose rules of domicil are identical, though

different from those of the forum. Suppose, for example, that the domicil of the person involved is either in state X or state Y, that under the law of X and Y his domicil isin Y, but that under the law of the forum his domicil is in X. Here the policy underlying the forum's choice-of-law rule would usually dictate that the case should be decided in the same way as would have been done by the courts of X and Y, the two states of primary interest. When this is the case, the forum, having been led in the first instance to state X by means of its own rules of domicil, will next inquire whether uniformity of result (as between X and Y) may be attained by applying X's rules of domicil and then, if it determines that this is the fact, will proceed to apply these rules and ultimately decide the case according to the law of Y (see § 8, Comment *l*).

A similar problem may arise when the choice-of-law rule of the forum points to some state other than the domicil as the source of the applicable law. But, having been led to the other state by its rule, the forum then discovers that the other state's courts would look to the law of the domicil for the solution of the case. If the forum decides that the policy underlying its choice-of-law rule is that the case should be decided without regard to the choice-of-law rules of the other state, it will apply the latter's local law. If, on the other hand, the forum finds that the policy behind its choice-of-law rules requires it to reach the same result as would have been reached by the courts of the other state on the very facts involved, it will apply the other state's rules of domicil in order to determine what state should furnish the applicable law. Otherwise, it might ultimately decide the case according to a different local law than the courts of the other state would have applied and thus fail to attain the desired uniformity of result.

Illustration:

7. A, a married woman, dies intestate owning land in state X. After A's death, the land is sold and the proceeds brought to state Y where an administrator petitions a court to direct how they should be distributed. Applying the normal choice-of-law rule (see § 236), the Y court looks in the first instance to the law of X, the state where the land is located. It then discovers that under the X choice-of-law rule questions relating to the inheritance of X land are governed by the local law of the state where the decedent was domiciled at the time of death. Under X's rule, A's domicil at death was in Y. Furthermore, under X's local law of intestacy, A's husband would get one-third of the proceeds and her children two-thirds; under Y local law, he would get one-half and the children one-half. The Y court will apply the X rule of domicil and thus ultimately decide the case according to its own local law.

Comment:

d. Capacity to acquire a domicil of choice. As stated in § 15, a person cannot acquire a domicil of choice unless he has legal capacity to do so. Whether such legal capacity exists will be determined by the law of the forum, except as stated in Comment *c* and § 8. When a person's status is material, the forum will determine his status by applying the local law of the state which governs the status (see Chapter 11); it will then apply its own rules in deciding whether a person of this particular status has legal capacity to acquire a domicil of choice. For example, the forum will usually apply the law governing the validity of the marriage (see § 283) to determine whether a woman is legally married; it will, however, apply its own rules to decide whether married women can acquire a domicil of choice.

e. Effect of Constitution. Whether a State of the United States has jurisdiction in a given case is a question of constitutional law. When such jurisdiction depends upon domicil, a State court's finding on this question is subject to review by the Supreme Court of the United States. If a case should arise where the full faith and credit clause of the Constitution requires that the law of the State of domicil be applied to determine a particular question, a State court's finding on the question of domicil would likewise be subject to review by the Supreme Court.

Comment d: See *Torlonia v. Torlonia, 108 Conn. 292, 142 Atl. 843 (1928); Beekman v. Beekman, 53 Fla. 858, 43 So. 923 (1907); Gardner v. Gardner, 6 N.J.Super. 270, 71 A.2d 131 (1950); In re Bain's Estate, 104 Misc. 508, 172 N.Y.S. 604 (Surr.Ct.1918);* 1 Beale, Conflict of Laws 108-109 (1935); Goodrich, Conflict of Laws 36 (Scoles, 4th ed. 1964); Stumberg, Conflict of Laws 49-50 (3d ed. 1963).

REPORTER'S NOTES

Comment c: *In re Schneider's Estate, 198 Misc. 1017, 96 N.Y.S.2d 652 (Surr.Ct.1950),* aff'd on rearg. *198 Misc. 1017, 100 N.Y.S.2d 371 (Surr.Ct.1950)* (involving facts similar to Illustration 7) is a case where the forum applied the rules of domicil of a second state; cf. *Dean v. Dean, 241 N.Y. 240, 149 N.E. 844 (1925); Matter of*

Zietz, 198 Misc. 77, 96 N.Y.S.2d 442 (Surr.Ct.1950); Re O'Keefe, [1940] Ch. 124; see Falconbridge, Renvoi and the Law of Domicile, 19 Can.B.Rev. 311 (1941).

Cross Reference

ALR Annotations:

Governing law of will as affected by change of domicil after its execution. 57 ALR 229.

Digest System Key Numbers:

Domicile 1

End of Document

Restat 2d of Conflict of Laws, § Scope

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 2- Domicil > Topic 2- Acquisition and Change of Domicil

Restat 2d of Conflict of Laws, § Scope

The rules for the acquisition of a domicil of choice are relatively simple; the difficulty comes in applying them in situations where the person's contacts are more or less equally divided between two or more states. Brief reference will here be made to burden of proof and to the various types of evidence that are frequently relied upon in such cases and to the relative weight that is usually given them.

Burden of Proof. A domicil is not lost until another has been acquired, and the burden of establishing a change of domicil is upon the party who asserts it (see § 19, Comment *c*). This principle is heavily relied upon by the courts. The amount of evidence necessary to satisfy this burden depends upon the facts of the particular case. Less is required, for example, when the person has been absent from his domicil for a considerable period of time.

Evidence. In addition to legal capacity, the requisites for the acquisition of a domicil of choice are physical presence and a certain attitude of mind toward the place in question (see § 15). Physical presence raises no particular problem of proof, and the cases have been concerned almost entirely with the required attitude of mind. Among the types of evidence considered by the courts are:

Formal declarations. A person's declarations as to what he considers to be his home, residence or domicil are generally admissible as evidence of his attitude of mind. Such declarations are frequently contained in formal legal documents, as wills, deeds and affidavits; they may also appear in letters, in ho tel and automobile registrations and, at times, are made by word of mouth. What ever the context, their accuracy may be suspect because of their self-serving nature, particularly when they are made to achieve some legal objective, as the avoidance of taxation or the securing of a divorce.

Informal declarations. Greater weight is likely to be accorded a person's casual statements, such as that he is happiest in a certain place or wishes to die there, than to formal declarations of the sort discussed above. Casual statements gain credence from the fact that they were presumably uttered on the spur of the moment and with no preconceived design to gain a given end.

Acts. Actions speak louder than words, and the courts rely most heavily upon them. Residing for a considerable time in a place is persuasive evidence of domicil there, although this can be rebutted by proof that this residence was meant to be temporary or that the person has a principal home elsewhere.

Since a man's home will usually be with his family, the place where his wife and children dwell is likely to be his domicil (see § 12 Comment *g*). So when he leaves his family behind and goes to another place, his domicil presumably remains unchanged. In the absence of evidence as to the place where a person lives, however, he will probably be found to be domiciled in the place where he works unless it can be shown that his job is only of a temporary nature. Similarly, the location of a person's bank is some evidence as to the place of his domicil since, for the sake of convenience, he would presumably wish to deal with a bank close to his home. Of less weight is the location of a person's securities since these may not require local supervision.

Beyond all this, the place to which a person has the closest and most settled relationship is likely to be that where he votes, where he belongs to a church, where he pursues his various interests and where he pays

taxes of the sort that are payable only by persons who are domiciled there. The courts frequently rely heavily upon such activities. On the other hand, activities of this sort will sometimes be suspect for the reason that often they can be deliberately carried on in one place rather than in another for the express purpose of influencing a future court decision on the issue of domicil.

Motive. A person's motive in going to a certain locality may be important evidence as to whether he intends to make his home there (see § 18, Comment *f*).

By way of conclusion, almost anything that bears on a person's attitude of mind toward a place is admissible in evidence. But, in final analysis, the courts place primary emphasis upon a person's home life and upon what he does rather than on what he says. It may be difficult to predict a court's decision as to the location of the domicil when the person's contacts are more or less equally divided between two or more states. The courts will also undoubtedly be influenced by the fact that a person has already been found domiciled in a place for one or more other purposes, as, for example, for voting.

REPORTER'S NOTES

Excellent discussions of the types of evidence considered by the courts in determining an issue of domicil are to be found in *Texas v. Florida, 306 U.S. 398 (1939); In re Dorrance's Estate, 115 N.J.Eq. 268, 170 Atl. 601 (1934),* aff'd *116 N.J.L. 362, 184 Atl. 743 (1935),* cert. den. *298 U.S. 678 (1936); In re Dorrance's Estate, 309 Pa. 151, 163 Atl. 303 (1932).* See 6 Wigmore, Evidence §§ 1727, 1784 (3d ed. 1940), Notes, 34 Geo.L.J. 220 (1946); 61 Harv.L.Rev. 1232 (1948).

Restat 2d of Conflict of Laws, § 14

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 2- Domicil > Topic 2- Acquisition and Change of Domicil

§ 14 Domicil of Origin

(1) The domicil of origin is the domicil which a person has at birth.

(2) The domicil of a legitimate child at birth is the domicil of its father at that time, subject to the rule stated in § 22 pertaining to divorce or separation of the parents. If the child is not the legitimate child of its father, or is born after the father's death, its domicil at birth is the domicil of its mother at that time.

COMMENTS & ILLUSTRATIONS

Comment on Subsection (1):

a. Since certain legal questions are determined in accordance with the law of a person's domicil (see § 11, Comment *c*) and such questions may arise as to an infant, every person must have a domicil at birth. This domicil, commonly called the domicil of origin, continues until a new domicil is acquired.

Comment on Subsection (2):

b. On occasion, a child's domicil of origin will be in a place where the child has never been.

Illustration:

1. A, whose parents are domiciled in state X, is born in a hospital in state Y. Under the will of a grandparent, A received a fortune at birth. A dies a week later without having left the hospital in Y. A's domicil of origin and at death was in X.

Comment:

c. Some statutes by their terms provide that a child, born illegitimate, becomes legitimate as to its father from the time of birth upon the recognition by the father of the child as his own (see the Reporter's Note to § 287). It is uncertain whether under these statutes and upon the happening of the legitimating act the child's domicil of origin shifts from the domicil of the mother to the domicil which the father had at the time of the child's birth.

If a child's domicil of origin is not the domicil of the father at the time of the child's birth, it will be the domicil which the mother had at that time.

d. Failure of proof. On occasion, a child's domicil of origin cannot be determined by applying the rule stated in Subsection (2). This may be either because the parents of the child are unknown or because their domicil at the time of the child's birth cannot be ascertained. The court in such a case may properly accept as the domicil of origin the place to which the child can earliest be traced, but this is merely a presumption which may be employed when other proof fails. Instances of this sort may arise when the domicil of origin of a vagrant or gypsy is in question.

