AMERICAN JURISPRUDENCE

SECOND EDITION

A MODERN COMPREHENSIVE TEXT STATEMENT OF AMERICAN LAW

STATE AND FEDERAL

COMPLETELY REVISED AND RE_WRITTEN IN THE LIGHT OF MODERN AUTHORITIES AND DEVELOPMENTS

Volume 25

DOMICIL to ELECTIONS § 202

2004

THOMSON WEST

For Customer Assistance Call 1-800-428-4880
I. IN GENERAL DEFINITIONS

A. DOMICIL

Research References

Text References
Restatement Second, Conflict of Laws §§ 11(b), 13, 1411, 15, 20

West's Digest References
Domestication

Annotation References
A.L.R. Digest: Conflict of Laws § 2:3; Domicile §§ 1 to 5

A.L.R. Index: Domicile and Residence

Forms References
Am. Jur. Pleading and Practice Forms. Domicile §§ 14, 15

Trial Strategy References
Proof of Personal Jurisdiction in the Internet Age, 59 Am. Jur. Proof of Facts 3d 1
Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 3d 565

1. In General

§ 1 Generally; definition

Research References

West's Key Number Digest, Domicile 39276

Objection to probate of will—Ground—No jurisdiction to probate will—Deceased not domiciled in state, 39 Am. Jur. Pleading and Practice Forms. Domicile § 14

Answer, demurrer, or plea in abatement—Personal jurisdiction lacking—No domicile, 39 Am. Jur. Pleading and Practice Forms. Domicile § 15

Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 3d 565

Derived from the Latin "domus," meaning dwelling house or home, the word "domicile" refers to the place where an individual has a true, fixed, and permanent home, to which he or she intends to return whenever he or she is absent.

[Section 1]


A domicile is a person's principal domestic establishment, as contrasted to a business establishment. McCrery v. Bel, 197 So. 2d 700 (La. Ct. App. 1st Cir. 2000).

As to the definitiveness of "home," see § 10.


8
Donjek is a relationship that the law creates between an individual and a particular locality or country. It may or may not be synonymous with...
residence. For purposes of diversity jurisdiction, domiciliary may be coextensive with citizenship, but one's domiciliary and national citizenship may differ in other contexts. Where a court must determine domiciliary in order to apply a federal statute, the term is defined with reference to congressional intent.\footnote{As to diversity jurisdiction, generally, see Am. Jur. 2d, Federal Courts §§425 to 470, 708 to 1034.}

\ftext{Rodriguez-Diaz v. Sierra-Martinez, 853 F.2d 1077 (1st Cir. 1988).}

\ftext{Guerra v. Angelus, 335 Md. 471, 644 A.2d 498 (1994).}

The term "citizen" used in the definition of "domiciliary" is not synonymous with citizenship of the United States. Salvatierra v. Calderon, 336 So. 2d 149 (La. Ct. App. 1st Cir. 2002).

As to the definition of "citizenship," see § 3.


As to choice of law principles, see § 2.

As to 25 U.S.C.A. § 1911(a) dealing with the Indian tribal court's jurisdiction over a child residing or domiciled within the reservation of the tribe, see Am. Jur. 2d, Indians § 145.


As to the residence requirement, see § 14.

\ftext{In re Petition of Brooks, 155 Ohio App. 3d 384, 2003 Ohio-6520, 831 N.E.2d 314 (3d Dist. Miami Ceover 2003).}

\ftext{Domiciliary requires both physical presence in a place and the intent to make that place one's home. Valerie v. Hospital Bella Vista, 354 F.3d 258 (1st Cir. 2001).}

\ftext{Section 2}


\ftext{Every person has a domiciliary at all times. Restatement Second, Conflict of Laws § 112(2).}
domicil at any one time, even if a person may have one or several actual physical residences.

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 in his principal home.

§ 3 Law governing determination

Research References

Generally, the question of domicil is to be determined by the law of the forum state, including choice-of-law principles.

Federal common law controls the determination of domicil for purposes of purported diversity jurisdiction. While useful, choice-of-law principles developed in a forum state will not determine the outcome.

When a court must determine domicil in order to apply a federal statute, the term is defined with reference to congressional intent. In the absence of a congressional definition, federal courts may draw on general principles of state law in order to determine the applicable law, if those principles are consistent with the policy of the statute in question.


Although one may be legally domiciled in different places for different legal purposes, a person is deemed to have only a single domicile for the peculiar legal purpose for which the concept is being used. Wit v. Herman, 396 F.3d 1256 (11th Cir. 2005); cert. denied, 548 U.S. 929, 126 S. Ct. 1574, 161 L. Ed. 2d 313 (2006).

No person has more than one domicil at a time. Restatement Second, Conflict of Laws § 1132.


A person may legally reside in more than one state while being legally domiciled in only one state. Brown v. Department of State Revenue, 725 S.E.2d 1023 (Va. Tax Ct. 2006).

As to the definition of residence, see § 8. Restatement Second, Conflict of Laws § 20.

[Sections 2]


In applying its rules of Conflict of Laws, the forum determines domicile according to its own standards. Restatement Second, Conflict of Laws § 12.

Maxx v. Wells Fargo & Co., Ltd., 704 F.2d 1088 (9th Cir. 1983).


Rodriguez-Diaz v. Sierra-Martinez, 853 F.2d 1007 (1st Cir. 1988).

2. Types of Domicile

§ 4

Generally

Research References
Wests Key Number Digest, Domicile 44:1
Mens rea establishment of domicile in foreign jurisdiction, 4 Am. Jur. Proof of Facts 2d 596

The three general types of domicile are domicile of origin, domicile of choice, and domicile by operation of law. Depending upon the laws to be construed or the question involved, domicile may also be classified as domestic or foreign, national, state, county, or municipal.

§ 5 —Domicil of origin

Research References
Wests Key Number Digest, Domicile 44:1
Proof of Personal Jurisdiction in the Internet Age, 59 Am. Jur. Proof of Facts 2d 1

A "domicile of origin" is acquired by every person at birth and continues until replaced by the acquisition of another domicile. It is the domicile of the child's parents or of the person upon whom the child is legally dependent at birth.


As to 25 U.S.C.A. § 1911(a) dealing with an Indian tribe court's jurisdiction over a child custody proceeding involving an Indian child residing or domiciled within the reservation of the tribe, see Am. Jur. 2d, Indiana § 145.

[Section 4]

1. As to domicile of origin, generally, see § 6.
2. As to domicile of choice, generally, see § 6.

As to domicile by operation of law, generally, see § 7.


[Section 5]


As to the domicile of infant, generally, see § 40.

The domicile of origin is the domicile which a person has at birth. Restatement Second, Conflict of Laws § 141.


§ 6 — Domicil of choice

Research References

Wax v. New Number Dignat, Domicile 194

A domicil of choice is a domicil chosen by a person to replace his or her former domicil.1

- Observation: The choice involves an exercise of free will and presumes the legal capacity to make a choice.2

Domicil of choice, generally, consists of a bodily presence in a particular locality and a concurrent intent to remain there permanently or at least indefinitely.3

- Caution: While intention is a principal feature of domicil of choice, a mere intention without the fact of actual presence in the locality cannot bring about acquisition of a new domicil.4

If there is a concurrence of the fact of physical presence at the particular place and the existence of the required attitude of mind, in addition to the requisite legal capacity, a change of domicil takes place.5

§ 7 — Domicil by operation of law

Research References

Wax v. Key Number Dignat, Domicile 495

A domicil by operation of law is a domicil that the law attributes to a person by operation of law.6

As to the capacity of particular persons to acquire domicil, see §§ 27 to 40.


414 Restatement Second, Conflict of Laws § 15(c).

5
person independently of the person's residence or intention. It applies to infants, incompetents, and other persons under disabilities that prevent them from acquiring a domicil of choice. 4

B. OTHER CONCEPTS

Statutory References
U.S.C.A. § 1603(a)(3)

Research References

Text References
Restatement Second, Conflict of Laws §§ 12

West's Digest References
Domicile 3d at 3

Annotation References
A.L.R. Digest: Conflict of Laws § 2, Domicile §§ 1 to 5
A.L.R. Index: Domicile and Residence

Trial Strategy References
Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 2d 595

§ 8 Residence; definition and distinctions, generally

Research References
West's Key Number Digest, Domicile 92
Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 2d 595

As distinguished from a fixed habitation, "residence" generally refers to an attachment to a place that is temporary, impermanent, or transient. The term "residence" imports having merely an abode at a particular place, which may be one of several places where one is physically present from time to time. On the other hand, it has sometimes been stated that a "residence"

[Section 8]
1Atlantic Cas. and Sur. Co. v. Williams, 622 So. 2d 1000 (Miss. 1993); Huffman v. Huffman, 232 Neb. 742, 441 N.W.2d 899 (1989).

