



WHAT IS DOMICILE?

Relevance of Domicile in Law

The English law concept of ‘domicile’ is of great relevance in private international law. The purpose of identifying a person’s domicile is to connect that person to a particular system of law. This is important because the matter determines which country’s jurisdiction would apply in matters such as marriage and divorce, legitimacy and succession (such as how an estate devolves on death under a Will or on intestacy).

Difficulties could potentially arise where territories are divided or where borders change. Examples of how this difficulty is resolved are illustrated by cases which followed the partition of Ireland in 1921. Following partition, the Court determined that someone was domiciled in Northern Ireland in 1907 and that another individual was domiciled in the Republic of Ireland in 1898, dates when neither entity existed. These cases were decided based on the individuals having had their homes in what subsequently became Northern Ireland and the Republic of Ireland. There are also issues with countries comprising states which have their own system of law, subject to a national level of federal law. In determining the domicile of, for example, a US person, it would be necessary to identify the state which the person identifies as the permanent home. Thus an individual would be domiciled in California or New York, rather than in the USA. This complicates issues and is not entirely satisfactory. There have for many years been recommendations to reform this aspect, but none have been adopted to date.

The general idea behind domicile is to identify the individual’s permanent home, as opposed to where the individual might be temporarily living. However, the legal process of identifying a person’s domicile is complex and involves a detailed factual consideration of that person’s family history, as well as of the individual’s circumstances and intentions. Where a person’s domicile is disputed, which is

not uncommon since differences of interpretation inevitably arise with a process where principles are applied to a range of facts and stated intentions, the Courts determine the issue. For this reason, the law of domicile is interpreted with the benefit of a significant body of case law. Some of the more important cases are summarised in the Appendix to this Factsheet to illustrate the rules which are described below.

Domicile and Taxation

A person's domicile became relevant to his/her tax status in 1914. To explain this, we have to go back to the introduction of income tax in Britain in 1799, an unpopular but necessary measure to help fund the Napoleonic War. Although Pitt the Younger, the Prime Minister at the time, wanted to apply income tax to overseas income, the only practical trading partner for people running businesses in the colonies was Britain itself, so profits would only be realised when the products grown overseas were brought to the UK. For pragmatic reasons therefore, the 1799 income tax provisions introduced a form of remittance basis so that foreign income only became taxable when brought to the UK.

By 1914, the picture had changed so that it was perfectly possible to earn profits abroad without bringing them to the UK. The 1914 Finance Act therefore abolished the remittance basis for overseas income, but an exception was made for UK resident foreigners. In determining how to identify this class of taxpayer, there was already a ready-made and well developed legal concept of domicile which could be used for this purpose. Thus was born the remittance basis of taxation for UK resident but non-domiciled taxpayers. The way in which the remittance basis of taxation operates along with a summary of other aspects of the UK tax treatment of foreign domiciled taxpayers are described in a separate Tax Factsheet, [*Moving to the UK*](#).

What are the rules in establishing a person's domicile?

No person can be without a domicile, even someone who moves from place to place without establishing a permanent home anywhere. Furthermore, no person can have more than one domicile at the same time, for the same purpose. The basic rules which determine domicile are as follows:

Domicile of Origin

Every person receives a domicile of origin on birth. A legitimate child born while his/her father is still alive takes the same domicile as the father. Illegitimate children and legitimate children born after the death of their father take the domicile of their mother. A domicile of origin has a particularly adhesive quality, following the presumption in law of the continuance of the existing domicile unless a new domicile of choice is acquired.

Domicile of Dependency

The domicile status of a minor child (for these purposes, a child under the age of 16) changes if there is a change in the domicile of the parent.

Domicile of Choice

An independent person (aged 16 or over) can acquire a domicile of choice by moving to a new country or state and having the intention to remain there permanently or indefinitely. A person will abandon that domicile of choice by a combination of ceasing



to live there and giving up the intention to live there. At that point, the individual might acquire a different domicile of choice by moving permanently or indefinitely to another country, but if that isn't the case then the domicile of origin automatically revives.

The burden of proof, which is based on the balance of probabilities, rests with the party which is seeking to assert that a person's domicile status has changed. The application of the principles of domicile has tested the Court for more than 150 years. Some of the more relevant cases are summarised in the Appendix at the end of this Factsheet.