Illustration:

2. A, an infant, is found abandoned in a church in state X. The identity of A's parents cannot be discovered and the place of A's birth remains unknown. A's plight receives widespread publicity and, as a result, many monetary gifts are made to him. A dies shortly thereafter. X may properly be taken to be the state of A's domicil of origin.

REPORTER'S NOTES

See *Craig v. Craig, 24 Conn.Sup. 359, 154 A.2d 881 (1959);* *Kowalski v. Wojtkowski, 19 N.J. 247, 116 A.2d 6 (1955);* 1 Beale, Conflict of Laws 128-131 (1935); Goodrich, Conflict of Laws 38-40 (Scoles, 4th ed. 1964); Stumberg, Conflict of Laws 31-33 (3d ed. 1963).

Cross Reference

ALR Annotations:

Extraterritorial recognition and effect, as regards marital status, of a decree of divorce or separation rendered in a state or country in which neither of the parties was domiciled. 39 A.L.R. 677, s. 105 A.L.R. 817.

Digest System Key Numbers:

Domicile 3

Restat 2d of Conflict of Laws, § 15

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 2- Domicil > Topic 2- Acquisition and Change of Domicil

§ 15 Domicil of Choice

(1) A domicil of choice may be acquired by a person who is legally capable of changing his domicil.

(2) In addition to legal capacity, acquisition of a domicil of choice requires

(a) physical presence as described in § 16, and

(b) an attitude of mind as described in § 18.

(3) The fact of physical presence at the particular place must concur with the existence of the required attitude of mind. If there is such concurrence, and the requisite legal capacity, a change of domicil takes place.

COMMENTS & ILLUSTRATIONS

Comment:

a. Requirements for acquisition of domicil of choice. The requirements for acquiring a domicil of choice are (1) legal capacity to do so, (2) physical presence as described in § 16 and (3) the existence of the attitude of mind described in § 18 toward the place in question. This attitude of mind takes the form of a present intention to make a home in the place. The order of occurrence of these events is not material; if they all eventually coexist, a change of domicil is accomplished. Important evidence looking toward the establishment of the third requirement is the fact that the person has abandoned his former domicil or otherwise can be shown no longer to bear toward that place the requisite attitude of mind.

b. A person may acquire a domicil of choice if

(1) having had a domicil by operation of law, such as a domicil of origin, he acquires a domicil of choice in a place other than his former domicil; or

(2) having had a domicil of choice in one place, he acquires a new domicil of choice in another place.

Illustrations:

1. A is eight years old. A may not acquire a domicil of choice since he lacks legal capacity to do so.

2. A sells his city house in state X and rents, with an option to purchase, a country house in state Y. When A first moves into his new house, he expects to live there only a month or so since he intends to acquire another city house in X. Up to this time, A has not acquired a domicil in Y. A, while living at his house in Y, decides to buy this house and to make it his home. At the moment A reaches that decision, he acquires a domicil in Y.

3. A has his domicil in state X where his family lives and where he spends most of his time. He has another dwelling place in state Y. He subsequently moves his family to his dwelling place in Y, spends most of his time there, and comes to regard this as his home. A's domicil thereupon is in Y.

Comment:

c. Retention of domicil until a new one is acquired. Although the requisite facts for acquiring a domicil of choice have ceased to exist, the domicil is retained until a new domicil is acquired elsewhere (see § 19).

REPORTER'S NOTES

For excellent discussions of the requirements for the acquisition of a domicil of choice, see *Texas v. Florida, 306 U.S. 398 (1939); In re Dorrance's Estate, 115 N.J.Eq. 268, 170 Atl. 601 (1934),* aff'd *116 N.J.L. 362, 184 Atl. 743 (1935),* cert. den. *298 U.S. 678 (1936); In re Dorrance's Estate, 309 Pa. 151, 163 Atl. 303 (1932).* See 1 Beale, Conflict of Laws 131-132 (1935); Goodrich, Conflict of Laws 40-41 (Scoles, 4th ed. 1964).

Comment c: *In re Estate of Jones, 192 Iowa 78, 182 N.W. 227 (1921).*

Cross Reference

Digest System Key Numbers:

Domicile 4

Restat 2d of Conflict of Laws, § 16

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 2- Domicil > Topic 2- Acquisition and Change of Domicil

§ 16 Requisite of Physical Presence

To acquire a domicil of choice in a place, a person must be physically present there; but the establishment of a home in a particular dwelling is not necessary for the acquisition of such a domicil.

COMMENTS & ILLUSTRATIONS

Comment:

a. Where one must be physically present. Physical presence in a particular area is essential for the acquisition in that area of a domicil of choice. In order to acquire a domicil of choice in a town, city, county or other subdivision of a state, one must be present there. On the other hand, if only domicil in a state is in question, presence anywhere in the state is enough. A person may not acquire a domicil of choice in a larger area than a territory having a separate system of law, but may acquire a domicil of choice in a given territory without acquiring a domicil in some subdivision thereof, as in a town, city or county (see § 11, Comment p).

Illustrations:1. A claims a domicil of choice in a particular county of state X in order to be allowed to vote there. To succeed in her claim, A must, among other things, establish that she was once physically present in that county.

2. A leaves the state in which he has been domiciled and comes to X, a city in another state, intending to make his home there. While searching for a suitable house, A lives in temporary lodgings, in hotels and clubs. These facts, standing alone, indicate that A has acquired a domicil of choice in X.

b. For how long one must be present. There is some uncertainty as to how long one must be physically present in a place in order to satisfy the requirement of presence for the acquisition of a domicil of choice. Courts (usually by way of dictum) and writers have sometimes said that physical presence even for a moment is enough. Such statements should not be taken literally. At least for most purposes, a person will not have a sufficient relationship to a place to warrant holding that place to be the domicil unless the person has been present there for a time at least.

c. Mobile home. Acquisition of a domicil of choice in a place requires the establishment of a settled relationship to that place. No such domicil may be acquired by one who makes a home in a vehicle or vessel which is constantly on the move from place to place. The domicil of such a person remains where it was before the traveling commenced (see § 19).

Life in a moving vehicle or vessel may be of three types:

1. The person keeps the vehicle or vessel for a considerable period each year within a given area, as a county or state. In such case, a domicil of choice may be acquired in that particular area provided that the person satisfies the other requirements for the acquisition of a domicil of choice (see § 15).

2. The person does not return each year to any particular area, but does settle down for a period of time in some of the places to which the vehicle or vessel is taken. Here it may be possible for the person to acquire a domicil of choice in such a place provided that the other requirements for the acquisition of a domicil of choice are satisfied (see § 15).

3. The person keeps the vehicle or vessel constantly on the move. In such a case, a domicil of choice is not acquired in any place to which the vehicle or vessel may be taken.

Illustrations:3. A traveling circus remains in quarters in state X every winter and travels during the remainder of the year. Persons who make their homes in the vans of the circus may be found to be domiciled in X.

4. The owner of a vessel makes a home in the vessel. The vessel is laid up each winter in state X. The owner may be found to be domiciled in X.

5. The owner of a trailer makes a home in the trailer and takes the trailer wherever there is suitable employment, normally remaining in each place for a considerable period of time. The owner may be found to acquire a domicil in each such place in turn.

6. A laborer on a railroad makes his home in a box car, which is continually carried from place to place as his services are needed. He does not acquire a domicil of choice in any of the places to which the car is taken.

d. Relocation of spouse. A person's domicil does not shift to a new location merely because the person's spouse, or some other member of the household, has gone there to live. This is true even though the person likewise intends to make a home in that place at a future time (compare Comment f).

Illustration:7. A and his sister, B, live together and plan a change of homes. A goes to the new dwelling place but B, being ill, remains behind in a hospital. B's domicil does not change.

e. Presence under compulsion. As to a person's presence in a place under compulsion, see § 17.

f. Comment on the Caveat. A person who decides to establish a home in a certain place sometimes sends the spouse ahead to make ready for occupancy, and perhaps also to find, the new dwelling place. Assuming the existence on the person's part of the requisite attitude of mind toward the place (see § 18), the spouse's presence there under such circumstances may, at least on occasion, serve as a substitute and thus satisfy for the person involved the requirement of this Section. The little authority in point is divided.

A domicil of choice should be in the place to which the person is most closely related. Rarely will this place be one where the person has never been, but the contrary may on occasion be true in certain situations falling within the scope of this Comment. Take, for example, a person (1) whose relationship to the earlier domicil is tenuous in the extreme, as a military man who has not been in the place of his domicil for many years and does not intend to return there in the future (see § 17, Comment d), (2) who has decided on the place where he intends to make his home, (3) who has sent his wife there to prepare the dwelling place, and (4) who intends to move there himself in the near future. Assuming, in such a case, that the person bears the requisite attitude of mind towards this new place (see § 18), it could be held to be the domicil of choice; the person's closest family ties are there in the person of the spouse and the spouse's presence in the place could be considered tantamount to that of the person involved. Where a person has no spouse, or does not live with the spouse, similar effect might be accorded the sending of some other member of the person's household to take possession of the new dwelling place.

REPORTER'S NOTES

Changes: The changes to this Section are to amend the commentary so that it is sex-neutral.

See Scoles and Hay, Conflict of Laws 179-181 (1984).

Comment b: For a case where a domicil of choice was held to have been acquired in a state after an extremely short concurrence of physical presence and the required attitude of mind, see *White v. Tennant, 31 W.Va. 790, 8 S.E. 596 (1888);* cf. *Winans v. Winans, 205 Mass. 388, 91 N.E. 394 (1910).*

Comment c: See *Howard v. Skinner, 87 Md. 556, 40 Atl. 379 (1898); State ex. rel. Wooters v. Dardenne, 131 La. 109, 59 So. 32 (1912).*

Comment f: The few cases in point are divided. Holding that the wife's presence in the place under these circumstances may serve as a substitute for that of her husband: *Bangs v. Inhabitants of Brewster, 111 Mass. 382 (1873); Lea v. Lea, 18 N.J. 1, 112 A.2d 540 (1955);* cf. *Anderson v. Anderson's Estate, 42 Vt. 350 (1894).* Contra: *McIntosh v. Maricopa County, 73 Ariz. 366, 241 P.2d 801 (1952); Hart v. Horn, 4 Kan. 232 (1867);* Case of Casey, 1 Ashm. 126 (Pa.1827); cf. *Sheehan v. Scott, 145 Cal. 684, 79 Pac. 350 (1905).* See Annotation, *31 A.L.R.2d 775 (1953).*

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Restat 2d of Conflict of Laws, § 17

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 2- Domicil > Topic 2- Acquisition and Change of Domicil

§ 17 Presence Under Compulsion

A person does not usually acquire a domicil of choice by his presence in a place under physical or legal compulsion.