"Domicile" means a permanent place of abode, whereas "residence" is not necessarily permanent and may be at some place other than the place of domicile. Wright v. Goss, 225 Ga. App. 393, 474 S.E.2d 23 (1997).


Generally, residence is the result of or achieved by a person's physical presence and living at a location and does not require an intention to stay permanently at the location.
is a person’s fixed place of habitation, from which the person has no present intention of moving. 6

Residence may or may not be synonymous with domicile. 7 A “chimneelike” concept, it has been said that residence is something more than a mere physical presence8 and something less than domicile. 9 It has been stated, in distinguishing between domicil and residence, that domicil involves the intent of an individual, while residence is a matter of objective fact. 10

Federal immigration law defines “residence” as the place of general abode, which is a person’s principal, actual dwelling place without regard to intent. 11

§ 9 — Legal residence; actual residence

Research References
West’s Key Number Digest, Domicile &2

The law sometimes equates “legal residence” with domicile, 12 while using “actual residence” to refer to one’s present physical location. 13

§ 10 Home

Research References
West’s Key Number Digest, Domicile &3

“Home” is the place where a person dwells and which is the center of his domestic, social, and civil life. 14


§ 1.


As to absences, see § 11.

Section 9.


A person may have several temporary locational residences, but can have only one legal residence, and legal residence or “domicile” is the place where a person has a fixed abode with the present intention of making it his or her permanent home. Krewhis v. Carter, 659 So. 2d 263 (Fla. Dist. Ct. App. 5th Dist. 1995).


A person may have an actual residence in one place and a legal residence in another, and a person may have several actual residences, but a person may have only one legal residence or domicile. Williams v. Clark County Dist. Attorney, 118 Nev. 473, 50 P.3d 536 (2002), as corrected, July 26, 2002.

See Canon 16.

Restatement, Second, Conflict of Laws § 12.

15
Although sometimes used synonymously, one may abandon a home, or move to other quarters after a home is destroyed, without changing domicil.

§ 11 Abode

Research References
West's Key Number Digest, Domicile 101

Construction of phrases "usual place of abode," or similar terms referring to abode, residence, or domicil, as used in statutes relating to service of process, 22 A.L.R. 3d 112

While some authority construes the term "abode" as synonymous with "domicil," it has also been said that abode generally differs from domicil.

Under this view, "abode" is a more restricted term that denotes a place where a person actually lives. With respect to occupancy, it is less permanent than domicil.

While permitted to have only one domicil, a person may have several abodes.

§ 12 Citizenship

Research References
West's Key Number Digest, Domicile 110

When used to refer to a person's relationship to one of the states of the United States, "citizenship" is generally synonymous with domicil, whether for the purpose of determining jurisdiction of a federal court, for the purpose

[Section 11]

[Section 12]

[Section 11]

[Section 12]
§ 13 Inhabitsancy or habitation

Research References
West's Key Number Digest, Domicile 4-1

"Inhabitancy" is equivalent to "domicil," unless that meaning is inconsistent with legislative intent. The term "habitation" signifies an abode for the moment and is merely a component of the concept of domicil. II. ACQUISITION AND ESTATEMENT OF DOMICIL, IN GENERAL

Research References
Restatement Second, Conflict of Laws §§ 18, 19
West's Digest References
Domicile 4-4

Assistance References
A.L.R., Digest: Domicile §§ 1, 2, 4, 21
A.L.R., Index: Domicile and Residence

§ 14 Generally; physical presence or residence; intention

Research References
West's Key Number Digest, Domicile 4-4

Generally, one must be physically present or actually reside in a place in


As to aliens and citizens, generally, see Am. Jur. 2d, Aliens and Citizens.


Sonoda v. State, 133 Miss. 107, 97 So. 534 (1923) involving the classification of property subject to an inheritance tax.


Garcia v. Angulo, 335 Md. 475, 644 A.2d 498 (1994); In re Blaujoard's Estate, 176 Misc. 796, 29 N.Y.S.2d 109 (Sup. Ct. 1941), as to special factors in determining the domiciliary status of aliens, see § 51.

[Section 13]

[Notes]

As to the definition of "domicil," see § 1.

17
Order to acquire a "domicil of choice" there. In this regard, in order to acquire a domicile by choice, these essentials must concur: (1) residence (bodily presence) in the new locality; and (2) an intention there to remain. In other words, there must be a concurrence of the fact and the intent. So long as the residence is actual, the character of the living quarters is immaterial, and even quarters that are normally temporary will qualify. Thus, the dwelling may be a temporary shack, a rented house, a boarding house, a hotel, or the house of a relative or friend.

*Observation:* Domicil may be fixed upon a presence within the state and the requisite intent to make a home there, even if the person has selected no particular locality in the state as a home.

### § 15 Duration of residence

**Research References**
West's Key Number Digest, Domicile 434

(Section 14)


As to the definition of "domicil of choice," see § 6.


The concept of domicile involves the concurrence of physical presence in a particular place with the intention to make that place one's home, and that the acquisition of a new domicile is generally understood to require an actual change of residence accompanied by the intention to remain either permanently or for an indefinite time without any fixed or certain purpose to return to the former place of abode. In re Glassford's Estate, 114 Cal. App. 2d 181, 249 P.2d 908, 34 A.L.R.2d 1239 (2d Dist. 1952).

3. Domicile is established when there is a good-faith intention to establish a particular residence as a permanent home, coupled with the physical moves to the new residence, as evidenced by positive, overt acts. Weiber v. Weiber, 861 So. 2d 472 (Fla. Dist. Ct. App. 5th Dist. 2003).

In order to establish domicile, a person must have an actual place of abode in the state with the intention in good faith to live there permanently and without any present intention of changing the home in the future. Dillen v. Clark, 764 A.2d 727 (R.I. 2001).

Domicile is obtained only through a person's physical presence accompanied by the present intention to remain indefinitely at a location or site or by the present intention to make a location or site the person's permanent or fixed home. Huffman v. Huffman, 232 Neb. 742, 441 N.W.2d 899 (1989). As to change of domicile, generally, see §§ 17, 18.


The establishment of a home in a particular dwelling is not necessary for the acquisition of such a domicile. Restatement Second, Conflict of Laws § 16.


10. In re Morby's Estate, 212 Wis. 79, 74 N.W.2d 523 (1950).

As long as a physical presence in the locality and an intention to acquire a domicil there occur concurrently, the length of residence is not a factor in the establishment of domicil. 3 No definite period of time is necessary to create a domicil, 3 unless the law of the jurisdiction provides otherwise. 3 Any period of residence, however short, will suffice when coupled with intent; 3 an individual need only be present for a moment. 3 Furthermore, the habitation need not be continuous or uninterrupted, since temporary absences do not affect domicil. 3 A domicil once established continues until it is superseded by a new domicil. 3

III. ABANDONMENT OR CHANGE OF DOMICIL

A. ABANDONMENT OF DOMICIL

Research References

West's Digest References

Domicile 804

Annotation References

A.L.R. Digest: Domicile § 14
A.L.R. Index: Domicile and Residence

§ 16 Generally

Research References

West's Key Number Digest, Domicile 804

In order to abandon a domicil, a person must choose a new domicil, actually reside in the place chosen, and intend that it be his or her principal and

[Section 16]


As to the requirement that physical presence and intention be concurrent, see § 17.

As to the intended duration of abode, see § 20.

As to required length of residence for jurisdiction in a divorce action, see Am. Jur. 2d, Divorce and Separation § 203, 204.


2As to Eaton's Will, 186 Wis. 124, 207 N.W. 309 (1926).

In the absence of any constitutional or statutory requirement in regard to domicil, the length of the residence is immaterial provided the other elements are found to exist. Delinea v. Clark, 764 A.2d 727 (R.I. 2001).


Domicil can be changed quickly, if the requisite intent is present. Larew v. Larrew, 742 So. 2d 1036 (La. Ct. App. 2d Cir. 1999), writ denied, 752 So. 2d 167 (La. 1999).


§ 24.

Restatement Second, Conflict of Laws § 19.
permanent residence. An intention to abandon an established domicile and the actual abandonment of it are necessary but not sufficient for the acquisition of a new domicile. An existing domicile cannot be lost by abandonment alone, even if there is an intent to acquire a new one; the existing domicile continues until a new one is in fact gained. B. CHANGE OF DOMICIL

Research References

Text References
Restatement Second, Conflict of Laws § 18

West's Digest References
Domicile C-44

Annotation References
A.L.R. Digest: Domicile §§ 14 to 21
A.L.R. Index: Domicile and Residency

Forms References
Am. Jur. Pleading and Practice Forms, Domicile § 13

Trial Strategy References
Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 2d 595

1. In General

§ 17 Generally

Research References
West's Key Number Digest, Domicile C-44
Change of domicile as affecting character of property previously acquired as separate or community property, 14 A.L.R. 3d 404
Acquisition of domicile by sending wife or family to new home, 31 A.L.R. 2d 775
Complaint, petition, or declaration—Allegations—Defendants' change of domicile after accrual of cause of action Am. Jur. Pleading and Practice Forms, Domicile § 12

An adult may change his or her domicile at will. To effectuate a change in domicile, the law requires that both residency and

[Section 16]

3As to the intention to abandon a domicile, see § 19.