Concluding comments

It will be appreciated that determining domicile status is a complex test based on law, as interpreted in a significant body of case law. It can, however, be an issue of profound relevance to several issues of private international law, including tax. Domicile is determined by a combination of facts and intentions. It can therefore be critically important to retain documentary information on the facts together with evidence to support intentions, whether the individual is a person coming to the UK for a temporary purpose and retaining domicile of origin, or a person leaving the UK to take up permanent or indefinite residence abroad. All of the Rawlinson & Hunter private client partners have a deep understanding of these rules and will be able to address any further questions.

Appendix

Some decided cases on the subject of domicile

Udny v Udny (1869)

Facts:

The taxpayer's father was born in Scotland, but he then left Scotland and acquired a property in London. Although the father had retained a property in Scotland, it was not habitable, and the father visited Scotland infrequently. In 1844, the father sold the London property, together with his personal possessions, and moved to France. The father did not intend to reside in France permanently. In 1853, the taxpayer was born, and his parents returned to Scotland, where the father intended to reside permanently.

Held:

The taxpayer's father acquired a domicile of choice in England, but this was lost when he moved to France, and so his Scottish domicile of origin revived. It followed that, on birth, the taxpayer would have acquired a Scottish domicile of origin.

Wood v Wood (1957)

Facts:

Samuel Wood was an Englishman by birth who was a showman by profession, exercising his profession through the medium of a troupe of chimpanzees. He separated from his wife, by whom he had two children, in 1949. Early in 1953, he left the UK with his animals and went to the USA, ending up in Las Vegas, Nevada, where he settled. In September 1954 he obtained a decree of divorce in Nevada and then ceased to make payments to his ex-wife under an order of the English Magistrates' Court made in February 1950. The ex-wife alleged that he had gone to Nevada simply to get divorced under the jurisdiction of the Court of Nevada and thereby to discharge himself of continued liability to make payments under the order of the English Court.

Held:

The evidence supported the acquisition of a domicile of choice by Wood in the State of Nevada. He had bought a house and land in Las Vegas and had taken steps to obtain an immigration permit with a view to obtaining US citizenship. He had formed a relationship with another woman with whom he was living and with whom he had had another child. He was attracted by the lower rates of income tax in the US and Nevada, and the Nevada climate better suited the dispositions of the chimpanzees. He had moved with sufficient degree of permanence to have acquired a domicile of choice in Nevada with the result that, under English law, the divorce in Nevada was effective to end the marriage.

Steiner v IRC (1973)

Facts:

Steiner was born in (what later became) Czechoslovakia. Steiner moved to Berlin at 17, and acquired a domicile of choice in Germany. Steiner started many successful businesses, owned a number of properties, and started a family in Germany. As a Jew, he became subject to persecution under the Hitler regime, and he (and his family) moved to England in the late 1930s. Steiner retained a number of properties in Germany, and believed that the Hitler regime would not last long; he intended to return to Germany after some time in exile in England.

In the 1940s, Steiner acquired a lease over a property in London and established a number of businesses in England. After the war had ended, Steiner remained in England, and in 1947 he applied for British naturalisation, which included a formal confirmation of his “intention to reside permanently within His Majesty’s dominions”. Throughout the 1950s and 1960s, Steiner retained a number of business / financial interests in Germany, and visited Germany from time to time.

Held:

Although Steiner had not acquired an English domicile of choice when he moved to London in the late 1930s, when he remained in England, the evidence derived from his connections with England, including his application for British naturalisation, supported the view that he had acquired a domicile of choice in England.

IRC v Bullock (1975)

Facts:

The taxpayer was born in Canada and came to England in 1932 to join the RAF. He regarded himself as Canadian and intended to return to Canada, after completing his service. However, in 1946 he married an Englishwoman and after a number of visits to Canada, it became clear that his wife was not agreeable to living in Canada. In 1959 the taxpayer retired from the RAF and took up employment in England, but after a couple of years he inherited his father’s estate, enabling him to retire completely. Up until 1966, the taxpayer had been hopeful of persuading his wife to return to Canada. At that point, he accepted defeat, complied with her wishes, and formed the intention to return to Canada in the event of his wife predeceasing him, or changing her mind. In 1962 his wife acquired a bungalow in Dorset and, from 1963 onwards, this was the matrimonial home. The Crown claimed that, at some time prior to 1971, the taxpayer had acquired a domicile of choice in England.