COMMENTS & ILLUSTRATIONS

Comment:

a. Rationale. Acquisition of a domicil of choice requires some free exercise of the will on the part of the person involved. Only in extremely rare situations will a person who comes to a place under physical compulsion or because of criminal or comparable sanctions form the attitude of mind toward the place that is requisite for the acquisition there of a domicil of choice. A person, however, who forms the requisite attitude of mind to the place, can acquire there a domicil of choice (see Comment c).

Few persons enjoy complete freedom in the selection of their home, and such complete freedom is not necessary. The man who would like to live in Florida is not prevented by the rule of this Section from acquiring a domicil of choice in New York if his job takes him to the latter State. Nor is the man who goes to Florida for reasons of health barred from obtaining a domicil there by the fact that, had it not been for his physical frailties, he would have elected to live in New York. The law distinguishes between different kinds and degrees of compulsion.

b. Inmates of prisons. Under the rule of this Section, it is difficult for a person to acquire a domicil of choice in the prison in which he is incarcerated. To enter prison, one must first be legally committed and thereby lose all power of choice over the place of one's abode. Under such circumstances it is highly unlikely that a person will form the attitude of mind toward the place of his incarceration that is requisite for the acquisition of a domicil of choice. If he were to form such an attitude of mind, however, he would there acquire a domicil.

c. Members of armed services. A member of the armed services who is ordered to a station to which he must go and live in quarters assigned to him will usually not acquire a domicil there though he lives in the assigned quarters with his family. He must obey orders and cannot choose to go elsewhere. On the other hand, if he is allowed to live with his family where he pleases provided it is near enough to his post to enable him to perform his duties, he retainssome power of choice over the place of his abode and may acquire a domicil. To do so, however, he must regard the place where he lives as his home. Such an attitude on his part may be difficult to establish in view of the nomadic character of military life and particularly if he intends, upon the termination of his service, to move to some other place.

Illustrations:1. A's domicil is in state X. As an officer in the Army, A is required to live on an Army post in state Y. His wife resides there with him. A is still domiciled in X.

2. A, an Army officer, is domiciled in state X. He is stationed in state Y, but is permitted to live outside the Army post. A marries a Y resident, purchases a house in Y and lives there with his family with the intention of making it his home. A acquires a domicil of choice in Y.

d. Paupers. An inmate of an almshouse or other institution who is at liberty to leave at any time may acquire a domicil there.

e. Economic or other exigencies. The compulsion of poverty or illness or the compulsion arising from disgust with existing political or social conditions is not compulsion of the sort dealt with in this Section. The existence

of such conditions, however, may effect a person's attitude towards a place of abode and cause the person not to regard it as the home (see § 18).

Illustrations:3. A's domicil is in state X. Being destitute and unable to work, A voluntarily becomes an inmate of a charitable institution situated in state Y. He has no expectation that he will leave the institution although he may do so at will. A may acquire a domicil of choice in Y.

4. A's domicil is in state X. A gives up her home in X because of disgust with existing political or social conditions and acquires a home in state Y without any intention of returning to X unless these conditions change. She hopes and expects such a change in the course of years. A may acquire a domicil of choice in Y.

f. Refugees and fugitives. A person who is forced to flee from his native country remains free to determine where he will go. He therefore may acquire a domicil of choice in the place of his asylum.

Illustrations:5. A's domicil is in state X. A resides with her family in state Y, having fled from X to avoid punishment for a crime. A intends to return to X as soon as it becomes evident that the X authorities will no longer prosecute her. A may be found to be still domiciled in X.

6. A (all other facts in the preceding illustration remaining the same) intends to continue to reside in state Y irrespective of any action on the part of the authorities in state X. A has acquired a domicil of choice in Y.

g. Holders of public office. Holders of public office may acquire a domicil of choice in the place where they reside if there is sufficient evidence to establish that they intend to make their home there. A person may live in a place because of the demands of public office and not intend to make a home there.

Illustrations:7. A's domicil is in State X. A is appointed a member of the Cabinet. A purchases a house in Washington, D.C., and lives there with her family. A person in A's position will usually not intend to make her home in Washington, D.C. In the absence of facts showing an intention to remain in the District of Columbia after her tour of duty, A will probably be found to have retained her domicil in X.

8. A's domicil is in State X. A accepts an executive appointment in Washington, D.C. of a character usually held for life. He sells his house in X,purchases a house in Washington and lives there with his family. He has no intention of resigning his position or of returning to X and does not vote there. A acquires a domicil of choice in the District of Columbia.

REPORTER'S NOTES

Changes: The black-letter rule and the commentary are slightly amended to reflect modern times and modern mores.

See 1 Scoles and Hay, Conflict of Laws 185-190 (1984).

Comment b: Recent cases have held that a prisoner may acquire a domicil of choice for some purposes in the place of his confinement. *Housand v. Heiman, 594 F.2d 923 (2d Cir.1979)* (diversity jurisdiction); *Stifel v. Hopkins, 477 F.2d 1116 (6th Cir.1973)* (diversity jurisdiction); *Tate v. Collins, 622 F.Supp. 1409 (W.D.Tenn.1985); Dane v. Board of Registrars, 374 Mass. 152, 371 N.E.2d 1358 (1978)* (right to vote).

For cases holding that a member of the armed forces may acquire a domicil of choice while living on the post, see *Bezold v. Bezold, 95 Idaho 131, 504 P.2d 404 (1972); Marcus v. Marcus, 3 Wash.App. 370, 475 P.2d 571 (1970).*

Comment c: When the serviceman lives off the base and intends to make his home in the place where he lives, he may acquire a domicil there. *Ferrara v. Ibash, 285 F.Supp. 1017 (D.S.C.1968); Martin v. Martin, 253 N.C. 704, 118 S.E.2d 29 (1961); Slade v. Slade, 122 N.W.2d 160 (N.D.1963); Sasse v. Sasse, 41 Wash.2d 363, 249 P.2d 380 (1952);* cf. *Percy v. Percy, 188 Cal. 765, 207 Pac. 369 (1922); Fritz v. Fritz, 55 Del. (5 Storey) 328, 187 A.2d 348 (Del.1962); Walsh v. Walsh, 215 La. 1099, 42 So.2d 860 (1949),* cert. den. *339 U.S. 914 (1950); King v. King, 173 So.2d 882 (La.App.1965); Rumbel v. Schueler, 236 Md. 25, 202 A.2d 368 (1964);* cf. *Bowman v. DuBose, 267 F.Supp. 312 (D.S.C.1967); Bannan v. Bannan, 188 So.2d 253 (Miss.1966).* See Badger, Domicil of Members of Armed Forces, 26 Tenn.L.Rev. 415 (1959); Thames, Domicile of Service Men, 34 Miss.L.J. 160 (1963); Annotation, *21 A.L.R.2d 1163 (1952).*

A State may not constitutionally deny the right to vote to military personnel domiciled within its territory. *Carrington v. Rash, 380 U.S. 89 (1965).*

Comment f: Cases holding that a refugee may acquire a domicil of choice in the place of his asylum include *Van Vliet v. Blatt, 51 D. & C. 182 (Pa.Com.Pl.1944);* Graumann v. Treitel, [1940] 2 All E.R. 188 (K.B.). A consideration in favor of a finding of a change in domicil, with its consequent change in the applicable law, may be that the regime from which the refugee fled has instituted new social and legal institutions whose application to him would be abhorrent.

Factors involved in the acquisition of a domicil of choice by a refugee are: (1) Has he formed the requisite attitude of mind (§ 18) toward the place of his asylum? An intention on his part to return to his native land upon the overthrow of its present regime does not preclude such a finding since, for the present at least, he may intend to make his home in his asylum. (2) Is he present under a permanent or temporary visa? Even in the latter situation, it is possible for the refugee to acquire a domicil of choice in his asylum, although the presumably temporary nature of his stay may cast some doubt upon whether he has formed the requisite attitude of mind toward it (see § 18). See, e.g., *Juarrero v. McNayr, 157 So.2d 79 (Fla.1963); Gosschalk v. Gosschalk, 28 N.J. 73, 145 A.2d 327 (1958); Jacoubovitch v. Jacoubovitch, 279 App.Div. 1027, 112 N.Y.S.2d 1* (2d Dep't 1952); *Taubenfeld v. Taubenfeld, 276 App.Div. 873, 93 N.Y.S.2d 757* (2d Dep't 1949); cf. *McGrath v. Kristensen, 340 U.S. 162 (1950); Roboz v. Kennedy, 219 F.Supp. 892 (D.D.C.1963).* (3) Is he an illegal entrant or has his visa expired? It has been held that a person may not acquire a domicil of choice in a nation which he has entered illegally. Smith v. Smith, 1962 (3) South Africa 930; but cf. *Catalanotto v. Palazzolo, 46 Misc.2d 381, 259 N.Y.S.2d 473 (Sup.Ct.1965).*

Comment g: For a case holding that a union official had not acquired a domicil in Virginia where he had lived for thirty years while serving in Washington, D.C., see *Lewis v. Splashdam By-Products Corp., 233 F.Supp. 47 (W.D.Va. 1964).*

Restat 2d of Conflict of Laws, § 18

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 2- Domicil > Topic 2- Acquisition and Change of Domicil

§ 18 Requisite Intention

To acquire a domicil of choice in a place, a person must intend to make that place his home for the time at least.

COMMENTS & ILLUSTRATIONS

Comment:

a. Rationale. A person's domicil of choice should be in the state to which he is most closely related, since the local law of this state determines certain of his most important interests (see § 11, Comment *c*). Satisfaction of the first two requirements for the acquisition of such a domicil, namely, legal capacity and physical presence, cannot alone identify this state. The most important factor in identifying the proper state is to be found in the third requirement for the acquisition of a domicil of choice, namely, intention or attitude of mind.

b. Type of intention required. One cannot acquire a domicil of choice in a place until one intends to make that place one's home for the time at least. This place will usually be a house or other structure; it may, however, be a geographical area in which the person has no fixed place of abode (see § 12, Comment *a*). There must be a present intention to make a home. One must be able to say, "This is now my home," and not, "This is to be my home." If there is an intention to make a home at present, the intention is sufficient although the person whose domicil is in question intends to change his home upon the happening of some future event.

Illustrations:

1. A comes from state X to state Y intending to make his home in Y if he can find suitable employment there. A's domicil is still in X.

2. A comes to state Y, abandoning his home in state X and intending to make a home in Y. A, however, intends to leave Y if Y should change its form of government. A is domiciled in Y.