[Section 17]

3Bank One, Texa., N.A. v. Mistle, 964
the intent to sustain that residency ceased. No change of domicil will result in the absence of one of these elements. Thus, an intention to acquire a domicil without actual residence in the locality does not result in the acquisition of domicil, nor does the fact of physical presence without an intention to acquire a domicil result in domicil.

While a very short period of residence in a place may establish a domicil, mere residence, regardless of how prolonged, is insufficient without an intention to make the place a permanent residence or home. The intent need not, however, develop at the same time as the physical move to a new location. A subsequent concurrence of physical presence and an intent to adopt the locality as a domicil is sufficient.

* Observation: Following the change of a domicil, when the new domicil is established, it persists until another is legally acquired.

§ 19 Preliminary steps toward relocation

Research References

West's Key Number Digest, Domicil 614

Acquisition of domicil by sending wife or family to new home, 31 A.L.R. 2d 775

Because one must be physically present in a place in order to acquire a domicil there, some courts hold that preliminary steps of a move do not

---


As to intent as effecting change of domicil, generally, see §§ 19 to 22.


To effect a change of one's legal domicil, two things are indispensable: residence in a new domicil and the intention to remain there. Lewandos v. Fortuna, 177 P.3d 945 (2d Cir. 1998).

For a change of domicil to occur, the fact of physical presence at a dwelling place and the intention to make it a home must occur. Karpf v. Transactor Systems, 114 Idaho 559, 739 P.2d 60 (1987).


Absence of either of (1) residence (bodily presence) in the new locality, and (2) an intention there to remain, thwarts the change in domicil. Huffman v. Huffman, 282 Neb. 742, 442 N.W.2d 899 (1990).


Plaintiff's domicil would not change from Florida to Connecticut as result of his formation of an unimplemented intent to move to Connecticut; domicil would not change until plaintiff was also physically present in Connecticut. Leonard v. Fortuna, 157 P.3d 945 (2d Cir. 1998).

As to physical presence required to establish a domicil of choice, see §§ 14.


As to the intention required to establish a domicil of choice, see §§ 19 to 23.

§ 10.


[Section 18]

§ 14.
alone establish a change of domicil. Some courts, however, have reached a contrary result. 5

2. Intent to Change Domicil

§ 19 Nature of intention

Research References

West's Key Number Digest, Domicile 4(2)

A change in domicile depends, in large part, on whether or not the person intends to make the new place a legal residence and thereby acquire a new domicile to the exclusion of the previous domicile. The person seeking to establish a new domicile must intend not simply to acquire the legal status of a domiciliary in the new jurisdiction but must intend to make the new place a home in fact. 2

* Observation: Generally, it is the intention at the time of arrival at the new residence which is important. The fact that one later acquires doubts about remaining in the new home or is called upon to leave it is not relevant, unless the subsequent doubt or the circumstances of leaving indicate that no intention to make a domicile in the place ever existed. 3

The intent to change one’s domicile must include an intention to abandon the former domicile permanently or indefinitely. 4 If a person establishes a new dwelling place but retains an intention to return to the old dwelling

9The essential fact that raises a change of abode is a change of domicile is the absence of any intention to live elsewhere. Williams v. Oventon, 229 U.S. 619, 33 S. Ct. 442, 58 L. Ed. 738 (1914).
10Keating v. Commissioner of Revenue, 488 N.W.2d 548 (Minn. 1991).

A nonresident, unaided mother's visits to Florida during an "on-off" relationship with her child's father were insufficient to prove a settled intention to make Florida her permanent home, even if Florida lacked personal jurisdiction over the mother with respect to a paternity and custody proceeding brought by the other Keating, 399 N.W.2d 872 (N.D. 1987); Godino v. Cleanthus, 183 Vt. 237, 665 A.2d 993 (1995).

Physical presence in a new location does not defeat the presumption of continuing domicile unless an intent to abandon a former domicile in favor of a new one is also proven. In re Ormsby, 804 A.2d 1077 (D.C. 2002).

20 As to the abandonment of domicile, generally, see § 16
place as his or her only home, the domicile remains at the old dwelling place. There must be both an intent to remain in the place chosen as the new domicile and an absence of an intent to return to the old domicile.

The intention to remain in the new place must be accompanied by an act demonstrating the intention. In addition, the intention must be objectively reasonable.

§ 20 Intended duration of residence

Research References

West's Key Number Digest, Domicile 99A3(D)

When a person lives in a particular location, in the sense that he or she merely subsists there for a while, the person has not necessarily established a domicile there. The intent necessary to establish domicile is an intent to remain in one's new place of residence, either permanently or for an indefinite period of time.

- Observation: The person need not intend to remain for all time, and an intention to remain for an indefinite period suffices.

The element of permanency should not be arbitrarily measured by any mere yardstick of time, but rather by the actor's intent as reflected by the nature and purpose of his or her conduct.

§ 21 Conditional intention

Research References

West's Key Number Digest, Domicile 99A3(D)

For domiciliary purposes, the intention to make a new home must be unqualified and not conditioned on the happening of a future event.

---

*Markovy v. Commissioner of Revenue, 468 N.W.2d 548 (Minn. 1991); King v. Bruce, 145 Tex. 647, 201 S.W.2d 403, 171 A.L.R. 1328 (1947).
*Markovy v. Commissioner of Revenue, 468 N.W.2d 548 (Minn. 1991).

[Section 39]


As to the effect of a "hearing intention" to return to a former domicile, see § 22.


To acquire a domicile of choice in a place, a person must intend to make that place his home for the time at least. Restatement Sec. 2, Comment B at § 18.

*Hughes v. Luckey, 233 Minn. 267, 46 N.W.2d 497 (1951).

[Section 21]

*Jones v. State ex rel. McFarland, 207
Observation: If one leaves to seek employment and intends to change his or her residence only after finding employment, there is no loss of domicile. Moreover, employment at a particular place does not bring about a change of domicile, if the intention to remain at that place is contingent upon the permanency of the employment.

§ 22 “Floating” Intention

Research References

West’s Key Number Digest, Domicile 944-23.

The intention to return at some indefinite, future time to a former place of abode, commonly called a “floating intention,” does not destroy present domicile. If a person has actually moved to a new abode, with the intention of remaining there for an indefinite time and establishing it as a place of fixed present domicile, that place is to be deemed the person’s domicile, notwithstanding the he or she may entertain a floating intention to return to his or her former domicile at some future time.

§ 23 Effect of motive

Research References

West’s Key Number Digest, Domicile 944-23.


Given an intention to change domicile, the motive of the person purporting to change his or her domicile is immaterial. Thus, a change of residence motivated by self-interest does not prevent a change of domicile. In particular, a change in domicile is not affected by the fact that the change is designed to—

— defeat the exercise of federal diversity jurisdiction or create diver-


2Marbury v. Commissioneer of Revenue, 468 N.W.2d 545 (Minn. 1991).


As to the weight of evidence of the location of a business or occupation, see § 46.

Section 231


[Section 231]


[Blank v. Texas, N.A. v. Montie, 964 F.2d 48 (1st Cir. 1992).]
sity jurisdiction, 4.
— secure lower taxes, 5.
— take advantage of less stringent divorce laws, 6.
— have one's will proven and estate settled in one county rather than another, 7.
— carry on an adulterous relationship, 8.
— take advantage of in-state tuition rates, 9.

3. Removal and Absence as Change of Domicile

§ 24 Generally

Research References

West's Key Number Digest, Domicile 6.04-4.1

A person's domicile in a state does not depend on a continuous presence in the state and is not dissolved by mere absence from the state. 1 One does not lose one's domicile by mere physical presence elsewhere, unless that presence is accompanied by an intention to abandon the old residence and adopt the new. 2

❖ Caution: If intended as a permanent abandonment, the shortest absence can be an abandonment of domicile, even if the person promptly changes his or her intention. 3

§ 25 Temporary absence

Research References

West's Key Number Digest, Domicile 6.04-4.1

Nature and duration of one's business or calling as element in determining domicile by divorce cases, 38 A.L.R. 5d 756

Nonestablishment of domicile in foreign jurisdiction, 4 Am. Jur, Proof of Facts 3d 596

A person does not abandon his or her established domicile by leaving it for a


1 Wicker v. Wicker, 223 Ark. 879, 269 S.W.2d 311 (1954); Slater v. Munroe, 313 Mass. 528, 48 N.E.2d 149 (1943); State v. Reid, 152 Mo. 237, 271 S.W. 556, 39 A.L.R. 1199 (1925); DeBuss v. Clark, 284 Ill. 704 A.5d 727 (R.I. 1941).