Held:

The residence contemplated by the taxpayer may have been general and indefinite (as to its future) but, nevertheless, the Court concluded that the taxpayer had acquired a domicile of choice in England, on the basis that the taxpayer’s matrimonial home was permanently established in England.

Re Furse (deceased) v IRC (1980)

Facts:

The testator was born in Rhode Island in 1883 and, at the time of his birth, his father was domiciled there. Whilst the testator was a minor, he emigrated to England, where his parents built a home. Whilst in his mid-20s, his parents sold the family home and returned to the US. The testator’s father died in New York in 1913.

In 1907, at the age of 24, the testator took up employment with a company in New York, and then married a US citizen in 1913. He stayed in New York until 1916, when he left the US to serve in the British Army until 1919/20, at which point he returned to New York. In 1923 the testator, with his family, moved to England and purchased a farm in West Hoathly, West Sussex, where he lived for the rest of his life. Although the testator and his wife had considered returning to the US, their property searches were all but abandoned by the early 1950s, and there was evidence to suggest that he had decided not to return to the US, so long as he was capable of living an active life on the farm in England.



Held:

Unable to conclude whether the testator acquired an English domicile of dependency, prior to reaching majority, and so the testator retained his domicile of origin in Rhode Island. However, when he returned to England with his family, and decided only to leave if he was no longer able to lead an active life there, he had acquired a domicile of choice in England.

CIR v Duchess of Portland (1982)

Facts:

The taxpayer had a domicile of origin in Quebec, and had always remained a Canadian citizen. In 1948 she married the Duke of Portland, who had an English domicile, and so she acquired a domicile of dependence in England. The Duchess retained a home in Quebec, whilst living in the UK with her husband, and intended to return to Canada once her husband had retired (or if her husband predeceased her). She also returned to Canada for some 10 to 12 weeks each year to visit family and friends, thereby maintaining her links with Canada. On 1 January 1974, s.1 of the Domicile and Matrimonial Proceedings Act 1973 came into force, and the Duchess claimed that her domicile of origin had revived.

Held:

Due to her domicile of dependence in England, acquired through marriage (prior to 1 January 1974), the Duchess was treated as retaining that domicile, as a domicile of choice. In terms of abandoning her English domicile of choice, she would need to have given up residing in England and also given up the intention to reside here. The Duchess of Portland therefore continued to be domiciled in England, after 31 December 1973, as she only spent limited periods of time in Quebec.

Re Clore (deceased) (No 2) (1984)

Facts:

Prior to his birth, Sir Charles Clore's parents fled Lithuania to escape persecution and settled in England. The taxpayer's father remained in England until three years before his death (when he went to live in Palestine). Towards the end of the taxpayer's life, he spent part of each year abroad and was regarded (by the UK tax authorities) as non-UK resident. Shortly after becoming non-UK resident, the taxpayer gave instructions to dispose of his properties in England. On 5 April 1978 he was redesignated as resident in Monaco (for exchange control purposes), acquired an apartment in Monaco, moved a significant proportion of his assets to Monaco and Jersey, resigned from the chairmanship of his main company (in the UK), and ceased his involvement with Lloyds of London. Despite these actions and change in lifestyle (pursuant to his advisers' recommendations), the taxpayer never settled in any one place after leaving England. The taxpayer died in London in 1979.

Held:

The taxpayer's father was domiciled in England when he was born and, accordingly, the taxpayer's domicile of origin was English. There had to be convincing evidence that the taxpayer had formed a settled intention to reside permanently in Monaco and, on the evidence, it could not be said that the taxpayer had ever formed that intention; he was held to have died domiciled in England.

