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Domicile - A Critical Analysis Of The Position In Cheshire, North & Fawcett Private International Law[1]

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ABSTRACT
This paper critically examines the concept of Domicile, the General Rules, makes clear the position of Prisoners, Married women, Refugees, Fugitives from justice, Fugitive debtors, Invalids, Corporations. It contrasts the domicile of origin concept from the domicile of choice and suggests that the concept of *domicile* should be abolished in favour of *nationality* since they should be defined to mean the same thing.
It introduces a purely new dimension to the concept of domicile stating reasons why every person should have only one domicile at any point in time. It tells us that the idea is very workable and that the concept of revival of domicile of origin should be done away with; while there should be no distinction between domicile and nationality. At the end of the paper, we get to know why dual nationality should be expunged globally.
Keywords : *Domicile, Nationality, Dual citizenship, Residence, Propositus, Child, domicile of origin, domicile of choice, Status, personal Rights, Property*

INTRODUCTION

According to the Oxford dictionary of Law[2], a person can be said to be domiciled in a country which he treats as his permanent home, and to which he has the closest legal attachment. A person cannot be without a domicile and cannot have two domicile at once[3]. At birth, he acquires a domicile of origin which is normally his father's domicile. He retains his domicile of origin until (if ever) he acquires a domicile of choice in its place.
In England, it has long been settled that questions affecting status are determined by the law of the domicile of the Propositus, and such questions are those affecting family relations and family property[4]. There are currently two main classes of domicile namely the domicile of origin and domicile of choice. The domicile of origin is acquired at birth, and in this case, could be the domicile of the father or that of the mother, according as he is legitimate or illegitimate[5].

The domicile of choice is acquired at any time after a person has become of full age and capacity with the intention of making a country his permanent base, and it can always be replaced at Will by a new domicile of choice[6].
The concept of domicile is not uniform throughout the world. Lord Cranworth in *Whicker v. Hume*[7] said *'….. by domicile, we mean the home, the permanent home, and if you do not understand your permanent home, I am afraid that no illustration drawn from foreign writers or foreign languages will very much help you to it'*. Therefore, the acquisition of a domicile of choice requires not only residence in a territory subject to a distinctive legal system, but also an intention to remain there permanently. *Permanently* here refers to *lasting or designed to last indefinitely without change.* This best describes the nature of intention necessary for a change of domicile and most Judges seem to have recognized this definition[8].

Scarman J. said *a domicile of choice is acquired only if it be affirmatively shown that the Propositus is resident within a territory subject to a distinctive legal system with the intention formed independently of external*

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[1] *J.J Fawcett & J.M Carruthers* (14th Edition, Oxford University Press) 2008

[2] @p.177 (6th Edition) Oxford University Press, 2006

[3] *Mark v. Mark* (2005) UKHL 42@[37]; (2006) 1 AC 98; *IRC v. Bullock* (1976) 1 WLR 1178@1184; *Lawrence v. Lawrence* (1985) Fam 106@132

[4] Cheshire, North & Fawcett Private International Law (14th Edition, Oxford University Press) 2008

[5] An illegitimate child acquires the domicile of his mother; *Udny v. Udny* (1869) 1 Sc & Div 441@457

[6] Oxford Dictionary of Law (6th Edition), Oxford University Press 2006 @177

[7] (1858) 7 HL Cases 124 @160

[8] Cheshire, North & Fawcett @159

pressures, of residing there indefinitely[1]. It is clear that the intended residence must not be for a limited period of time.