3 In re Newcomb's Estate, 102 N.J. 238, 8 N.E.2d 950 (1928).


7 As to domicile as affected by residence in a foreign country, see § 51.


9 Removal from one's domiciliary jurisdiction without the intent to change one's domicile is insufficient. Welker v. Welker, 661 So. 2d 472 (Fla Dist. Ct. App. 5th Dist. 2003).

period, if he or she genuinely intends to return and not to acquire a domicile elsewhere. If domicile has once existed, mere temporary absence will not destroy it, however long it continued. Thus, a temporary relocation away from one's established domicile does not result in a change of domicile without proof of intent to establish domicile elsewhere.

§ 26 Removal for health reasons

Research References

West's Key Number Digest, Domicile $94(1)

A change of residence in order to benefit one's health does not usually change one's domicile. Such a change is less than a change of domicile, even though the actual time spent in the new residence may be long and even though the person is aware that his or her illness will prevent a return to the domicile.

IV. DOMICIL OF PARTICULAR TYPES OF PERSONS; PERSONS IN PARTICULAR PLACES OR CIRCUMSTANCES

A. PARTICULAR TYPES OF PERSONS

Research References

Test References

Restatement Second, Conflict of Laws §§ 17, 21, 22

West's Digest References

Domicile $5, 7.1

[Section 53]


A temporary removal or absence from one domicile with an intent to return there will not suffice to establish a new domicile. Kemper v. Kemper, 607 So. 2d 711 (Fla. Dist. Ct. App. 5th Dist. 2000).

If a person temporarily leaves a legal domicile or leaves for a particular purpose, and does not take up a permanent residence somewhere else, then that person's legal domicile has not changed. Williams v. Clark County Dist. Attorney, 118 Nev. 473, 56 P.3d 536 (2002), as corrected, (July 26, 2002).

[Section 26]


Residence in a nursing home in another parish is not some sufficient to change domicile. Puqua v. Puqua, 311 So. 2d 568 (La. Ct. App. 3d Cir. 1975).


§ 27 Persons in transit

Research References
West's Key Number Digest, Domestics §§ 21-3

Since a domiciliary, once established, continues until a new one is acquired by a change of intent and physical presence, a person who is in transit to a new domiciliary retains his or her old domiciliary until the new one is reached. This rule applies to changes from one country to another, from one state to another, and from one county or town to another county or town in the same state. However, there is also contrary authority.

§ 28 Soldiers and other military personnel

Research References
West's Key Number Digest, Domestics §§ 37-57

[Section 27]

§ 17.


5Sahnen v. Superior Court is in and for Los Angeles County, 32 Cal. 2d 753, 197 P.2d 739 (1948) (disapproved on other grounds by, Robinson v. Superior Court in and for Los Angeles County, 35 Cal. 2d 379, 218 P.2d 19 (1950)).


6In re Estate of Galade, 299 S.D. 21, 389 N.W.2d 331 (S.D. 1989) (a former wife tolerated to make South Dakota the permanent home of her and her children, and that a child was domiciled in South Dakota at the time of her death, where: (1) the wife had been awarded legal custody of the child in the divorce; (2) the wife and children had vacated their home in Maryland and were en route to a new home in South Dakota at the time of the child’s death; and (3) the wife had all of the family’s belongings shipped to South Dakota and had obtained employment and a place to live there).
Generally, an adult does not gain or lose a domiciliary residence by serving in the military. If the intention is to change domicile, a person does not acquire a new domicile by entering the military and does not abandon or lose the domicile that he or she had upon entering. Moreover, an original posting to a location does not sever the soldier's previous domiciliary status. However, military personnel may acquire a new domicile where stationed, if the circumstances show an intent to abandon the original domicile and adopt the new one. Like a civilian, a soldier can acquire a new domicile by the concurrent elements of physical presence and the intent to become domiciled at the place of military service.

Caution: Contrary authority has held that a person in the armed forces cannot acquire a domicile of choice by being present under the legal compulsion of military orders, because such a presence does not signify the person's intent to acquire a new domicile.

If a soldier buys off-base housing does not, in itself, prove the required intent to acquire a domicile. Matters properly taken into consideration in determining whether a soldier stationed within a state has established a residence include whether he or she:
- established actual living quarters there
- brought any family there
- accumulated any of the indicia of some degree of permanency, such as bank accounts, telephone listings, charge accounts, and the like

[Section 28]

[Notes]


2 As to jurisdiction in diverse suits involving persons in military or naval service, see Am. Jur. 2d, Diversity and Separation §§ 215 to 217.


A soldier does not acquire a new domicile merely by being stationed at a particular place in the line of duty; rather, a soldier's domicile remains the same as when he or she entered the service, unless proof of clear and unequivocal intention to change domicile is shown. Turell, as C. v. Bottomly, 46 S.W.3d 859 (Tex. 2000).


A member of the military may abandon his or her former domicile and establish a new domicile by meeting the statutory requirements that apply to any other citizen. Mulolland v. Mulolland, 270 (La. 1936, 622 S.E.2d 177 (2002)).

As to the concurrent elements of presence and intent, generally, see § 17.


9 In re Marriage of Thornton, 135 Cal. App. 3d 500, 185 Cal. Rptr. 388 (5th Dist. 1982).
§ 29 Inmates; probationers

Research References

World Key Number Digest, Domicile 332

Since the location of domicil is voluntary, a forcible change in one's state of residence does not affect one's domicil. Thus, a prisoner's domicil ordinarily remains what it was before his or her imprisonment and does not change to the location of his or her confinement.

However, the presumption that an inmate retains the domicil possessed at the time of entry into the institution is rebuttable, and an inmate is capable of electing to make the place of incarceration his or her new domicil. By seeking release in a particular state different from the state of his or her initial incarceration and by persuading the authorities to transfer him or her there, a prisoner would manifest both physical presence and an intent to remain in the new domicilary state when released. Moreover, the degree of attachment between the inmate and the institution may give rise to resident status by operation of law, particularly if there are no other forums with a similar degree of interest.

A person placed on probation following the conviction of a crime has the ability to acquire a new residence.

§ 30 Exiles and fugitives

Research References

World Key Number Digest, Domicile 332

*Peng v. District Court of Third Judicial Dist. in and For Salt Lake County, 4 Utah 2d 147, 299 P.2d 331, 53 A.L.R.2d 1159 (1965).

[Section 29]

*Sullivan v. Freeman, 944 F.2d 334 (9th Cir. 1991).

A person does not usually acquire a domicil of choice by his presence in a place under physical or legal compulsion. Restatement, Conflict of Laws § 17.


Given that a person's domicil reflects his or her choice of abode, when an individual is imprisoned and loses the power to decide where he or she will live, the individual does not lose his or her former domicil as a result of the involuntary incarceration. Bolton v. Krantz, 54 Mass. App. Ct. 193, 764 N.E.2d 827 (2002).

*Sullivan v. Freeman, 944 F.2d 334 (7th Cir. 1991).


*Sullivan v. Freeman, 944 F.2d 334 (7th Cir. 1991).


As to operation of law, see § 7.

*Marion County v. Milwaukee County, 272 Wis. 541, 79 N.W.2d 533 (1956).
§ 30

Since a change of domicile must be voluntary and free from compulsion or restraint, refugees and asylum seekers do not necessarily act with the voluntariness needed to establish domicile. However, such persons retain the ability to demonstrate voluntary intent and may acquire a new domicile in the place where they have sought refuge. A fugitive from justice may establish domicile in the jurisdiction where he or she is hiding.

§ 31 Government employees

Research References

Nature and location of one's business or calling as element in determining domicile in diverse cases, 35 A.L.R. 776.

A change of residence occasioned by the duties of public office or civil service employment does not cause a change of domicile, in the absence of a concurrent intention to abandon the old domicile and acquire a new one. That is, one who resides at a place in order to fulfill public duties does not, by that fact alone, acquire a new domicile or lose the domicile that he or she had before undertaking such duties. No distinction is made in this respect between elected and appointed officers. Thus, ambassadors, ministers, and consular officers generally do not gain or lose a domicile by their employment or duties. The rule also applies to federal officeholders and employees in the District of Columbia.