Comment b (cont.):

An intention to make a place one's home for a limited time may not effect a change of domicil when there is a present intention to return to the previous home. The required attitude of mind involves to a certain extent the idea of fixity. It is essential that the person intends to remain in the place for a time at least. If he intends to remain there permanently, it is easier to find the required attitude of mind than if he intends to move away at some time in the future. If he does not intend to move at a definite time, it is easier to find that he has this attitude of mind than if he intends to move at a definite time. It is possible, however, for a person to have the proper attitude of mind even though he does intend to move at a definite time; although the more distant that time is, the easier it is to find the requirement satisfied.

Other factors to be considered include the person's feelings toward the place. It is not essential that the place be the one where he would prefer to live or to which he is sentimentally most attached. But if the place does occupy such a position in his affections it is easier to find the requirements of this Section satisfied than if it does not. Similarly, it is easier to find the existence of the requisite intention if the person has abandoned his former place of domicil than if he retains important ties with it (see Special Note following § 20). The search in each instance is for the state to which the person is most closely related at the time.

c. Other expressions used by the courts. The courts do not always describe the requisite intention as one simply to make a home. Frequently, this intention is expressed in terms of the durability of the intended stay, as, for example, that one must intend to reside indefinitely in the place or, stated negatively, that one must have

no present intention of moving elsewhere or of not residing indefinitely in the place. Expressions such as these should not be taken literally (see Comment *b*).

Illustrations:

3. A, abandoning his former home, fixes his dwelling place in state X with the intention of staying there so long as he can get a good job, but when work is slack he intends to move to another place where he can get better work. He takes his family to his dwelling place and moves his belongings there. These facts tend to show that A has a home and domicil in X.

4. A, a student in the undergraduate department of a university, is in the habit of returning to his father's home for his vacation and is dependent in part upon his father for support. These facts tend to show that A has no domicil at the university.

5. A, after graduation from college, leaves his father's house, teaches for several years and then comes to the law school of a university. His expenses are paid partly from his own money and partly from money borrowed from his father which he is under obligation to repay. He has a domicil in the university town if he intends to make his home there while attending the university.

6. A leaves his father's home, establishes another dwelling place, and earns his own living for several years. He comes to a university to attend the undergraduate department. He has a domicil in the university town if he intends to make his home there while attending the university.

Comment:

d. Proof of intention. A person's intentions must be determined in the light of his declarations and other conduct and of the circumstances in which he finds himself. The evidence will often be equivocal, and the principal difficulty in domicil cases lies not so much in the rules themselves as in the evaluation of the facts, especially with respect to intention (see Special Note following § 20).

e. Two or more dwelling places. When a person acquires a new dwelling place, it is easier to find that he intends to make his home in the new dwelling place if he gives up the former dwelling place than if he retains it. It is possible for a person, although he still regards the old dwelling place as his home, to regard the new dwelling place also as his home (see § 20). It is also possible for a person to retain his old dwelling place and to cease to regard it as his home. In that case, if he regards the new dwelling place as his home, his domicil changes to the new dwelling place.

f. Motive. Acquisition of a domicil of choice in a given place requires legal capacity, physical presence within its confines and an intention to make that place one's home (see § 15). Provided that these requirements are met, it is immaterial what motives led the person to go there. It makes no difference whether these motives were good or bad or, more specifically, whether the move to the new location was for purposes of health, to accept a job, to avoid taxation, to secure a divorce, to bring suit in the federal courts or even to facilitate a life of sin or of crime.

On the other hand, a person's motives in going to a place do have an intimate bearing on his attitude of mind toward it. If he goes there to accept a lifetime employment, he almost certainly intends to make his home there. A contrary inference, however, might well be drawn if the change of abode was for purposes of health, to accept public office or a temporary job or to escape from creditors. The fact that the move was dictated by a desire to obtain some special advantage, as a divorce or the avoidance of taxes, may give rise to the inference that the person had no bona fide intention to change his home and that therefore no new domicil was acquired.

Listed below are five typical reasons or motives for moving to another state. Each of them is followed by two illustrations. The facts of the first illustration, including the motive for moving, tend to show that the person had no intention of making his home in the second state; a contrary inference may be drawn in the second illustration. Such inferences could, of course, be overcome by other evidence.

Business:

7. A leaves his family in Turkey and comes to Massachusetts in order to take a temporary job. He transmits part of his earnings to his wife who has remained in the Turkish home to which A intends to return after earning a sufficient competence. These facts tend to show that A does not intend to make his home in Massachusetts and that his domicil remains in Turkey.

8. A leaves his home in Massachusetts and goes with his family to Concord, New Hampshire in order to supervise the operation of a business he had previously acquired. He stays in Concord for many years,

taking part in the life and affairs of the city and evincing no interest in his old home. These facts tend to show that A intends to make his home in Concord and has acquired a domicil of choice there.

Health or Travel:

9. A, domiciled in New York, is advised to go abroad for his health. He goes to Nice where he takes a house on a long lease and lives there for several years until his death. A always wished to return to New York but was prevented by his health from doing so. These facts tend to show that A did not intend to make his home in Nice and that his domicil remained in New York.

10. A goes abroad with his family in order that he may live in Paris. He buys a home in Paris and stays there until his death. These facts tend to show that A intended to make his home in Paris and had acquired a domicil of choice there.

Education of children:

11. A, a farmer, moves into a city in the autumn in order to place his children in good schools during the winter. These facts tend to show that A does not intend to make his home in the city and that his domicil remains unchanged.

12. A, a farmer's widow, sells the farm and, after examination of several places, buys and occupies a dwelling house in a city because she believes the city schools will give her children the best education. These facts tend to show that A intends to make her home in the city and has acquired a domicil of choice there.

To attend educational institutions:

13. A, a young man aged twenty one, leaves his father's home to enter the X university. A returns to his father's home for vacations. These facts tend to show that A does not intend to make his home near the university and that his domicil remains unchanged.

14. A, a young man just graduated from college, definitely leaves his former home, marries and goes with his wife to state X where he enters a professional school. He takes a house there, intending to live there until he secures his professional degree. These facts tend to show that A intends to make his home in X and has acquired a domicil of choice there.

Legal advantages:

15. A, a married woman, goes to state X for the purpose of obtaining a divorce, intending to go elsewhere after she has been awarded this relief. These facts tend to show that A does not intend to make her home in X and that her domicil remains unchanged.

16. A, a college teacher, solicits and obtains a teaching position in a college in state X. He chooses this college because he wishes to get a divorce and the X divorce laws are favorable to his needs. He intends to stay at the college unless he is offered a better position elsewhere. These facts tend to show that A intends to make his home in X and has acquired a domicil of choice there.

g. Intention to acquire a domicil. The primary intention required for the acquisition of a domicil of choice is an intention to make a home rather than an intention to acquire a domicil. Were it otherwise, persons could choose to be domiciled in a state of low burdens and high benefits quite irrespective of where they actually happened to live. A person's domicil of choice is in the state to which he is most closely related rather than in the state where he wishes to be domiciled. A desire to retain an old domicil does not, of itself, prevent the acquisition of a new one.

An intention to acquire a domicil in a place may on occasion have some significance. Two situations can be imagined. The first is where a person's significant contacts are in state X and yet he desires to be domiciled in state Y. Here no effect will be accorded the desire to be domiciled in Y; such a desire cannot serve to remove the domicil from the state which is obviously that of closest relationship.

The second situation arises infrequently. It is where a person's significant contacts are closely divided between two or more states. Here, on occasion, the person's desires as to the location of his domicil may be permitted to tip the scales in favor of one state or the other (see Comment *h* and § 20, Comment *c*).

h. Domicil of person with dwelling place cut by boundary line. A person's domicil of choice should be in the place to which he is most closely related. In the normal situation, a person's domicil of choice is in the political division where his dwelling place is situated. When the dwelling place is situated upon a dividing line between political divisions, it may be difficult to determine in which of these divisions the domicil is. Usually, the domicil will be in that political division where the major portion of the dwelling place is located, particularly if only an uninhabitable part lies in the other. On rare occasions, however, the preponderant portion of the person's dwelling place may be in one political division, while the bulk of his interests and activities, and also those of his family, are in the other. One such case might be that of a farmer, all of whose tillable land, barn and out-buildings are situated in one political division but the major portion of whose dwelling place is situated in another. A second case might be that of a man who votes and holds public office, attends church, sends his children to school and follows a gainful employment in the political division which contains only the lesser part of his dwelling place. In these cases, it may well be thatthe person is more closely related to the political division which is the center of his interests and activities than to that which contains the major part of his dwelling place. If this is the case, his domicil of choice should be in the former division. When the boundary line cuts the dwelling place in half, or nearly so, primary weight should be given to the interests and activities of the person and his family and the domicil placed in the political division where most of these interests and activities are centered.

When the person's dwelling place is cut practically in half by the boundary line, or when the preponderant part of his home is in one political division and the bulk of his interests and activities are in another, effect may be given to an expressed desire on his part that his domicil should be in one political subdivision rather than in the other (see Comment *g* and § 20, Comment *c*).

REPORTER'S NOTES

See generally 1 Beale, Conflict of Laws 142-154 (1935); Goodrich, Conflict of Laws 43-44 (Scoles, 4th ed. 1964); Stumberg, Conflict of Laws 19-20 (3d ed. 1963); Annotation, *98 A.L.R.2d 488 (1964).*

Comment c: See *Newman v. Graham, 82 Idaho 90, 349 P.2d 716 (1960).*

Comment d: See *Julson v. Julson, 255 Iowa 301, 122 N.W.2d 329 (1963).*

Comment f: *In re Glassford's Estate, 114 Cal.App.2d 181, 249 P.2d 908 (1952); Schultz v. Chicago City Bank & Trust Co., 384 Ill. 148, 51 N.E2d 140 (1943); Gasque v. Gasque, 143 S.E.2d 811 (S.C.1965);* 1 Beale, Conflict of Laws 161-181 (1935); Goodrich, Conflict of Laws 45-46 (Scoles, 4th ed. 1964).

Comment g: The courts are sympathetic with the expressed desire of an American citizen to retain his domicil in this country and thus remain subject to our system of law. On occasion, such a desire has apparently led to a holding that an American domicil had been retained despite the fact that the actual home of the person would appear to have been abroad. See, e. g., *Dupuy v. Wurtz, 53 N.Y. 556 (1873); United States Trust Co. v. Hart, 150 App.Div. 413, 135 N.Y.S. 81* (1st Dep't 1912); *In re Hoff's Estate, 178 Misc. 515, 35 N.Y.S.2d 60 (Surr.Ct.1942);* Coudert, Some Considerations in the Law of Domicile, 36 Yale L.J. 949 (1927).