GENERAL RULES OF DOMICILE

1) It is a settled principle that nobody shall be without a domicile, and in order to make this effective, the Law assigns a domicile of origin to every person at birth (which is that of the father for a legitimate child) and that of the mother for an illegitimate child, and to a Foundling the place where he is found[2]. This prevails until a new domicile has been acquired[3], so that if a person leaves the country of his origin with an undoubted intention of never returning to it again, his domicile of origin subsists until he actually settles with the requisite intention in some other country.
2) A person cannot have two domicile - since the object of the law in insisting that no person shall be without a domicile is to establish a definite legal system by which certain of his rights and obligation may be governed, and since the facts and events of his life frequently impinge upon several countries, it is necessary on practical grounds to hold that he cannot possess more than one domicile at the same time, at least for the same purpose.
3) Domicile signifies connection with a simple system of territorial law, but it does not necessarily connote a system that prescribes identical rules for all classes of persons.
4) There is a presumption in favour of the continuance of an existing domicile. Hence, the burden of proving a change lies in all cases upon those who allege that a change has occurred[4]. The standard of proof necessary to rebut the presumption is that adopted in civil actions which requires the intention of the Propositus to be proved on a balance of probabilities, not beyond reasonable doubt as is the case in Criminal Proceedings[5].
5) Subject to certain statutory exceptions[6], the domicile of a person is to be determined according to the English, and not the foreign concept of domicile[7].

ACQUISITION OF DOMICILE OF CHOICE

Residence and *Intention* must concur as elements before a domicile of choice can be established. It should be noted that long residence does not constitute nor does brief residence negate domicile. For instance, in *Inland Revenue Commissioners V. Bullock*[8], a Canadian who had a domicile of origin in Nova Scotia was held not to have become domiciled in England, despite the fact that he had either served R.A.F or lived in England for over 40 years. He retained his domicile in Nova Scotia because he intended to return there should his wife predecease him. A brief residence is no obstacle to the acquisition of a domicile if the necessary intention exists. For example, if a man clearly intends to live in another country permanently, as for example, where an emigrant, having wound up his affairs in the country of his origin, flies off with his wife and family to Australia, his mere arrival there will satisfy the element of residence[9]. It can also be illustrated as follows: *A man abandoned his home in State* ***P,*** and took his family to a house in State ***M***, *about half a mile from* ***P****, intending to live there permanently. Having deposited his belongings there, he and his family returned to* ***P****, in order to spend the night with a relative. He fell ill and died there. It was held that his domicile at death was in* ***M****.*
Motive is one of the indices of intention as a requisite for the acquisition of a domicile of choice. Firstly, it may throw light upon the question as to whether the movement to another country was intended to be permanent[10]. It

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[1] *In the Estate of Fuld* (No. 3) (1968) p.675@684

[2] *Re McKenzie* (1951) 51 SRNSW 293

[3] *Munro v. Munro* (1840) 7 CL & Fin 842 @876; Cheshire, North & Fawcett @155

[4] *Winans v. A-G* (1904) AC 287; *Re Lloyd Evans* (1947) Ch 695; *Bheekun v. Williams* (1999) 2 FLR 229@234; *Spence v. Spence* (1995) SLT 335; *Reddington v. Riach's Executor* (2002) SLT 537

[5] *In the Estate of Fuld* (No. 3) (1968) 675@685-686; *Re Flynn* (1968) 1 WLR 103@115; *Buswell v. IRC* (1974) 1 WLR 1631@1637; Cheshire, North & Fawcett Private International Law @156

[6] Family Law Act 1986, S. 46 (5)

[7] *Lawrence v. Lawrence* (1985) Fam 106@132; *Rowan v. Rowan* (1988) ILRM 65 @ 67

[8] (1976) 3 ALL ER 353; (1976) 1 WLR 1178

[9] *Bell v. Kennedy* (1868) LR 1 Sc & Div 307 @419 where it was held that if the intention of permanently residing in a place exists, a residence in pursuance of that intention, however short, will establish a domicile. *Blackett v. Darcy* (2005) NSWSC @ 13; *In the Marriage of Ferrier – Watson & Mc Elrath* (2000) Fam CA 219@[78]-[80]

[10] Cheshire, North & Fawcett @166

will serve for instance to contrast the case of a man who flees to England to escape political persecution in his own country with that of a retired Officer who goes to Jersey to avoid heavy taxation. Secondly, it may provide a means of testing the sincerity of a declaration of intention. However, the only intention relevant to a change of domicile is an intention to settle permanently in a country.