Whether a public officer or employee has changed his or her domicile must be determined from all the circumstances indicative of intent and in accordance with the general principles of the law of domicile. The nature of the

[Section 30]


As to the effect of motive, see § 23.

[Section 31]

Richards v. Richardson, 236 Ala. 423, 83 So. 364 (1920).


Raymond v. Loebman, 243 Pa. 64, 89 A. 791 (1914).


In order to retain his former domicile, one who moves to the District of Columbia to enter governmental service must always have a fixed and definite intent to return to his former place of abode when separated from the service. A mere sentimental attachment to his former place of domicile or readiness to go back where one came from is not enough. District of Columbia v. Murphy, 314 U.S. 441, 62 S. Ct. 303, 86 L. Ed. 329 (1942).

particular office or employment is a significant, but not conclusive, factor.

§ 32 Students

Research References

Wheat’s Key Number Digest, Domicile 862

Residence of students for voting purposes, 44 A.L.R. 34797

In general, a student who attends a school with the intention of remaining there only as a student and until the course of education is completed does not acquire a domicil there. The rule applies to both adults and minors. An adult student or an emancipated minor may acquire a domicil at the place where his or her school is situated, if the student intends to make the place a permanent home and has no intention of resuming the former domicil.

§ 33 Teachers

Research References

Wheat’s Key Number Digest, Domicile 862

Residence of students for voting purposes, 44 A.L.R. 34797

A teacher may acquire domicil in the town where he or she teaches, even if the intention to make the place a home is subject to the possibility that the teacher may later find a better position elsewhere or fail to retain his or her employment in that town. However, a teacher does not change his or her domicil so long as he or she retains the domicil of origin.

§ 34 Clergy

Research References

Wheat’s Key Number Digest, Domicile 862

The mere contingency that members of the clergy may be reassigned to new duties or parishes does not prevent the acquisition of domicil in the


[Section 32]


5As to the residence of students for voting purposes, see Am. Jur. 2d, Elections § 108.


[Section 23]

8Dodd v. Lecce, 210 Iowa 513, 211 N.W. 422 (1928) (where the teacher’s contract for teaching was limited to a school term of nine months only); Hildl v. Jones, 31 N.M. 720, 155 P. 490 (1916).

9Bartman v. Thomas, 300 Ky. 156, 197 S.W.2d 53 (1946).
places to which they are assigned.

§ 35 Persons engaged in itinerant occupations

Research References
West's Key Number Digest, Domestic & Int.
Nature and location of one's business or calling as element in determining domicile in divorce cases, 36 A.L.R. 2d 756

Typically, the domicile of one engaged in an occupation or trade that requires nearly constant travel is the domicile of choice at the time of entry into the occupation or trade. Despite absences for business purposes, the domicile is presumed to continue in the same domicile as established by concurrent physical presence and an intention to remain in a new location.

§ 36 Married persons

Research References
West's Key Number Digest, Domestic & Int.
Complaint, petition, or declaration—Allegation—Domicile of spouse for divorce purposes. Am. Jur. Pleading and Practice Forms, Domestic § 11

A man and wife are presumed to have the same domicile, and this presumption flows in favor of both parties. However, the common-law rule that a married woman lost her own domicile and acquired her husband's domicile by operation of law has been abandoned. The rules for the acquisition of a domicile of choice are the same for both married and unmarried persons.

One spouse's domicile is not determinative of the other spouse's domicile, and each spouse may establish his or her domicile as he or she chooses. Separate domiciles may be established by agreement or by any other justifiable means.

[Section 26]
[Section 55]

As to the concurrent elements of presence and intent, see § 17.

[Section 36]

A person who is absent due to work in the mercantile marine should be considered a resident of the county and state to which he returns and intends to return when his calling permits. Dahl v. Dahl, 253 S.W.2d 691 (Tex. Civ. App. Beaumont 1952).


As to the presumption of the termination of domicile, see § 55.
reason that leads the couple to live apart.6

- Caution: That the couple remains married may, however, tend to
disprove the asserted domicili.7

2. Infants

§ 37 Generally

Research References

West's Key Number Digest, Domicile 91 § 1
Separate domicile of mother as affecting domicile or residence of infant, 13 A.L.R. 2d 306
Jurisdiction to award custody of child having legal domicile in another state, 4 A.L.R. 2d 7

Generally, an infant cannot unilaterally acquire, change, or determine his or her domicile. A minor’s domicile is the same as that of his or her parents.5

- Observation: If the parents have separate domiciles, the child usually
takes the domicile of the parent with whom the child lives.3

Whenever the parental domicile changes, the minor’s domicile necessarily follows it. Furthermore, just as temporary absences do not affect the domicile of an adult, a child does not lose his or her domicile by being sent on a visit by the parents.6

§ 38 After divorce or judicial separation

Research References

West’s Key Number Digest, Domicile 91 § 1
Change of domicile as affecting character of property previously acquired as separate or community property, 14 A.L.R. 2d 404
Separate domicile of mother as affecting domicile or residence of infant, 13 A.L.R. 2d 306

7Marzhey v. Commissioner of Revenue, 468 N.W.2d 548 (Minn. 1991); O’Toole v. Utah State Tax Com’n, 830 P.2d 242 (Utah 1992).

5Section 371

A minor can acquire a domicile of his or her own in limited circumstances, and may acquire a domicile of choice only if he or she be emancipated. Palagi v. Palagi, 10 Neb. App. 753, 627 N.W.2d 745 (2001).

A minor has the same domicile as the parent with whom he lives. Restatement Second, Conflict of Laws § 2(1971).
11§ 25.
If a judicial determination as to the custody of the child does not accompany a divorce or judicial separation of the parents, the domicil of the child is that of the parent with whom the child lives. Under such circumstances, a child who lives with the mother has the mother's domicil, while a child who lives with the father has the father's domicil.

If a divorce or separation proceeding determines custody of the child, the child's domicil is that of the parent having custody. This is true regardless of whether the child lives with the legal custodial parent or with the non-custodial parent, or with an infant in the custody of a divorced mother follows that of the mother, even if the infant does not actually live with her. The same rule applies to custodial fathers.

Observation: Although a child in joint custody may simultaneously be a resident of both parents' homes, to hold that the child may be domiciled in both parents' homes would conflict with the general proposition that a person may have only one domicil.

According to some authority, the domicil of an infant does not follow that of the child's parent, if that parent's physical custody of the child involves a violation of a decree, order, or agreement respecting the custody or location of the infant.

Some cases, however, have reached a contrary conclusion.
§ 39 —Effect of death of parent having custody

Research References

Week's Key Number Digest, Domestic 247

Upon the death of the parent having custody of the child, the domicil of the child becomes that of the surviving parent. 1

§ 40 Abandoned child

Research References

Week's Key Number Digest, Domestic 241

A child abandoned by the mother acquires the domicil of the father, while a child abandoned by the father acquires the domicil of the mother. 1 If abandoned by both parents, the child takes the domicil of the person who stands in loco parentis to the child, such as a natural or an appointed guardian. 1

When parents are divorced and one parent dies, the child acquires the domicil of the surviving parent. See v. 539, 1961 UT App 917, 395 P.2d 397 (Utah Ct. App. 2001).

(Section 40)

Restatement, Second, Conflict of Laws § 25, comment c)


Master of Adoption of Holloway, 472 F.2d 961 (Utah 1966); In re Moore's Estate, 68 Wash. 598, 411 P.2d 551 (1966)

As to a child under guardianship, see § 43.
§ 41 Child of unmarried parents

Research References
West's Key-Number Digest, Domestic § 41

A child born out of wedlock has the domicil of the mother.1 In such circumstances, the place of birth and the domicil of the father are immaterial.2

§ 42 Effect of death of parent or parents

Research References
West's Key Number Digest, Domestic § 42

Domicile of infant on death of both parents; doctrine of natural guardianship, 32 A.L.R. 2d 863

Upon the death of a parent, the child has the domicile of the surviving, supporting parent.3 Upon the death of both parents, the child takes the domicile of the last surviving parent, and it remains the same until changed by operation of law or the proper act of a guardian. The domicile of the surviving parent at his or her death is determinative, even though the infant is not physically within the jurisdiction at the time, although a parent may change the child's domicile by arranging for the disposition of the child in the event of the death of the last surviving parent.4

Unless emancipated, a child is generally legally incapable of changing his or her domicile after the death of both parents.5

§ 43 Child under guardianship

Research References
West's Key Number Digest, Domestic § 43

Domicile of infant on death of both parents; doctrine of natural guardianship, 32 A.L.R. 2d 863

[Section 41]

For the purpose of determining whether a tribal court is entitled to assert jurisdiction over a custody action pursuant to the Indian Child Welfare Act, an illegitimate child's domicil follows her mother's. People in Interest of G.R.P., 1977 D.112, 509 N.W.2d 29 (S.D. 1977).