Cases giving effect to a person's desires as to the location of his domicil in situations where his significant contacts were closely divided between two states or other governmental areas include *Chambers v. Hathaway, 187 Cal. 104, 200 Pac. 931 (1921); Thayer v. City of Boston, 124 Mass. 132 (1878); In re Paullin's Will, 92 N.J.Eq. 419, 113 Atl. 240 (1921); Matter of Newcomb, 192 N.Y. 238, 84 N.E. 950 (1908); Winsor's Estate, 264 Pa. 552, 107 Atl. 888 (1919); In re Ford's Estate, 14 Wis.2d 324, 11 N.W.2d 77 (1961);* see also authorities cited under Comment *h* and in the Reporter's Note to § 20.

Cases where there was a failure to show the requisite intention to change a domicil include *In re Shapiro's Will, 36 Misc.2d 271, 232 N.Y.S.2d 232 (Surr.Ct.1962); In re Graner's Will, 34 Misc.2d 1041, 229 N.Y.S.2d 95 (Surr.Ct.1962).*

Statutes in a few States expressly permit a person to select as his domicil one of two or more places within the State provided that his significant contacts with each of them are more or less equal. See e. g., Ga.Code Ann. § 79-402 (1964); La.Civ.Code Ann. Arts. 38, 44, 45 (1952).

See Cook, The Logical and Legal Bases of the Conflict of Laws, ch. 7 (1942); Heilman, Domicil and Specific Intent, 35 W.Va.L.Q. Rev. 262 (1929).

The question whether a person's desires as to the location of his domicil should be accorded even a limited effect may depend upon the particular issue involved. Thus, it might be thought that this should not be the case with respect to questions involving governmental benefits and burdens, as taxation, poor relief and judicial jurisdiction. On the other hand, some weight should perhaps be accorded these desires in areas where normally the desires of the person concerned are supreme, such as in matters relating to the distribution of property upon death. There is little evidence that such distinctions have been drawn by the courts.

For intrastate cases involving qualifications for holding office, see *State v. Mueller, 388 S.W.2d 53 (Mo.App.1965); Gladwin v. Power, 21 A.D.2d 665, 249 N.Y.S.2d 980* (1st Dep't 1964).

Comment h: See 1 Beale, Conflict of Laws 192-194 (1935); Goodrich, Conflict of Laws 42-43 (Scoles, 4th ed. 1964).

Cases placing the domicil in that political division where the major part of the home is located include *Blaine v. Murphy, 265 Fed. 324 (D.Mass.1920); Danforth v. Nabors, 120 Ala. 430, 24 So. 891 (1898); Abington v. Inhabitants of North Bridgewater, 23 Pick. (40 Mass.) 170 (1839); East Montpelier v. City of Barre, 79 Vt. 542, 66 Atl. 100 (1906).*

For a case placing greater emphasis upon the person's activities and intentions than upon the location of his dwelling place, see *Aldabe v. Aldabe, 441 P.2d 691 (Nev.1968).*

When the boundary line cuts the home in half, or nearly so, it has been suggested by way of dictum that some part of the house, as the person's bedroom, should be assumed to be the point of his closest relationship and his domicil of choice fixed in the political division where this particular part happens to be located. *Abington v. Inhabitants of North Bridgewater, supra.*

Cases giving effect to a person's expressed desire as to the location of his domicil in situations where the home is nearly cut in half by the boundary line or where the major part of the home is in one political division and the bulk of the person's interests and activities are in another include *Chancey v. State, 141 Ga. 54, 80 S.E. 287 (1913); Follweiler v. Lutz, 112 Pa. 107, 2 Atl. 721 (1886);* see *Chenery v. Inhabitants of Waltham, 8 Cush. (62 Mass.) 327 (1851); Application of Davy, 281 App.Div. 137, 120 N.Y.S.2d 450* (3d Dep't 1952). Compare also the authorities cited in the Reporter's Note to § 20. An Alabama statute provides that where a person's dwelling place is situated on a dividing line between two local political units, he can choose to be domiciled in either. Ala.Code tit. 17, §§ 18, 19 (1958).

Cross Reference

Digest System Key Numbers:

Domicile 4(2)

Restat 2d of Conflict of Laws, § 19

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 2- Domicil > Topic 2- Acquisition and Change of Domicil

§ 19 Continuation of Domicil

A domicil once established continues until it is superseded by a new domicil.

COMMENTS & ILLUSTRATIONS

Comment:

a. Every person must at all times have a domicil (see § 11). A domicil, once established, continues until a new one is acquired.

Illustrations:

1. A, having a domicil in state X, ceases to live there. A does not acquire another home. A's domicil is in X.

2. A, having a domicil in state X, goes to live in state Y. A has not yet decided to make his home in Y. A's domicil is in X.

3. A, having a domicil in state X, decides to make his home in state Y. A has not yet gone to Y. A's domicil is in X.

4. A, having a domicil in state X, decides to make his home in state Y. He leaves X and is on his way to Y but has not yet reached Y. His domicil is in X.

Comment:

b. The rule of this Section is equally applicable whether the last domicil is a domicil of origin, a domicil of choice, or a domicil assigned by operation of law. If a domicil of choice is abandoned without acquiring a new domicil of choice, the domicil of origin is not thereby revived, but the last domicil of choice continues to be the domicil.

Illustration:

5. A, whose domicil of origin is in state X, acquires a domicil of choice in state Y. Tiring of the life in Y, A decides to make his home in state Z and leaves Y for Z. A's domicil remains in Y until he acquires a new one in Z.

Comment:

c. The burden of proof is on the party who asserts that a change of domicil has taken place.

REPORTER'S NOTES

See 1 Beale, Conflict of Laws 181-186 (1935); Stumberg, Conflict of Laws 26-27 (3d ed. 1963).

Comment b: The English rule is that a person's domicil of origin is revived during the period that the person is traveling from an abandoned domicil to a new domicil of choice. Udny v. Udny, L.R. 1 H.L. (Sc.) 441 (1869); Estate of Fuld, [1966] 2 W.L.R. 717. This doctrine of revival has not been adopted in the United States. According to the American rule, a person retains a domicil of choice during the time that he is traveling from this domicil to a new domicil. *In re Estate of Jones, 192 Iowa 78, 182 N.W. 227 (1921); Ness v. Commissioners of Corporation and Taxation, 279 Mass. 369, 181 N.E. 178 (1932);* Goodrich, Conflict of Laws 40 (Scoles, 4th ed. 1964); Stumberg, supra, at 31-32.

Cross Reference

Digest System Key Numbers:

Domicile 1, 4(1)

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Restat 2d of Conflict of Laws, § 20

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 2- Domicil > Topic 2- Acquisition and Change of Domicil

§ 20 Domicil of Person Having Two Dwelling Places

When a person with capacity to acquire a domicil of choice has more than one dwelling place, his domicil is in the earlier dwelling place unless the second dwelling place is his principal home.

COMMENTS & ILLUSTRATIONS

Comment:

a. A person's domicil is usually in the place where he has his home (see § 11). In the exceptional situation dealt with in this Section, a special rule is needed to determine which of the two dwelling places is the person's domicil.

b. If a person has two dwelling places, any one of the following situations may arise:

1. One dwelling place may be a home in the sense used in this Restatement (see § 12), and the other merely a residence. This is the most common situation of all. It is likely to exist whenever a person has one dwelling place where he lives during the major portion of each year and another which he uses only for weekend and vacation purposes. Here his domicil will be at the dwelling place which is his home.

2. Both dwelling places may be homes in the sense used in this Restatement, but one may be the person's principal home. In this case his domicil is at the principal home. As between two homes, a person's principal home is that to which he is more closely related or, stated in other words, that which is more nearly the center of his domestic, social and civil life. This will normally be the home where he and his family spend the greater part of their time. Also significant are such factors as which home is the more spacious, which contains the bulk of the household furnishings, in which has he shown more interest, which home has a way of life, (country life, for example, as opposed to city life) more conducive to the person's tastes, and from which home does he engage more actively in social and civic affairs, as by voting, holding public office, attending church, belonging to local clubs and the like. The person's own feelings towards the dwelling place are of great importance. His statements in this connection cannot be deemed conclusive, however, since they may have been made to attain some ulterior objective and may not represent his real state of mind (see Special Note following this Section).

Illustration:

1. A, a city merchant, acquires a country dwelling place while still retaining his dwelling place in the city Since he wishes his children to be brought up in the country, he has them live most of the time at the country dwelling place and spends himself more time there than in his dwelling place in the city. A's domicil is at his country dwelling place.

Comment b (cont.):

3. Both dwelling places may have some of the aspects of a home in the sense used in this Restatement and both in more or less equal degree. In this unusual situation, the domicil remains at that one of the two dwelling places which was first established. This is because a domicil, once established, continues until superseded (see § 19), and here there is no basis for preferring the later dwelling place over the earlier one.

Illustrations:

2. A comes from the country to the city and engages in business, retaining his country dwelling place and establishing a new dwelling place in the city. There is no basis for regarding either as his principal home. A's domicil is at his country dwelling place.

3. A, a city merchant, acquires a country dwelling place while still retaining his dwelling place in the city. There is no basis for regarding either as his principal home. A's domicil is at his city dwelling place.

Comment b (cont.):

c. The third situation dealt with above in Comment *b* is exceptional. Rarely will a person have such an equal relationship to his two dwelling places as to make it difficult to say which is the predominant or principal one. When the contacts are closely divided, effect may be given to the person's expressed desire to have his domicil at one dwelling place rather than at the other (see § 18, Comments *g* and *h*).

REPORTER'S NOTES

See *Broadstone Realty Corp. v. Evans, 213 F.Supp. 261 (S.D.N.Y.1962);* 1 Beale, Conflict of Laws 186-192 (1935); Stumberg, Conflict of Laws 33-34 (3d ed. 1963).

Comment c: When a person's contacts with two dwelling places are more or less equal, the courts, for some purposes at least, will be inclined to follow an expressed desire on his part that his domicil should be at one dwelling place rather than at the other. *Chambers v. Hathaway, 187 Cal. 104, 200 Pac. 931 (1921); Hurst v. City of Flemingsburg, 172 Ky. 127, 188 S.W. 1085 (1916); Thayer v. City of Boston, 124 Mass. 132 (1878); In re Paullin's Will, 92 N.J.Eq. 419, 113 Atl. 240 (1921); Matter of Newcomb, 192 N.Y. 238, 84 N.E. 950 (1908); Winsor's Estate, 264 Pa. 552, 107 Atl. 888 (1919);* Stumberg, supra, at 35.