Plummer v IRC (1987)

Facts:

The taxpayer was born in London to English parents. In 1979 her grandmother bought a house in Guernsey, and in 1980, when the taxpayer was 15 years old, her mother and younger sister took up residence in Guernsey. The taxpayer remained at a school in London, and stayed with her father during the week, spending weekends and holidays in Guernsey. After completing her A-Levels, she undertook a secretarial course in London and then attended Goldsmiths College. She continued to spend weekends and most of her holiday in Guernsey. In 1983/84 she spent 245 days in England and 106 days in Guernsey, and the following year, 247 days in England and 87 days in Guernsey. She was resident for tax purposes in both the UK and Guernsey.

Held:

The taxpayer had not acquired a domicile of choice in Guernsey – to do so, she would need to have established Guernsey as her “chief residence”. It was concluded that the taxpayer had not yet settled in Guernsey.

Gaines-Cooper v HMRC (2010)

Facts:

The taxpayer was born in England, with an English domicile of origin. In 1975 he bought a house in the Seychelles, and expressed the wish that his ashes be scattered there. The taxpayer married a Seychellois woman, and his will stated that he lived in the Seychelles, and was domiciled there. During his hearing, a number of high-ranking witnesses from the Seychelles (including the ex-President) were called to give evidence; they told the Court that they saw the individual as being Seychellois.

The taxpayer had retained strong connections with the UK which included a number of UK properties; his wife and son lived in the UK; and he also regularly attended Royal Ascot and other UK social events. His son also went to school in the UK and his guardians lived in the UK. His will had been drafted in accordance with English law; he had retained his UK citizenship; and he did not apply for citizenship in the Seychelles. Moreover, his “chief residence” remained in the UK.

Held:

The taxpayer had never abandoned his domicile of origin and that a Seychelles domicile of choice had never been acquired. The acquisition of a non-UK domicile of choice requires both residence in the overseas country and an intention of permanent or indefinite residence in the overseas country (the taxpayer was unable to demonstrate the latter, despite residing in the Seychelles for some part of each year).

Gulliver v HMRC (2017)

Facts:

The taxpayer had a domicile of origin in the UK. During his business career he spent a significant amount of time living in the Far East. The taxpayer believed he had lost his UK domicile sometime before 2000, having acquired a domicile of choice in Hong Kong. It seemed, from a ruling obtained from the UK tax authorities in 2002, that this position was accepted. HMRC then opened an enquiry into the taxpayer’s 2014 tax return, challenging his non-UK domicile status.

Held:

The Tribunal held that HMRC was not precluded from asking questions which could lead to a conclusion that the taxpayer had not, in fact, acquired a domicile of choice in Hong Kong. The Judge said that income tax and capital gains tax are determined on a year-by-year basis, and both HMRC and the taxpayer are permitted to argue the question of domicile in respect of a different tax year. HMRC was not therefore bound by its earlier ruling.

Partners

Mark Harris FCA
Kulwarn Nagra FCA
Andrew Shilling FCA, CTA
Craig Davies FCA, CTA
Graeme Privett CTA, TEP
Chris Hawley FCA
Phil Collington CTA, TEP
Toby Crooks FCA, CTA Dip(ITM), TEP
Michael Foster CTA, FCCA
Paul Huggins FCA, CTA, TEP
Trevor Warmington CTA, TEP
James Randall FCA, CTA
Kristina Volodeva CTA
Alan Ive CTA
Catherine Thompson FCA, CTA
Alex Jones
Katharine Haggie FCA, CTA, TEP
Hiral Kanzaria ACA CTA
Mark Shaw
William Watson FCA
Yueling Wei FCCA

Directors

Louise Catt FCCA
Karen Doe
Sarah Fernando FCA, CTA
Sharon Gillies
Lynne Hunt FCA
Salma Khan CTA
Gillian Lawrence ACA, CTA
Lee Moss CTA
Claire Osborne FCA
Steve Williams
Mark Wong
Stephen Yates FCA, CTA, TEP

Consultants

Paul Baker ACA
Chris Bliss FCA
Philip Prettejohn FCA

Rawlinson & Hunter LLP

Eighth Floor
6 New Street Square
New Fetter Lane
London
EC4A 3AQ
United Kingdom

and at

Q3, The Square
Randalls Way
Leatherhead
Surrey
KT22 7TW
United Kingdom

T +44 (0)20 7842 2000

E firstname.lastname@rawlinson-hunter.com

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