[Section 42]

[Section 42]
3R.T. v. Executive Director of Social Service Bd., North Dakota, 331 N.W.2d 584 (N.D. 1983).


5As to authority of a guardian to change the domicile of a minor ward, see § 43.

6In re Guardianship of Watson, 317 S. 3d 30 (Miss. 1973); holding that the domicile of orphaned children was the county of their parents' domicile, notwithstanding that the children lived briefly with their paternal grandmother in another county). In re Guardianship of La Valle, 194 Neb. 91, 230 N.W.2d 213 (1975).

7In re Durre, 350 N.W.2d 1222, 200 S.W.2d 343, 170 A.L.R. 391 (1947).

8People ex rel. Nisacav v. Wingate, 379 Ill. 244, 38 N.E.2d 487 (1943). In re Pratt, 219 Minn. 414, 18 N.W.2d 147 (1945).

9As to the fact that an infant cannot unilaterally acquire, change, or determine his or her domicil, generally, see § 27.
A natural guardian of an orphaned child, such as a grandparent, may determine and control the domicil of the child after the death of its parents. By taking up residence with the grandparents, the orphan may acquire their domicil.

- Caution: The grandparents' rights as natural guardians must yield to those of a legally appointed guardian or of someone entitled to custody of the child on other grounds.

While the courts have been reluctant to extend the doctrine of natural guardianship beyond the grandparents, a testamentary guardian usually stands in the parents' place to the extent of having the power to change the ward's domicil with his or her own. Similarly, if a guardian has been appointed by the court pursuant to the recommendation and petition of the natural guardian, the infant will take the domicil of the appointed guardian.

Whether the guardianship is natural, testamentary, or of another nature, the guardian's power to change the child's domicil may not be abused.

§ 44 Adopted child

Research References

Wren's Key Number Digest, Domicle 4911.

An adopted minor child has the same domicil as the adoptive parent, whether that is the domicil of the parent at the time of the adoption, or one subsequently acquired by the parent.

§ 45 Effect of emancipation; marriage of minor

Research References

Wren's Key Number Digest, Domicle 4912.

An emancipated minor may choose a domicil.

[Section 43]

1In re Guardianship of Lehr, 249 Iowa 625, 71 N.W.2d 909 (1956); In re Hall's Guardianship, 235 N.C. 497, 71 S.E.2d 140, 32 A.L.R.2d 656 (1953); In re Moore's Estate, 68 Wash. 2d 79, 435 P.2d 653 (1968).


3Ex parte Fletcher, 225 Abs. 139, 142 So. 30 (1932).


5Salcesara, L. & W.R. Co. v. Petrowsky, 239 F. 554 (C.C.A. 2d Cir. 1918); In re Kiernan, 36 Misc. 394, 77 N.Y.S. 904 (Sup. Ct. 1903).


[Section 44]


[Section 45]


37
§ 45

Observation: While there is authority to the contrary, a minor becomes emancipated by marriage and may acquire his or her own domicile.

§ 46 Effect of attainment of majority

Research References
West's Key Number Digest, Domicile 491

The attainment of majority does not separate a minor from its parents' domicile. The former minor merely acquires the power to possess a separate domicile if desired, and the domicile acquired at birth continues until a new domicile is chosen.

3. Incompetent Persons

§ 47 Generally

Research References
West's Key Number Digest, Domicile 491, 71

An incompetent person generally lacks the capacity to form the union of choice and intent required to change domicile. Thus, an adult who had been adjudged mentally incompetent at the time of departing for a new residence is incapable of acquiring a domicile of choice, absent an affirmative showing that the person is sufficiently competent to choose a new domicile. In such circumstances, the domicile continues to be what it was when the person became incompetent.

In some jurisdictions, a prior adjudication of incompetency conclusively establishes that a person is unable legally to acquire a new domicile voluntarily until formally restored to competency by a court of the state of his domicile, regardless of the person's present or subsequent actual mental


[Section 46]


[Section 47]


condition.4 In general, however, the question of capacity in any given case
must be evaluated on its facts.5

Caution: In determining whether an actual intentional change of an
incompetent’s domicile has occurred, courts must be wary of placing too much
reliance on “glimmerings of rationality,” especially where prospective
beneficiaries of the incompetent’s estate may seek an advantage.6

§ 48 Change of residence for hospitalization, treatment, or
custodial care

Research References
Weit’s Key Number Digest, Domicile p=1

Change of state or national domicile of mental incompetent, 96 A.L.R. 2d 1236

A mentally incompetent person who goes voluntarily to or is sent to an-
other place for hospitalization, medical treatment, custodial care, or improve-
ment of health does not acquire a new domicile by residence in an institution
or a private home occupied for such a purpose, regardless of the duration of the
stay.7

§ 49 Change of domicile by court or act of another

Research References
Weit’s Key Number Digest, Domicile p=1

Change of state or national domicile of mental incompetent, 96 A.L.R. 2d 1236

Under certain circumstances, the domicile of an incompetent person who
has been found to be incapable of voluntarily changing his or her domicile, ei-
ther as a matter of fact or of law, may be changed by the act of another.1

Observation: Generally, the domicile of an Incompetent minor child fol-


7App. 3d Cir. 1975); First Trust & Deposit Co. v. Goodrich, 3 N.Y. 2d 410, 165 N.Y.S.2d 510,


Section 49

1Glue v. Klein, 226 Mich. 175, 197 N.W. 691 (1924).


39
for him or her. This applies particularly to a court that has appointed a guardian for the incompetent person.  

§ 50 —Removal by guardian without court authorization

Research References
West's Key Number Digest, Domicile 1
Change of state or national domicile of mental incompetent, 96 A.L.R. 2d 1236.

If, in order to change the incompetent person's domicile, a guardian is required to obtain a court order prior to the removal of the incompetent to a new residence, a removal without the authority of the court order is ineffective to change the incompetent's domicile. If, however, a guardian has changed an incompetent's domicile openly and notoriously, and if the court having jurisdiction was advised and implicitly consented to a change of the incompetent's domicile, the implied approval of the guardian's acts may ratify the change of domicile.  

* Observation: Some cases hold that a guardian of an incompetent person does not need prior court approval in order to change the incompetent's domicile, if the change is made in good faith and in the incompetent's best interests.

B. PERSONS IN PARTICULAR PLACES OR CIRCUMSTANCES

Statutory References
28 U.S.C.A. § 1432(a)

Research References
West's Digest References
Domicile 1, 3, 6

Annotation References
A.L.R. Digest: Domicil  §§ 11, 12
A.L.R. Index: Domicile and Residence

§ 51 Foreign country

Research References
West's Key Number Digest, Domicile 2

While there is a strong presumption that a person in a foreign country

---

Footnotes:
1Hayward v. Hayward, 66 Ind. App. 440, 115 N.E. 965 (Div. 2 1917).

[Section 50]


Kier v. Grier's Estate, 212 Minn. 143, 39 N.W.2d 398 (1953).
intends to retain his or her national domicil, a citizen of one country may acquire a domicil in another country without naturalization. Whether or not the person becomes domiciled in the foreign country is measured by the person's actions and intent.

Caution: No matter how long continued, a sojourn, detention, or visit in a foreign country without an intention to remain there permanently does not change one's residence, and the pursuit of employment in the foreign country does not, by itself, amount to a change of domicil.

Being subject to deportation if discovered, an illegal alien arguably cannot form a lawful intent to remain in the United States. If some set of circumstances would allow an alien's immigration status to become lawful, however, the alien's intent to remain is not objectively unreasonable, and the alien may acquire domicil as a matter of either federal or state law.

Observation: Illegal aliens have acquired domiciliary status by possessing the required concurrence of physical presence and an intent to establish domicil.

For purposes of federal jurisdiction, an alien admitted to the United States for permanent residence is deemed a citizen of the state in which the alien is domiciled. 1

§ 52 Vehicle or vessel

Research References

War's Key Number Digest, Domicil, 091

A person who makes a home in a boat, car, van, or other vehicle can acquire a domicil only in the place, if any, where the vehicle regularly remains for a

[Section 81]

155.