Domicile of choice must be voluntary, not of constraint. But in several cases, the circumstances may raise a doubt as to whether such freedom exists. For instance, freedom may not be said to exist in the instances given below:

a) **Prisoners**: a clear example of constraint preclusive of this freedom is imprisonment in a foreign country, and there is no doubt that a prisoner, except perhaps one transported or exiled for life retains the domicile that he possessed before his confinement[1].

b) **Refugees**: any motive that induces the flight no doubt shows that there was no intention of permanent residence in the chosen asylum. But this may be reversed where the Refugee continues to retain the residence after a return to the original country has become safe and practicable[2].

c) **Fugitives from justice**: this is another example of involuntary residence. If a man leaves his domicile in order to escape the consequences of a crime, the natural inference is that he has left it forever and that a presumption arises in favour of the acquisition of fresh domicile in the country of refuge.

d) **Fugitive debtors**: Freedom of choice is definitely affected when a man finds it desirable to flee the country to avoid his creditors. Whether this raises a presumption against an intention to return to his own country must obviously depend upon a variety of circumstances, such as the amount of the debts, the possibility of meeting them, the imminence of legal proceedings, the activities of the debtor in his new residence, e.t.c.

It certainly cannot be said that the adoption of the new residence perse effects a change of domicile until all the listed factors have been weighed and shown whether or not he will escape permanently[3].

e) **Invalids**: the principle is that unless a man is a free agent, his adoption of a new residence does not effect a change of domicile. He must have the alternative of staying or leaving. For instance, if a man is assured by his doctors that he has a few months to live, and he decides to spend the short remainder of his life in a country where the climate may alleviate his suffering, it would seem clear if all sentiments of pity is dismissed, that of his own volition, he has chosen a new permanent home, since he intends to continue his new residence until death.

f) **Miscellaneous Cases**: if a person resides abroad in pursuance of his duties as a public servant of his own Government (e.g. an Ambassador), a Military Attaché, Naval Officer or a Consul, or if he is an employee under contract to go where sent, the inference to be drawn from the cause of the residence is that it is not intended to be permanent[4]. In such cases, the existing domicile is retained unless there are additional circumstances from which a contrary intention can be inferred. Thus, it has been held that even a member of the armed forces may acquire a domicile in a foreign country where he is compulsorily resident and even when he is liable to be removed at any moment by higher authority, if there is sufficient evidence of his intention to settle there permanently as soon as he once more becomes a free agent[5]. The fact that the area of his new home coincides with his area of service does not perse preclude him from acquiring a new domicile. Certainly, if the requisite residence and intention are satisfactorily proved, he may acquire a domicile in a country other than that in which he is compulsorily serving[6]. It can be said that a person who enters the armed forces of a foreign power in such circumstances as to necessitate his indefinite residence in the foreign country, acquires a new domicile there[7].

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[1] *Re The Late Emperor Napoleon Bonaparte* (1853) 2 Rob Eccl 606

[2] *May v. May* (1943) 2 ALL ER 146

[3] *Re Robertson* (1885) 2 TLR 128; *Re Wright's Trusts* (1856) 25 LJ Ch 621 @624; Cheshire, North & Fawcett @168

[4] *A-G v. Kent* (1862) 31 LJ Ex 391@397 (attaché to Portuguese Embassy); *Sharpe v. Crispin* (1869) LR 1 P&D 611 (consul); *Firebrace v. Firebrace* (1874) 4 PD 63 (Army Officer); Cheshire, North & Fawcett @169

[5] *Cruickshanks v. Cruickshanks* (1957) 1 ALL ER 889; (1957) 1 WLR 564; *Sellars v. Sellars* (1942) SC 206 (Scotland)

[6] *Stone v. Stone* (1959) 1 ALL ER 194; (1958) 1 WLR 1287

[7] *Re Mitchell, ex p Cunningham* (1884) 13 QBD 418@421; *Forbes v. Forbes* (1854) Kay 341@356

BURDEN OF PROOF OF CHANGE OF DOMICILE

Firstly, English Judges are of the view that it requires far stronger evidence to establish the abandonment of a domicile of origin in favour of a fresh domicile than to establish a change from one domicile of choice to another.