Cross Reference

ALR Annotations:

Change of domicil by public officer or employee. 129 A.L.R. 1382.

Digest System Key Numbers:

Domicile 1, 2

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Restat 2d of Conflict of Laws, § 21

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 2- Domicil > Topic 3- Married Women, Infants, Incompetents

§ 21 Domicil of Wife

The rules for the acquisition of a domicil of choice are the same for both married and unmarried persons.

COMMENTS & ILLUSTRATIONS

Comment:

a. The common law rule. At common law a married woman had no capacity to acquire a domicil of choice and was assigned that of her husband by operation of law. This rule has been abandoned. The ordinary rules for the acquisition of a domicil of choice are now applied to a married woman whether or not she is living with her husband.

Originally, there were at least two reasons for the common law rule. One was the view, as expressed by Blackstone, that "the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband." This view is no longer held. The second reason for the common law rule was the desirability of having the interests of each member of the family unit governed by the same law. To achieve this goal, husband and wife should have the same domicil.

The common law rule that a wife takes the domicil of her husband by operation of law so long as she lives with him is clearly inconsistent with contemporary views relating to the legal position of married women. Nonetheless, the rule has rarely been reexamined by the courts. Undoubtedly, this is because in the vast majority of situations a wife who lives with her husband in a certain place will regard that place as her home. Under these circumstances, the wife's domicil will be in that place by application of the rules for the acquisition of a domicil of choice.

b. Special circumstances of wife. In the vast majority of situations, husband and wife will have but a single home and this home will be in the place of their domicil. In some situations the wife may have close ties, such as the ownership of a place of abode, with a state that is not the state of the husband's domicil. Even in such situations, the husband and wife will usually regard the same place as their home. These natural feelings on the part of the spouses may also be buttressed by an awareness of the advantages of having a single law govern the interests of each member of the family unit. For all of these reasons it will usually be found that a wife who lives with her husband has the same domicil as his even though she may have close ties with another state.

On the other hand, there will be situations where a wife who lives with her husband has a domicil apart from his. These will be situations where, at least for the purpose at hand, the wife has closer ties with some other state than with the state of the husband's domicil and regards this other state as her home. As stated above, however, the husband and wife will usually regard the same place as their home. Hence a court will not find that a wife considers her home to be in a place different from that of her husband in the absence of convincing evidence to this effect. Rarely in the nature of things will such a finding be made except upon the initiative of the wife.

For example, suppose that W, who is domiciled in state X, marries H, who is domiciled in state Y. W owns a house in X which she considers her home and where she expects to live most of the time with H in the future. H is willing to live most of the time in X, but nevertheless wishes to retain his Y domicil. In an effort to retain her X domicil, W, prior to the marriage, executes an agreement with H in which it is stated that she will remain domiciled in X. Following the marriage, the spouses spend by far the greater part of each year at W's house in

X. Some time after the marriage, the Y tax authorities claim that W is subject to Y income taxation on the ground that she acquired H's domicil in Y by operation of law. These facts would support a finding that W has retained her X domicil.

Again let us suppose that W, who is domiciled and holds public office in state X, marries H, who is domiciled in state Y. Following the marriage, W spends most of her time in X. These facts would support a finding that W has retained her X domicil.

c. Effect of void marriage. A woman who enters into a void marriage will acquire a domicil of choice in the place where she lives with her reputed husband provided that she regards that place as her home. This is true whether or not the woman knows that the marriage is void.

d. Domicil of wife living apart from husband. The harshness of the common law rule that a married woman could have no domicil apart from that of her husband (see Comment a) first became apparent in the field of divorce. It was unfair that a deserted wife could bring suit for divorce only in the state, however distant it might be,where her husband had chosen to establish his new home. The first step in modifying the rule was to say that a husband, once he had given his wife cause for divorce, no longer enjoyed the power to change her domicil. Her domicil remained in the state where the spouses had last lived together as man and wife, and accordingly the wife could there bring suit for divorce or separate maintenance. The rule was then further liberalized by permitting the wife under such circumstances to acquire a new domicil of her own in any state where she might choose to go. It was also made clear that her power in this regard was not restricted to the bringing of marital actions; if she could acquire a domicil of choice for one purpose, she could do so for any purpose. *Williamson v. Osenton, 232 U.S. 619 (1914).* Gradually, the same power was accorded the wife in situations where the spouses had separated by mutual consent rather than because of the fault of the husband. During this period, therefore, the wife could have a domicil of her own provided that she was dwelling apart from her husband and was doing so justifiably, or, as stated in the original Restatement of this Subject, which appeared in 1934, if she had not been guilty of desertion in leaving him. Today, the power of the wife has been broadened still further. If there has been an actual rupture of marital relations, she may acquire a separate domicil even though she was the party at fault. And she may likewise do so if for any reason she is living apart from her husband even though her relations with him are entirely amicable.

Illustrations:1. A is domiciled with B, her husband, in state X. B elopes with another woman and now makes his home in state Y. A continues to make her home in X. A's domicil is in X.

2. A is domiciled with B, her husband, in state X. B goes to state Y and becomes domiciled there. He requests A to come and live with him there, but she refuses to do so and keeps her home in X. By the local law of X and of Y she is guilty of desertion in refusing to follow him. A's domicil is in X.

3. A is domiciled with B, her husband, in state X. A elopes with another man and makes her home in state Y. A's domicil is in Y.

e. Domicil of wife on termination of marriage. The termination of the marriage, either by death or divorce, does not of itself change the domicil of the wife. Until she acquires a new domicil, the old one remains even though it was based on the domicil of her husband.

Illustrations:4. A is domiciled with B, her husband, in state X. He dies. A's domicil is in X.

5. A is domiciled with B, her husband, in state X. The marriage is terminated by divorce. A's domicil is in X.

6. A is the wife of B. Although B is domiciled in state X, A is domiciled in state Y. The marriage is terminated by a divorce. A's domicil is in Y.

REPORTER'S NOTES

Changes: There has been no change in substance. The black-letter rule and the commentary have been amended to reflect modern times and modern mores. This Section was originally in Topic 3, "Infants and Incompetents," but has been moved to Topic 2, "Acquisition and Change of Domicil."

Comment b: Cases holding that a wife although living with her husband may have a domicil apart from his include: *Mas v. Perry, 489 F.2d 1396 (5th Cir.1974)* (diversity jurisdiction); *Knapp v. State Farm Insurance, 584 F.Supp. 905 (E.D.La. 1984)* (diversity jurisdiction); *Samuel v. University of Pittsburgh, 375 F.Supp. 1119 (W.D.Pa. 1974),* app. dism. on other grounds *506 F.2d 355 (3d Cir.1974)* (holding unconstitutional the presumption that a wife's domicil is that of her husband for purposes of determining amount of tuition); *Chwalow*

v. C.I.R., 470 F.2d 475 (3d Cir.1972) (purposes of Internal Revenue Code); Napletana v. Hillsdale College, 385 F.2d 871 (6th Cir.1967) (diversity jurisdiction); Martin v. Hefley, 259 Ark. 484, 533 S.W.2d 521 (1976) (eligibility to vote); Bowers v. Bowers, 287 So.2d 722 (Fla.App.1973) (diversity jurisdiction). New York has provided by statute that a married person's domicil "shall be established for all purposes without regard to sex." N.Y.Dom.Rel.Law § 61; Dilsaver v. Pollard, 191 Neb. 241, 214 N.W.2d 478 (1974) (voting). To same effect, see Scoles and Hay, Conflict of Laws 194-196 (1984).

For cases adhering to the view that a wife cannot acquire a separate domicil except when her husband's misconduct compels her to live apart from him, see *Consolidated Loan, Inc. v. Guercio, 200 So.2d 717 (La.App.1967);* Landry v. Landry, 192 So.2d 237 (La.1966); cf. Hagle v. Leeder, 442 S.W.2d 908 (Tex.Civ.App.1969) (wife claimed and was held to have same domicil as husband).

Comment d. See Oxley v. Oxley, 159 F.2d 10 (D.C.Cir.1946); McCormick v. United States, 57 Treas.Dec. 117 (1930); Boardman v. Boardman, 135 Conn. 124, 62 A.2d 521 (1948); Burkhardt v. Burkhardt, 38 Del. 492, 193 Atl. 924 (1937); Van Rensselaer v. Van Rensselaer, 103 N.H. 23, 164 A.2d 244 (1960); Younger v. Gianotti, 176 Tenn. 139, 138 S.W.2d 448 (1940); Risch v. Risch, 395 S.W.2d 709 (Tex.Civ.App.1965), cert. den. *386 U.S. 10 (1967);* Tate v. Tate, 149 W.Va. 591, 142 S.E.2d 751 (1965); cf. Commonwealth v. Rutherfoord, 160 Va. 524, 169 S.E. 909 (1933). See Scoles and Hay, Conflict of Laws 194-196 (1984).

Comment e: See 1 Beale, Conflict of Laws 208-210 (1935).

Restat 2d of Conflict of Laws, § 22

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 2- Domicil > Topic 3- Married Women, Infants, Incompetents

§ 22 Domicil of Minor

(1) A minor has the same domicil as the parent with whom he lives.

(2) Special rules are applied to determine the domicil of a minor who does not live with a parent.

COMMENTS & ILLUSTRATIONS

Comment:

a. Domicil of father. An unemancipated child lacks capacity to acquire a domicil of choice. This was the rule at common law and remains the rule today. The child is assigned the father's domicil when he lives with the father and has the same home as his. Except as stated in § 14, the child takes as his domicil of origin the domicil the father has at the time of the child's birth, and thereafter, upon a change of domicil by the father, the child takes the father's new domicil. The child is also assigned the father's domicil when he lives apart from the father, except as stated below.

b. Domicil on death of father. If the father dies and no guardian of the child's person is appointed, the child has the domicil of his mother, except as stated in Comments *e-i*, provided that this is the place where the mother would be domiciled by application of rules relating to the acquisition of a domicil of choice. So if the father dies before the birth of the child, the child takes the domicil of his mother at the time of his birth as his domicil of origin (see § 14). Similarly, if the father dies after the birth of the child and no legal guardian of the child's person is appointed, the child takes the domicil the mother has at the time. Thereafter the child's domicil will follow that of the mother, whether the child lives with the mother or not, except as stated immediately below and in Comments *e-i*.