158. As to the intention to change domicil generally, see § 19.


considerable time each year and for a longer time than the vehicle regularly remains elsewhere. 1

§ 53 Residence on boundary
Research References
West's Key Number Digest, Domicile 9

If a person's house lies on a dividing line between two political subdivisions, the person's residence will be deemed to be in the jurisdiction in which the most necessary and indispensable part of the house is situated, which is the part where one eats and sleeps. 1 If the court can ascertain exactly where the occupant of a house as divided sleeps, that location determines the jurisdiction in which the residence is located. 2

V. PROOF AND EVIDENCE
A. IN GENERAL
Research References
West's Digest References
Domicile 9 to 9

Annotation References
A.L.R. Digest: Domicile § 1; Evidence § 134
A.L.R. Index: Domicile and Residence

Trial Strategy References
Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 2d 595
Locating and Interviewing Witnesses, 3 Am. Jur. Trials 229

§ 54 Residence: presumption and inference
Research References
West's Key Number Digest, Domicile 9 to 7
Locating and Interviewing Witnesses, 3 Am. Jur. Trials 229

Residence, being a visible fact, is not usually in doubt. 3 While the fact of residence does not alone determine domicil, 4 actual residence in a place is a

1 State ex rel. Western v. Drummond, 133 La. 109, 60 So. 52 (1915).

As to the definition of residence, see § 8.

42
circumstance tending to prove domicil there, it is prima facie evidence of domicil. Until facts to the contrary are forthcoming, the place where one lives is presumed to be his or her domicil, and long-continued residence strengthens the presumption. 6

While a person may have many residences, he or she only has one domicil, and in determining which of a person's residences his or her domicil, courts will look to intent. 7

- Observation: Important facts in determining the domicil of a person who has more than one residence are the physical character of each, the time spent and the things done in each place, and whether or not there is an intention to return to the original domicil. 8

§ 55 Presumption of continuation of domicil

Research References


2 A person who is a resident of the state where she lived with her parent, even though she represented herself as resident of another state when dealing with insurance companies and credit card companies, declined a Tennessee post office box as her address on employment application, and continued to purchase Tennessee license plates for her vehicle. Balles v. State Farm Mut. Auto. Ins. Co., 723 So. 2d 320 (Miss. Ct. App. 1998).


5 Whenever a person has acquired a residence and it is his or her only obvious place of residence, it is presumed to be his or her domicil. McCready Enterprises, L.L.C. v. Humann, 805 So. 2d 807 (La. Ct. App. 5th Cir. 2001), writ denied, 808 So. 2d 345 (La. 2002), reconsideration not considered, 811 So. 2d 960 (La. 2002).


Section 55


As to domicil of origin, generally, see § 5.

As to domicil of choice, generally, see § 6.
§ 55

§ 56 Burden of proof

Research References

West's Key Number Digest: Domestic 992

It is a general rule that the burden of showing a change of domicile is upon the party asserting the change. However, proof of residence elsewhere rebuts the presumption6 and places the burden of proof on the party denying the change.7

Observation: If the evidence is conflicting, the original or former domicile is favored over a newer domicile of choice. A party alleging a change of domicile must establish this by a preponderance of the evidence8 or by clear and convincing evidence.9

2Domicile, once established, is presumed to continue until it is shown to have been changed. In re Orzhansky, 804 A.2d 1077 (D.C. 2002).
5In re Green's Estate, 99 Misc. 582, 164 N.Y.S. 1063 (Sur. Ct. 1917), aff'd, 179 A.D. 890, 169 N.Y.S. 1088 (1st Dep't 1917).
6As to domicile in a foreign country, generally, see § 55.
8[Section 56]
10The burden of proof is on one asserting that an earlier domicile was abandoned in favor of a later one. State of Texas v. State of Florida, 912 U.S. 386, 59 S. Ct. 363, 83 L. Ed. 817, 211 A.L.R. 1179 (1939).
11Domicile is presumed to continue, and the burden of proof ordinarily rests on the party asserting abandonment of one domicile to demonstrate acquisition of another. Kestle v. Carter, 699 So. 2d 286 (Fla. Dist. Ct. App. 5th Dist. 1997).
13As to the presumption of residence as fixing domicile, see § 54.
§ 57 Admissibility of declarations

Research References
West's Key Number Digest, Domestic 699
Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 245

A person's statements of his or her intent as to domicil are admissible and should be considered in determining the person's domicil.1

1 Election registers,2 tax returns,3 and wills4 are admissible on the question of the declarant's residence or domicil.

§ 58 Proof of intention

Research References
West's Key Number Digest, Domestic 698
Nature and location of one's business is calling as element in determining domicil in divorce cases, 36 A.L.R. 24756
What constitutes "intent" of nonresident decedent within statute providing for local auxiliary administration where decedent died leaving an estate in jurisdiction, 34 A.L.R. 261770
Recognition as to marital status of foreign divorce decree attached on ground of lack of domicil, since Williams decision, 28 A.L.R. 261403
Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 245

Observation: While residence, being a visible fact, is not usually in doubt,1 the intention to remain is not so easily proved.2

To prove that one's change of abode was accompanied by an intention to change one's domicil, all acts that fairly indicate such a purpose are competent and admissible.3

B. WEIGHT AND SUFFICIENCY

Research References
West's Digest References
Domicil 610

[Section 57]
4 Kinsey v. Smith, 55 U.S. 400, 14 How. 400, 14 L. Ed. 471 (1852); In re Michelbacher's Will, 156 N.J. Eq. 397, 39 A.2d 18 (Super Ct. 1944); Matter of Estate of Burcham, 481 A.2d 175 (N.J. 1984).
[Section 58]
1 As to proof of residence, generally, see § 54.
Announcement References
A.L.R. Digests: Domicile § 1
A.L.R. Index: Domicile and Residence

Trial Strategy References
Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 2d 565

§ 59 Generally

Research References
West’s Key Number Digest, Domicile § 10
Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 2d 565

The weight to be given to the various facts and circumstances indicative of domicile depends upon the circumstances of the case. The determination of domicile does not depend upon any one factor or circumstance, but upon circumstances that together show a preponderance of evidence in favor of a place as domicile.

Observation: Filing a homestead exemption may conclusively establish the fact of domicile.

§ 60 Declarations

Research References
West’s Key Number Digest, Domicile § 10

An oral declaration or a written declaration in a tax return, deed, insurance policy, etc.

[Section 59]

Matters of Estate of Burcham, 483 N.W.2d 175 (N.D. 1992).


However, where a party physically resides in one location, the intention to return to another location is usually of controlling importance in the determination of the whole question of domicile. Livermore v. Livermore, 822 S.2d 437 (Ala. Civ. App. 2001).


When there is no declaration that a person has changed his or her domicile, proof of the person’s intention depends upon the circumstances. Becker v. Dean, 864 So. 2d 864 (La. App., 2003); opinion issued, (Sept. 30, 2003).

Godd v. Thompson, 417 So. 2d 576 (Miss. 1983) (overruled on other grounds by, Foster v. Hardin, 526 So. 2d 985 (Miss. 1988)).

As to who may claim a homestead exemption, generally, see Am. Jur. 2d, Homestead § 15.

[Section 60]


Intent is a highly significant factor in determining whether there has been a change of domicile, and an individual’s intent is subjective, such that the best proof of domicile is
Domicil

161

ance policy,1 will,2 letter,3 lease,4 lease,5 letter,6 or mortgage,7 lease, contract, or other instrument8 constitutes some evidence as to domicile. The weight to be given to such declarations is to be determined by the time and circumstances under which they are made.9

A declaration found in a solemn instrument such as a will is entitled to greater weight.10 Most declarations, however, are not conclusive11 and are to be considered in light of the motive of the person making the declaration.12 Declarations are subject to the infirmity of any self-serving declaration13 and may be contradicted by other declarations and inconsistent acts.14 Furthermore, while competent as evidence of the required intention to establish domicile at a given place of residence, statements alone cannot prove residence.15

§ 61 —Consideration in conjunction with other evidence

Research References

West's Key Number Digest, Domicile c-10

where he to the says it is. Kewibist v. Carter, 689 So. 2d 385 (Fla. Dist. Ct. App. 5th Dist. 1997).


Gamble v. Dawson, 67 Wash. 72, 120 P. 1000 (1912).

Warren v. Warren, 73 Fla. 764, 75 So. 35 (1917).


As to evidence of domicile of decedent, see Restatement Second, Conflict of Laws § 29, special note on evidence of a domicile of aliens.


It is an intention to change domicile may be proved by the express declaration in writing registered in the publics of the old and new residence or, in the absence of a declaration, by the circumstances surrounding the residence. Davis v. Ghe Eagle Ship Manage-
In establishing domicile, intent is based upon the actual state of the facts and not what one declares them to be, and the acts and conduct of the parties speak louder than words when it comes to a determination of domicile.

Thus, for purposes of determining a person's domicile, the person's declared intentions may be discounted when they conflict with the facts, and declarations as to domicile may be contradicted by evidence of acts and conduct inconsistent with such declarations. In such circumstances, conduct has greater evidential value than does a declaration.

* Observation: The focus of the inquiry remains the intent of the person claiming domicile.