Secondly, and by way of contrast, it has been held that a change of domicile from one country to another under the same Sovereign, as from Jersey or Scotland to England, is more easily proved than a change to a foreign country[1].

According to Cheshire, North & Fawcett Private International Law, *'nationality' and 'domicile' are two different conceptions and that a man may change the latter without divesting himself of his nationality*[2]. With due respect, I disagree with this view because once a person intends to be resident *permanently* in a country other than his country of origin, he intends to be a National of that new country. That is why we have the concept of *dual nationality*. Globally, many people of different nationality are in the possession of a dual citizenship status. For example, many Americans living and working in Nigeria have acquired the Nigerian citizenship status by naturalization, and this is what obtains in the United States of America, Germany, Great Britain, France, Italy, Japan and so many other countries. So long as a person intends to permanently reside in another country until death, the person should expect the Law of the place to govern him in all his personal affairs and even his property on death. The person is deemed to have become a citizen of that country by naturalization. He is deemed to have adopted the Law of that country as his personal Law. So, we cannot really divorce the concept of domicile of choice from nationality, particularly if the domicile is from one country to another. Whereby a person intends to change his domicile within a country, for instance when a person moves from her State of origin with the intention to reside and permanently settle in another State (still within the same country), then we can say that domicile and nationality remain two different concepts since it is taken that those States have different Laws which vary considerably in content and meaning. However, the truth in my candid view remains that it makes no sense for States within a country to have different Laws governing them. A uniform system of Laws in every country of the World is most desirable.

Some of the problems usually encountered on the analysis of the concept of *domicile* is that it is usually misused. It is my humble view that a domicile of choice should not be applied to change of permanent residence within a *particular* country, but only from one country to another. The fact is that not so many countries of the world operate different systems of Laws from one State to another. In Nigeria, for example, a man's property is governed by the English Law once the deceased was known with proof to have married under the English Law, irrespective of which State he might have decided to reside in Nigeria till his death, even if that particular State is not his State of origin. Countries that operate Uniform system of Laws[3], use *domicile* as a term for change of permanent residence from one country to another with the requisite intention of living there till a person dies, and this helps us understand the concept more, and convinces us that domicile and nationality mean one and the same thing.

We just have to work hard to eliminate the possibility of according the dual nationality status to any person, so that people from all over the world who have abandoned their domicile of origin should retain the domicile of choice only and no more. It is absolutely wrong for a person to have a dual citizenship at the same time because no person can be in two different places at the same time. It will also eliminate crime along the Borders. I would also add that once a person acquires a domicile of choice, the person who automatically becomes citizen by naturalization should equally have the right to contest for elections in that country, even though he is not a citizen by birth. The truth is that he has lived long for a certain number of years, and has become acquainted and possibly addicted to the customs and way of life of the people. We have to stop discriminatory practices (including those associated with Racism) all over the world, especially in Europe where naturalized citizens are currently not allowed to contest elections. This is the only way forward if the comity of nations must really stand, and this will also ensure love, peace and unity in the World.

CONTRASTING THE DOMICILE OF ORIGIN FROM DOMICILE OF CHOICE

A domicile of origin differs from a domicile of choice in its character, in the conditions necessary for its abandonment and in its capacity for revival. Firstly, there is the strongest possible presumption in favor of its continuance. As contrasted with the domicile of choice, it has been said by Lord MacNaughten that *it is more*

[1] *Whicker v. Hume* (1858) 7 HL Cases 124; *Moorhouse v. Lord* (1863) 10 HL Cases 272 @287

[2] @ p. 171; *Re Adams* (1967) IR 424 @447 - 448

[3] In Nigeria, we operate the Uniform Civil Procedure Rules, especially if you are based in Abuja and intend to reside there for life. This is irrespective of the fact that there are indigenes of Abuja (Federal Capital Territory), and the person in question may even be an indigene of another Nigerian State

enduring, its hold stronger and less easily shaken off[1]. Secondly, since a domicile of choice is voluntarily acquired animo et facto, so it is extinguishable in the same manner i.e. merely by a movement from the country *animo non revertendi* and even without acquiring a fresh domicile. When countries make the acquisition of a domicile of choice in another country punishable if the Propositors refuse to abandon their domicile of origin, people will not easily be acquiring another domicile, knowing that they may end up being without any domicile at all or a citizenship status.