The child's domicil will not follow that of a stepfather by operation of law even though it were to be held that the mother's domicil does so (see § 21, Comment *b*). After the mother's remarriage, the child's domicil will be that of the mother provided that this is in a place where the mother would be domiciled by application of the rules relating to the acquisition of a domicil of choice (see § 15). Otherwise, the child's domicil will remain unchanged until such time as he acquires another domicil in one of the ways stated below. Upon the death of the father who has been awarded legal custody of the child or with whom the child has been living, the child's domicil shifts to that of the mother even though the mother's domicil is in another state (see Comment *d*). Upon the death of both parents, the domicil a child has at the time continues to be his domicil until this domicil is changed in one of the ways stated below.

c. Illegitimate child. An illegitmate child has the domicil of his mother, except as stated in Comments *e-i*, provided that this is in a place where the mother would be domiciled by application of the rules relating to the acquisition of a domicil of choice. At birth an illegitimate child takes the domicil his mother has at the time as his domicil of origin (see § 14). Upon a change of domicil by the mother during the child's minority, the child takes the mother's new domicil whether the child lives with the mother or not, except as stated immediately below and in Comments *e-i*. The child's domicil will not follow that of a stepfather by operation of law even though it were to be held that the mother's domicil does so (see § 21, Comment *b*). After the mother's marriage to a man who is not the child's father, the child's domicil will be that of the mother provided that this is a place where the mother would be domiciled by application of rules relating to the acquisition of a domicil of choice (see § 15). Otherwise, the child's domicil will remain unchanged until such time as he acquires another domicil

in one of the ways stated below. Upon the death of the mother, the domicil which an illegitimate child has at the time continues to be his domicil until his domicil is changed in one of the ways stated below.

d. Separation of parents. A child's domicil, in the case of the divorce or separation of his parents, is the same as that of the parent to whose custody he has been legally given. If there has been no legal fixing of custody, his domicil is that of the parent with whom he lives, but if he lives with neither, his domicil is that of his living father, except as stated in Comments *e-i*. Upon the death of the parent to whose custody the child has been awarded or with whom the child has been living, the child's domicil shifts to that of the other parent even though the latter is domiciled in another state.

As to the domicil of a child when abandoned by both parents, see Comment *e*. As to the domicil of a child whose custody has been awarded to someone not a parent, see Comment *h*.

e. Abandoned child. An abandonment, as the term is used here, occurs in two situations. It occurs when the parent deserts the child; it likewise occurs when the parent gives the custody of the child to another with the intention of relinquishing his parental rights and obligations. Whether a child has been abandoned so as to bring the case within the scope of this Comment is a question involving the rules of domicil. The rules of the forum are applied, except as stated in § 8, to determine whether an abandonment has taken place (see § 13).

If a child is abandoned by his father, he takes the domicil of his mother if he has not been abandoned by her. So too, a child domiciled with his mother and abandoned by her takes the domicil of his father if he has not been abandoned by him. Except as stated in Comments *f-i*, a child abandoned by both parents retains the domicil possessed by the parent who last abandoned him at the time of the abandonment; a child abandoned by both parents simultaneously retains the domicil of the father at the time of the abandonment.

Under the local law of many states, a child who has attained years of discretion becomes emancipated upon being abandoned by both parents (see Comment *f*).

f. Emancipated child. An emancipated child may acquire a domicil of choice. A parent has no power to control the domicil of an emancipated child. Hence a change of domicil by the parent will not of itself change the domicil of the child. Determination of the circumstances under which a child becomes emancipated is not within the scope of the Restatement of this Subject. Some states require actual court proceedings, but the majority insist upon no more than that the minor, having attained years of discretion, maintain a separate way of life, either with his parents' consent or because they are dead or have abandoned him. It is frequently held that the contraction of a valid marriage emancipates a minor.

As an original proposition, two approaches could be taken to the question of what law governs emancipation in a case involving the capacity of a child to acquire a domicil of choice. The first is to consider emancipation a question of status to be determined by the law of the state where the parent (and through him the child) was domiciled when the alleged emancipating acts took place. The second is to consider emancipation as an issue bearing upon the capacity of a child to acquire a domicil of choice and hence to be determined by the same law that determines capacity to acquire a domicil in general (see § 13, Comment *d*). The question does not appear to have arisen. The second approach is the one that should be adopted, since emancipation is important in this context only because it gives capacity to acquire a domicil of choice. The rules of the forum are therefore applied, except as stated in § 8, to determine whether the child is emancipated in the sense that he has capacity to acquire a domicil of choice.

g. Adopted child. An adopted minor child has the domicil of his adoptive parent. The normal effect of an adoption is to substitute a new parent-child relationship in place of that which formerly bound the child to his natural parents. The child, at the moment of adoption, takes the domicil of the adoptive parent and thereafter his domicil follows that of the parent in the same way that it would if a natural parent-child relationship existed between them. If a child is adopted by a husband and wife, the domicil of the adopted child follows that of his adoptive parents. Upon the divorce or separation of the adoptive parents, the domicil of the adopted child is determined by the principles which determine the domicil of a natural legitimate child under such circumstances (see Comment *d*). Upon the death of the adoptive parent, the domicil which the adopted child has at the time continues to be his domicil until this domicil is changed in accordance with the rules stated in this Chapter.

h. Power of guardian over domicil. A person's domicil should usually be in the place to which he is most closely related. This policy, if it stood alone, would lead to the conclusion that a child under guardianship should be domiciled in the place where he has been sent by the guardian to live and make his home. But this policy must give way on occasion to another policy, which is that the child, who is the ward of the appointing

court, should not acquire a domicil in a place where that court does not wish him to. Because of this latter policy, the child will be held not to have acquired a domicil in a place where the guardian had no authority to send him in the first instance. And even when the guardian acted within his authority in sending the child to a certain place to live and make a home, the child will be held not to have acquired a domicil in that place if the guardian's authority did not extend to fixing the child's domicil there.

No difficulty arises when the guardian's authority as to the location of the child's domicil is expressly set forth either in the original decree of appointment or in some subsequent order. If, for example, it is clear that the appointing court in state X was willing to have the child's domicil changed to state Y, such a shift will be held to have occurred as soon as the child arrives in Y to make his home there. Usually, however, no express indication of the extent of the guardian's authority over the child's domicil will be available. Here an effort must be made to ascertain this authority by interpreting the court's various orders and decrees in the light of the circumstances attending their issuance. In the absence of any evidence of the court's intentions, the guardian will be held to have the authority to move the child, and shift his domicil, to a new location within the confines of the appointing state. Similar authority to move the child to a new home and domicil in another state, and hence beyond the effective control of the original court, is not so easily inferred. Here the courts are divided. It will usually be held under these circumstances that the guardian was acting within his authority, and that the child's domicil shifted to the other state, if the shift of domicil would be in the best interests of the child and was not made to achieve some selfish purpose of the guardian.

The ward does not take his guardian's domicil by operation of law. If the ward lives with the guardian in the state of appointment, he takes the domicil of the guardian. If he does not live with the guardian he does not take the latter's domicil.

A person may be appointed guardian over either the person or the property of a child or incompetent. Only a guardian of the person may affect the domicil of the ward. As to judicial jurisdiction to appoint a guardian of the person, see § 79. The child's domicil does not follow that of his parents once a guardian of his person has been appointed.

i. "Natural" guardian. If both parents of a child are dead, or if the child is abandoned by both parents or by a surviving parent, and no guardian of the child's person is appointed, the child should acquire a domicil at the home of a grandparent or other person who stands *in loco parentis* to him and with whom he lives. To date, the cases have placed the child's domicil, in the circumstances dealt with here, at the home of a grandparent or other close relative. Absent some compelling reason to the contrary, the child's domicil should be in the place to which he is most closely related. The child should therefore have a domicil at the home of the person who stands *in loco parentis* to him and with whom he lives even though this person is not a blood relative.

A child's domicil does not, as in the case of a parent (see Comments *a*-*c*) automatically follow that of a grandparent or other person with whom he lives. The child's domicil is the same as the latter's only if the child actually lives with him in his home. If the child ceases to live in the home of the grandparent or other person, his domicil remains at that place until he acquires a new domicil under the rules stated in this Chapter. This is so even though the grandparent, or other person, subsequently acquires a new domicil, dies or abandons the child.

Comment b: See 1 Beale, Conflict of Laws 220-222 (1935); Goodrich, Conflict of Laws 59 (Scoles, 4th ed. 1964); Stumberg, Conflict of Laws 45-46 (3d ed. 1963).

Comment c: See *In re Estate of Moore, 68 Wash.2d 792, 415 P.2d 653 (1966);* 1 Beale, Conflict of Laws 216-217 (1935); Goodrich, Conflict of Laws 53-57 (Scoles, 4th ed. 1964).

Comment d: See *Ziady v. Curley, 396 F.2d 873 (4th Cir. 1968); Boardman v. Boardman, 135 Conn. 124, 62 A.2d 521 (1948); Willmore v. Willmore, 273 Minn. 537, 143 N.W.2d 630 (1966),* cert. den. *385 U.S. 898 (1966);* 1 Beale, Conflict of Laws 215-216 (1935); Goodrich, Conflict of Laws 57-58 (Scoles, 4th ed. 1964).

Upon the death of the parent to whose custody he has been awarded, the child's domicil shifts to that of his surviving parent. *Clark v. Jellinek, 90 Idaho 373, 414 P.2d 892 (1966); In re Guardianship of Skinner, 230 Iowa 1016, 300 N.W. 1 (1941); Chumos v. Chumos, 105 Kan. 374, 184 Pac. 736 (1919); De Jarnett v. Harper, 45 Mo.App. 415 (1891); In re Guardianship of Peterson, 119 Neb. 511, 229 N.W. 885 (1930); Matter of Thorne, 240 N.Y. 444, 148 N.E. 630 (1925); Peacock v. Bradshaw, 145 Tex. 68, 194 S.W.2d 551 (1946).*

Alternating domicil. A court decree sometimes provides for the division of the child's custody between his parents so that he will live with one parent for a designated portion of each year and with the other parent during the remainder. When, in such a case, the parents live in different states, it has been held for purposes of jurisdiction in a custody action that the child's domicil alternates between these states so as to be the same as that of the parent with whom he is living at the time. *State ex. rel. Larson v. Larson, 190 Minn. 489, 252 N.W. 329 (1934); Mills v. Howard, 228 S.W.2d 906 (Tex.Civ.App.1950); Goldsmith v. Salkey, 131 Tex. 139, 112 S.W.2d 165 (1938).* This rule might not be applied in a case where one of the parents was entitled to the child's custody only for the period of a month during each year. Cf. *Allen v. Allen, 200 Or. 678, 268 P.2d 358 (1954).*
Comment e: See Goodrich, Conflict of Laws 54-55 (Scoles, 4th ed. 1964).
Comment f: See *Hollowell v. Hux, 229 F.Supp. 50 (E.D.N.C.1964);* 1 Beale, Conflict of Laws 212-215 (1935); Stumberg, Conflict of Laws 43-44 (3d ed. 1963).