§ 62 Exercise of civil and political rights

Research References

Web's Key Number Digest, Domicile c 10
Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 3d 595

The failure to perform the duties and avail oneself of the privileges of citizenship in the community of one's new residence is a significant factor, but not controlling, indication that no change in domicile is planned. Conversely, the exercise of the right to vote or of other civil and political rights in a certain place is evidence of domicile in that place. Indeed, it has been held that the place of voting is the highest evidence of domicile.

* Caution: The fact that an individual exercises the right to vote while compelled to be in a foreign jurisdiction does not, in and of itself, constitute a change of domicile.

Whether a person holds an office in the jurisdiction is also a factor to be considered.

[Section 62]

**Lamire v. Larrance, 742 So. 2d 1034 (La. Ct. App. 2d Cir. 1999), writ denied, 752 So. 2d 167 (La. 1999).**

**Stull v. Caldwell, 836 S. 2d 149 (La. Ct. App. 3rd Cir. 2002).**

**State ex rel. Jealous of Hill v. Mufi, 2617 2d 65, 657 N.W.2d 799 (S.D. 2003).**


**In re Lagrone's Estate, 369 Cal. App. 2d 909, 337 P.2d 193 (2d Dist. 1968); Lynn v. Tyan, 110 Cal. 287, 137 P. 784 (1915); Ber- retti v. Perik, 352 Md. 971, 180 S.W.2d 665 (1944).**

**Manley v. Commissioner of Revenue, 456 N.W.2d 548 (Minn. 1991).**

**Eberle v. Eberle, 196 Or. 205, 246 P.2d 847, 36 A.L.R.2d 741 (1952).**


**Oplebery v. Williams, 372 Md. 360, 812 A.2d 1061 (2002).**

§ 63 Payment of taxes

Research References
West's Key Number Digest, Domicile §610
Establishment of Person's Domicile, 39 Am. Jur. 2d Proof of Facts §547
Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. 2d Proof of Facts §269

While not controlling, the payment of taxes that are assessable at the domicile of the taxpayer, such as personal property taxes, and income taxes, is of some weight in determining domicile. Conversely, the failure to pay taxes in the alleged new domicile tends to show no change of domicile.

§ 64 License or permit

Research References
West's Key Number Digest, Domicile §610
Establishment of Person's Domicile, 39 Am. Jur. 2d Proof of Facts §567
Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. 2d Proof of Facts §269

The failure to secure a license ordinarily required of domiciliary residents of a state, such as an automobile license or a business permit, indicates an intention not to establish a domicile in that state. Conversely, securing a license or permit in a state or registering a vehicle there is evidence of an intent to establish domicile.

§ 65 Location of business or occupation

Research References
West's Key Number Digest, Domicile §610

6[Citation not available]
7[Citation not available]
8[Citation not available]
9[Citation not available]
11[Citation not available]
12[Citation not available]
13[Citation not available]
14[Citation not available]
15[Citation not available]
16[Citation not available]
17[Citation not available]
18[Citation not available]
19[Citation not available]
20[Citation not available]
21[Citation not available]
22[Citation not available]
23[Citation not available]
24[Citation not available]
25[Citation not available]
26[Citation not available]
27[Citation not available]
28[Citation not available]
29[Citation not available]
30[Citation not available]
31[Citation not available]
32[Citation not available]
33[Citation not available]
34[Citation not available]
35[Citation not available]
36[Citation not available]
37[Citation not available]
38[Citation not available]
39[Citation not available]
40[Citation not available]
41[Citation not available]
42[Citation not available]
43[Citation not available]
44[Citation not available]
45[Citation not available]
46[Citation not available]
47[Citation not available]
48[Citation not available]
49[Citation not available]
Nature and location of one’s business or calling as element in determining domicil in divorce cases, 36 A.L.R. 756
Establishment of Person’s Domicile, 39 Am. Jour. Proof of Facts 2d 587
Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jour. Proof of Facts 2d 585

The location of a person’s business, profession, or occupation is a nonconclusive factor in the determination of domicile. If a person maintains two or more residences in different localities, the fact that the person carries on business in one of them may be of some weight in determining the person’s intention. A business or occupation conducted at the person’s last domicile tends to show that the person has not abandoned that place as a domicile, even though the person is no longer physically present there.6

Reminiscenc: A merely temporary absence from one’s domiciliary state or county because of work or employment at another place does not bring about a change of domicile.7 Neither does employment at a particular place bring about a change of domicile, if the intention to remain at that place is contingent upon the permanency of the employment.8

§ 66 Ownership, dispossesion, or acquisition of property
Research References
Ward’s Key Number Digest, Domicile 122
Establishment of Person’s Domicile, 39 Am. Jour. Proof of Facts 2d 587
Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jour. Proof of Facts 2d 585

Ownership of the house where one lives is evidence that one’s domicile is the place where the house is located.4 In addition, the sale or disposition of the dwelling may be some evidence of an intention to abandon a domicile and establish another, although other circumstances may effectively negate an inference of such intent.5 Likewise, the purchase of a dwelling in another state is nonconclusive evidence of an intent to acquire a domicile in that state.6

The failure to purchase property in the state claimed to be the new domicile


As is the nature of the intention to change domicile, see § 19.


§ 25.

§ 23.


Matter of Estate of Burschim, 483 N.W.2d 50
§ 67 Selection of burial place

Research References
West's Key Number Digest, Domicile &110

Although choosing a final resting place may be considered in determining a person’s domicil, it should be considered very lightly, because many sentimental reasons influence the selection of burial places for our dead, having little reference to legal domicil.

§ 68 Church, social, and club activities

Research References
West's Key Number Digest, Domicile &110
Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 2d 595

A person’s church and community activities, identification with regard to the social life of a place, and membership in lodges and clubs all have some bearing on the question of domicil.

VI. TRIAL AND JUDGMENT

Research References
West's Digest References
Domicile &11

Annotation References
A.L.R. Digest: Domicil § 1; Judgment § 345; Trial § 224
A.L.R. Index: Domicile and Residence

Forms References
Am. Jur. Pleading and Practice Forms, Domicil § 15

1Davidson v. Davidson, 180 P. 2d 901 (5th Cir. 1956).

[Section 67]
1Warren v. Warren, 73 Fla. 764, 75 So. 35 (1917); Crump v. Walton, 199 Ind. 262, 157 N.E. 196 (1926); Wilkening v. Miller, Ohio 1 Ohio St. 669, 99 Ohio St. 99, 106 N.E. 80 (1915); DelBrio v. Clark, 764 A.2d 723 (R.I. 2000).
2McIntosh v. Clark, 764 A.2d 723 (R.I. 2000).

Cooper v. Adams, 118 Iowa 496, 222 N.W. 385 (1925).

[Section 68]

Cooper's Adm'r v. Commonwealth, 121 Va. 328, 93 S.E. 690 (1917).

[Section 68]

51
§ 69 Question of law or fact

Research References
West's Key Number Digest, Domain = 11

In some jurisdictions, the determination of domicile is a mixed question of fact and law. In other jurisdictions, the determination of domicile or legal residence is a question of fact, which will not be reversed on appeal unless clearly erroneous.

Observation: A person's intent is a question of fact, but whether that intent gave rise to a particular legal status is a question of law.

§ 70 Effect of judgment fixing domicile

Research References
West's Key Number Digest, Domain = 11

Neither the Fourteenth Amendment nor the Full Faith and Credit Clause of the Federal Constitution requires uniformity in the decisions of the courts of different states on questions of domicile, if the power of the state is dependent upon domicile within the boundaries of the state.

Generally, as between the parties and their privies in a proceeding in which domicile is contested, a judgment of the state determining the question of domicile is conclusive and precludes such persons from raising the issue in another state.

[Section 69]


In determining domicile of an individual, what state of facts constitutes a change of domicile is a mixed question of law and fact. Harris v. McRae, 703 So. 2d 309 (Ala. 1997).


Domicile is an issue of fact to be determined on a case-by-case inquiry. Dominique v. Forbeaux, 654 S.W.2d 452 (La. App. 1st Cir., 2003), writ denied, 653 So. 2d 831 (La. 2003).

Generally, the determination of domicile is a question of fact; however, where the underlying facts are not in dispute, domicile is a question of law. Fawley v. Auto Club Insurance Association, 254 Mich. App. 362, 656 N.W.2d 856 (2002).


[Section 70]


As to full faith and credit in the context of a foreign divorce, see Am. Jur. 3d, Divorce and Separation § 1156, 117.

Re = Fischer's Estate, 118 N.J. Eq. 599, 180 A. 623 (Peacor, Ca. 1935); Hapler v. Nicholas, 196 Ohio St. 282, 1 Ohio L. Abs. 100, 140 N.E. 185 (1922).

As to unilateral attack of a foreign divorce
due to party's lack of domicile, see Am. Jur. 2d, Divorce and Separation § 1207.