According to *Cheshire, North & Fawcett*[2], the only distinction between acquisition of a domicile of choice and its abandonment is that the latter requires less evidence than the former[3], but then the distinction between acquisition and abandonment will not arise if people should learn to have and accept as their nationality for life just one domicile.

The domicile of origin which is not a matter of free will but is communicated to a person by operation of Law is not extinguished by mere removal non revertendi. It cannot be lost by mere abandonment and this is because you may even abandon your domicile, willingly but provided you have not acquired any domicile of choice, your domicile of origin still stands as your domicile. We can see *Bell v Kennedy*[4], which is the leading authority for this Rule. In *Bell v. Kennedy*[5], the domicile of origin of Bell was in Jamaica where he had been born of Scottish parents domiciled in that Island. He was educated in Scotland, but returned to Jamaica after reaching his majority. Some fourteen years later in 1837, he left the Island without any intention of returning, resided with his mother in-law in Scotland, and occupied himself in looking for an estate in that country on which to settle down. He had not been successful in this when his wife died in 1838, but after her death, he bought an estate and it was admitted that at the time of the trial, he had acquired a Scottish domicile. The question for decision was - what was his domicile at the time of his wife's death? It was held that his domicile at that moment was in Jamaica, although he had abandoned the Island for good in 1837 and was resident in Scotland, he had not at that time decided to make his permanent residence there. The evidence showed that in 1837, his mind was vacillating with regard to his future home. Therefore, since he had not acquired a Scottish domicile of choice, he retained his domicile of origin.

REVIVAL OF THE DOMICILE OF ORIGIN

Where the domicile of origin is displaced as a result of the acquisition of a domicile of choice, the Rule of English Law is that it is merely placed in abeyance for the time being. It remains in the background, ever ready to revive and to fasten upon the Propositus, immediately he abandons his domicile of choice[6]. It is my view that once a person acquires a domicile of choice, he should not be allowed to claim back the domicile of origin, there must be strict rules propounded on the change of domicile. If not, people will easily be changing their domicile anytime, at the slightest convenience, and can easily acquire more than two domicile before we get to know it. Nobody should be allowed in anyway and for any reason to acquire more than one domicile at the same time. The flexibility in the Rule of change of domicile has created a lot of difficulties by making it easy for criminals to have escape routes to different domicile which they may acquire. For instance, Mr. A can have a domicile of origin in which case, he is a citizen of his birth place/country, and next he acquires a domicile of choice in country Z (where he is also a citizen), he may commit a crime in his domicile of origin and run to his domicile of choice, because he possesses the dual domicile and citizenship/nationality status, and it becomes difficult to trace him as a rogue. This is why crime has become very rampant across the different country Borders. Therefore, the doctrine of *Revival* should be abolished to stop people from committing crime, and this will equally make population census and available statistical data on identity more reliable. It should be however noted that since citizens of some countries are proved to have more criminal tendencies than those of some other countries, it has become extremely difficult and totally unacceptable for the whole world to embrace the concept of a uniform passport or identity which would have been very desirable.