Minority was not a status at common law and is determined in each case by the law that governs the issue involved. 2 Beale, Conflict of Laws 661-663 (1935). So, for example, whether a minor has capacity to receive a legacy is determined by the law of the testator's domicil at the time of death. *Boehm v. Rohlfs, 224 Iowa 226, 276 N.W. 105 (1937); Harding v. Schapiro, 120 Md. 541, 87 Atl. 951 (1913).* Similarly, whether a minor has capacity to transfer an interest in land is determined by the law of the state where the land is. *Beauchamp v. Bertig, 90 Ark. 351, 119 S.W. 75 (1909).*

Whether a married woman has capacity to acquire a domicil of choice is determined by the law of the forum. *Torlonia v. Torlonia, 108 Conn. 292, 142 Atl. 843 (1928).* Forum law should also determine whether a minor has such capacity.
Comment g: See 1 Beale, Conflict of Laws 217 (1935); Goodrich, Conflict of Laws 54 (Scoles, 4th ed. 1964).

Comment h: For cases holding that, in the absence of any indication of a contrary intention on the part of the appointing court, the child will be held domiciled in the state where he was sent by the guardian to live and make his home if this would be in the best interests of the child and was not made to achieve some selfish purpose of the guardian, see *Ricci v. Superior Court, 107 Cal.App. 395, 290 Pac. 517 (1930); In re Waite, 190 Iowa 182, 180 N.W. 159 (1920); In re Pratt, 219 Minn. 414, 18 N.W.2d 147 (1945); First Trust & Deposit Co. v. Goodrich, 3 N.Y.2d 410, 144 N.E.2d 396 (1957); In re Kiernan, 38 Misc. 394, 77 N.Y.Supp. 924 (Surr.Ct.1902); Wheeler v. Hollis, 19 Tex. 522 (1857).*

Statutes in a few States provide that the guardian of a child's person may not fix the latter's domicil outside of the State without the express permission of the appointing court. See, e. g., *Cal. Prob.Code § 1500* (1953); Okla. Stat.Ann. tit. 30, § 15 (1951); S. D.Code § 14.0510 (1939).

Some cases hold that the guardian may not fix the child's domicil outside of the state without the express permission of the appointing court. See *Daniel v. Hill, 52 Ala. 430 (1875); Woodward v. Woodward, 87 Tenn. 644, 11 S.W. 892 (1889);* cf. *Lamar v. Micou, 112 U.S. 452 (1884),* reh. den. *114 U.S. 218 (1885).*

See Goodrich, Conflict of Laws 58-59 (Scoles, 4th ed. 1964); Paulsen and Best, Appointment of a Guardian in the Conflict of Laws, 45 Iowa L.Rev. 212, 227-228 (1960); Annotation, *32 A.L.R.2d 863 (1952).*
Comment i: See *In re Huck, 435 Pa. 325, 257 A.2d 522 (1969)* (quoting first paragraph of this Comment. One parent dead and the other incompetent; domicil of children found to be with grandparent with whom they lived.) For cases supporting the view that under the circumstances dealt with in this Comment a child acquires a domicil at the home of a close relative, other than a grandparent, with whom he lives, see *Lehmer v. Hardy, 294 Fed. 407 (D.C. Cir. 1923)* (aunt); *Delaware, L. & W. R. Co. v. Petrowsky, 250 Fed. 554 (2d Cir. 1918)* (brother); *Loftin v. Carden, 203 Ala. 405, 83 So. 174 (1919)* (aunt); *Hughes v. Industrial Comm., 69 Ariz. 193, 211 P.2d 463 (1949)* (aunt); *In re Lancey's Guardianship, 232 Iowa 191, 2 N.W.2d 787 (1942)* (uncle); *Jansen v. Sorenson, 211 Iowa 354, 233 N.W. 717 (1930)* (aunt); *State ex rel. Brown v. Hamilton, 202 Mo. 377, 100 S.W. 609 (1907)* (aunt); cf. *In re Estate of Moore, 68 Wash.2d 792, 415 P.2d 653 (1966)* (child held not domiciled at home of person with whom he lived since latter did not stand in *loco parentis to* him).

For cases suggesting that under the circumstances dealt with here only a grandparent may affect the domicil of a minor child, see *Bjornquist v. Boston & A. R. Co., 250 Fed. 929 (1st Cir. 1918);* *Hiestand v. Kuns, 8 Blackf. (Ind.) 345 (1847);* Munday v. *Baldwin, 79* Ky. 121 (1880); *Greene v. Willis, 47 R.I. 375, 133 Atl. 651 (1926).*

REPORTER'S NOTES

Comment a: See *A. v. M., 74 N.J.Super. 104, 80 A.2d 541 (1962);* 1 Beale, Conflict of Laws 210-212 (1935); Goodrich, Conflict of Laws 53-54 (Scoles, 4th ed. 1964); Stumberg, Conflict of Laws 41 (3d ed. 1963).

For a case where an unemancipated minor working in another state was held to have the domicil of his father, see *Taylor v. State Farm Mut. Auto Ins. Co., 248 La. 246, 178 So.2d 238 (1965).*

Cross Reference

Digest System Key Numbers:

Domicile 1, 5

Restat 2d of Conflict of Laws, § 23

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 2- Domicil > Topic 3- Married Women, Infants, Incompetents

§ 23 Domicil of Person Mentally Deficient

(1) A person who is mentally deficient may acquire a domicil of choice if he has sufficient mental capacity to choose a home.

(2) Special rules are applied to determine the domicil of a person who lacks the requisite mental capacity.

COMMENTS & ILLUSTRATIONS

Comment:

a. The crucial question is whether the person has sufficient mental capacity to choose a home. That he may be incapable of managing his own affairs is not conclusive; nor is the fact that he has been adjudged incompetent and a guardian appointed over his person or property.

b. If a person after coming of age becomes mentally incapable of acquiring a domicil of choice and no legal guardian of his person is appointed, his domicil continues to be in the place where he had his domicil before he became incompetent. Except as stated in Comment c, a person, who is mentally incapable of acquiring a domicil of choice and for whose person no legal guardian has been appointed, does not acquire a new domicil in a place where he lives.

c. Incompetent living with parent. A person, who becomes mentally incapable of acquiring a domicil of choice before he comes of age and who continues to live with his parent, does not become emancipated upon arriving at majority. If no legal guardian of his person is appointed and if he continues to live with the parent, he has the domicil of the parent. If he does not continue to live with the parent, his domicil remains in the place in which he was domiciled at the time of his separation from the parent.

d. When committed to an institution. Presence in a place under physical or legal compulsion does not lead to the acquisition there of a domicil of choice (see § 17). An insane person does not acquire a domicil in an asylum upon his commitment, but if he voluntarily lives in such a place, being free to leave at will, he may acquire a domicil there if he is not mentally incapable of acquiring a domicil of choice.

e. When sanity regained. If a person, who was at one time mentally incapable of acquiring a domicil of choice, regains this capacity, he may, if he is of full age, thereafter acquire a domicil of choice notwithstanding the fact that a guardian of his person has been appointed.

f. Domicil of incompetent under guardianship. The domicil of an incompetent under guardianship, who lacks sufficient mental capacity to choose a home, involves essentially the same problems as those presented by a minor child under guardianship. The rules relating to the guardian's power to change the domicil of the ward are the same in both instances. Reference is made to § 22, Comment h for a fuller statement of these rules and of the policies underlying them.

No difficulty arises when the extent of the guardian's authority to shift the location of the incompetent's domicil may be determined from an inspection of the orders or decrees of the appointing court. In the absence of any evidence of the court's intention, the guardian will usually be held to have the authority to shift the location of the incompetent's domicil to a new location within the confines of the appointing state. Similar authority to move the incompetent to a new home and domicil in another state, and hence beyond the effective control of the original court, is not so easily inferred. Here the courts are divided. It will usually be held under these circumstances that the guardian was acting within his authority, and that the incompetent's domicil shifted to

another state if this shift of domicil would be in the best interests of the incompetent and was not made to achieve some selfish purpose of the guardian.

As to judicial jurisdiction to appoint a legal guardian of the person of an incompetent, see § 79.

REPORTER'S NOTES

See *In re Estate of Peck, 454 P.2d 772 (N.Mex.1969); In re Estate of Meyer, 290 N.Y.S.2d 731 (Surr.1969);* 1 Beale, Conflict of Laws 223-227 (1935); Goodrich, Conflict of Laws 59-60 (Scoles, 4th ed. 1964); Stumberg, Conflict of Laws 47-50 (3d ed. 1963); Annotation, *96 A.L.R.2d 1236 (1964).*

Comment f. A person under guardianship may nevertheless have sufficient mental capacity to acquire a domicil of choice. *In re Sherrill's Estate, 92 Ariz. 39, 373 P.2d 353 (1962); Matthews v. Matthews, 141 So.2d 799 (Fla. App.1962); Groseclose v. Rice, 366 P.2d 465 (Okla.1961).*

For cases holding that, in the absence of any indication of a contrary intention on the part of the appointing court, the incompetent will be held domiciled in the state where he was sent by the guardian to live and make his home if this shift in domicil would be in the best interests of the incompetent and was not made to achieve some selfish purpose of the guardian, see *Coppedge v. Clinton, 72 F.2d 531 (10th Cir. 1934); Grier v. Estate of Grier, 252 Minn. 143, 89 N.W.2d 398 (1958); Kuphal v. Kuphal, 177 Misc. 255, 29 N.Y.S.2d 868 (Surr.Ct.1941); Matter of Kassler, 173 Misc. 856, 19 N.Y.S.2d 266 (Sup.Ct.1940).* In any event, applicable statutory provisions must be complied with. *In re Estate of Phillips, 190 So.2d 15 (Fla.App.1966).*

For cases holding that the guardian may not fix the incompetent's domicil outside the state without the express permission of the appointing court, see *Foster v. Carlin, 200 F.2d 943 (4th Cir. 1952); Chew v. Nicholson, 281 Fed. 400 (D.Del.1922); Hayward v. Hayward, 65 Ind.App. 440, 115 N.E. 966, 116 N.E. 746 (1919); Commonwealth v. Kernochan, 129 Va. 405, 106 S.E. 367 (1921).*

See Goodrich, Conflict of Laws 59-60 (Scoles, 4th ed. 1964); Paulsen and Best, Appointment of a Guardian in the Conflict of Laws, 45 Iowa L.Rev. 212, 227-228 (1960).

Changes: The title to Topic 3 has been changed to reflect modern times and modern mores. In addition, this Topic encompasses only §§ 22 and 23, instead of §§ 21 through 23, as in the original version. Section 21 is now in Topic 2.