I also would not know why many people of the world have refused to accept to live by their domicile of origin throughout their lifetime. Perhaps, part of the problems we are facing today on the issue of domicile is the

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[1] *Winans v. A-G* (1904) AC 287 @290; *Bowie (or Ramsay) v. Liverpool Royal Infirmary* (1930) AC 588. In the latter case, evidence was completely lacking of the slightest indication, either by words or actions that George Bowie intended to live elsewhere than in England. Yet, it was held that the tenacity of his Scottish domicile of origin had not yielded. See Cheshire, North & Fawcett @162-163

[2] Private International Law @ 172

[3] *Re Evans* (1947) Ch 695

[4] (1868) LR 1 SC & Div 307

[5] Supra; reported in Cheshire, North & Fawcett @172-173

[6] Cheshire, North & Fawcett @173; *Udny v. Udny* (1869) LR 1 Sc & Div 441; *Tee v. Tee* (1974) 1 WLR 213@215-216

fact that some countries High Commissions/Embassies just refuse to give people an entry visa into any country they intend to visit or study or even work and do business, simply because of a certain bad impression they have of the people or that person's nationality. The Comity of Nations has to sit down and discuss how Border crimes can be eliminated. The first solution to be given would be to critically assess any person who wants to enter into another country, by finding out the person's motive for going to that country. Constant refusal of Entry Visas to intending travelers have greatly contributed to peoples' insistence in acquiring a domicile of origin and domicile of choice (especially of different countries), thereby having dual nationality which eventually gives a wrong statistics of the world data. They do this for the fear of being denied entry into a country they want to visit; some people go to any length just to acquire two domicile. For instance, an American citizen by naturalization can travel from the USA to many other countries without a visa. Yet, he is a Nigerian citizen by origin and also has his Nigerian passport/citizenship. Now what are we talking? The doctrine of Revival does more harm than good. Any National of a country that gets entry permit or visa into another country and commits crime at the country he enters, should be punished by the Law of that country, and his crime should be treated personally against him without any blame being attributed to his country of nationality. In that way, other countries will be more realistic and cooperative in issuing visas to genuine travelers. The desperation to acquire a domicile of choice and still maintain a domicile of origin will reduce drastically. As a Nigerian citizen, if Mrs. B for instance, wants to travel to England on vacation and she is given a visa, each time she intends to travel there, why would Mrs. B be tempted to possess a British passport? There is no doubt that a person can change his domicile of origin to a domicile of choice, but there should be no room for abandonment of domicile of choice subsequently, once he rejects his domicile of origin. The domicile of origin has always been taken for granted as the last hope of every person. That policy towards any country of one's origin should be abolished. No country is useless from inception; it is the people in that country that make it good or undesirable. No country of the world should be looked down upon.

EXCEPTION TO MY PROPOSITION THAT A PERSON MUST HAVE ONLY ONE DOMICILE

The invariably one and only exception to this rule is *married women*, and this is because anything may lead to spousal divorce in which case the woman is free to take back her domicile of origin (if it is different from that of the man). This means that she must come from a different country from that of the man in my own view. It could also possibly have been resolved by the Parties that after the divorce proceedings have been through, the woman will drop her domicile of choice (that of the ex-husband) and take back her domicile of origin. Where the divorced husband does not stop her from continuing with his own domicile and she indeed intends to keep using the ex-husband's domicile, then she does not have to revive her domicile of origin. Despite this, a married woman should be allowed to use her domicile of origin instead of her husband's domicile (where his domicile is different from hers) if she thinks it would do her more justice without affecting adversely her marriage. Whereby the husband refuses to allow her exercise such freedom in the marriage, they both have to mutually agree by finding a lasting solution to that issue. If it will make them incompatible, they may cease to contract any valid or legal marriage *ab initio*. Hence, for intending spouses with different domicile, critical issues like this should be discussed before all marriage formalities are met.

DOMICILE OF DEPENDENT PERSONS

1. Children: A child acquires his/her domicile of origin at birth, which could be that of his father (for a legitimate child) or that of his mother (for an illegitimate child). A Foundling acquires the domicile of the country where he is found as stated earlier. A child is described in England as any person under the age of sixteen years. In Nigeria, it is eighteen years of age for attainment of majority. A child has no power to alter his civil status until he is of age and capacity[1]. But any child below the age of sixteen, whose foreign marriage is recognized in England[2] will be regarded as capable of having an independent domicile. The primary rule is that the domicile of a legitimate child automatically changes with any change that occurs in the domicile of the father[3], while that of an illegitimate child changes with that of his mother. Unfortunately, a change in a Guardian's domicile may not be immediately communicated to the Ward (especially if the Ward is living in his school in a far away city). This is another reason why flexibility in the change of domicile should be discouraged.

[1] See Domicile & Matrimonial Proceedings Act 1973, s. 3(1) of England. A child who was over 16 years or was married, but was incapable of having an independent domicile before January 1, 1974 is regarded as capable from that date; Cheshire, North & Fawcett @175

[2] *Alhaji Mohammed v. Knott* (1969) 1 QB 1; (1968) 2 ALL ER 563

[3] *D'Etchegoyen v. D'Etchegoyen* (1888) 13 PD 132; Cheshire, North & Fawcett @175

According to the Domicile and Matrimonial Proceedings Act 1973[1], where both parents of a child are alive but living apart, the child's domicile is that of the mother if the child has his home with her and no home with his father (provided it is mutually agreed by the parents that the mother's domicile is separate from that of the father). The child in this case continues to retain his mother's domicile till after her death, unless and until he has a home with his father. It is my view in this case that such a child, knowing fully well that both parents have different domicile, should not be allowed to change to that of his father (if at all he so desires) till he has reached full age and capacity, after which if he decides to take the father's domicile, he should never be allowed to revert to his mother's domicile again. However, a child acquires on the death of the father, the domicile of his mother[2].

2. Lunatics: here, the paramount consideration is the interest of the lunatic, but according to the general principle applicable to children, the domicile of the father will be communicated to a child of an unsound mind during his childhood stage, but if he continuously remains insane during childhood and after the age of sixteen or on attainment of majority, his domicile will continue to change with that of his father (if his father changes his domicile). If his insanity started after he had clocked the age of sixteen years or majority, the Court of Protection should be entitled to change his domicile, provided it will be for his own benefit. A rule could be adopted to the effect that an adult who is mentally disordered or mentally incapacitated should be domiciled in the country with which he is for the most time being most closely connected[3].

The Position of Corporations

A connection with a particular country must be assigned to a Corporation in order that the different rights and obligations by which it is affected may be determinable by the appropriate system of Law[4]. A company should be domiciled in the country where the centre of control exists, and can be resident in other countries where it has branches, provided we realize that residence in this context does not mean *permanent* place. Only the Head Office can be assumed to have a permanent status. Therefore, the Law of the country of a company or Corporation's Headquarters shall govern every affairs of the Company or Corporation. Branches remain subject to control of the Headquarters. Any country that operates Laws that are in conflict with that of a principal address of a company should not allow the company to operate a Branch, except it is willing to allow the branch to be subject to control of the Laws of its Headquarters[5].

The Directors or Management Staff of a Company do not necessarily have to be Nationals of the Country of the headquarters. It is sufficient if they are merely resident there with no intention whatsoever to make that country their nationality. Where they choose it to be their nationality, the domicile of origin or whichever nationality they had prior to this time must be taken away from them. This will equally help to guard against fraud in the company. There is no Rule that says the Staff of a Corporation must have the nationality of the Corporation[6].

DOMICILE, NATIONALITY AND RESIDENCE

According to *Cheshire, North & Fawcett*[7], *nationality is a possible alternative to domicile as the criterion of the personal law. These are two different conceptions. Nationality represents a man's political status, by virtue of which he owes allegiance to some particular country. Domicile indicates his civil status and it provides the law by which his personal rights and obligations are determined. Nationality depends, apart from naturalization, on the place of birth or on parentage; domicile ….. is constituted by residence in a particular country with the intention of residing there permanently. It follows that a man may be a national of one country, but domiciled in another.*

I humbly disagree that nationality is a possible alternative to domicile because the place you choose as domicile of choice should remain your nationality since the person intends to make such a place his permanent home. The concepts of *nationality* and *domicile* should not be separated; they should be taken to mean the same thing, so that we can avoid any person being a citizen of two countries at one and the same time. Therefore, the

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[1] S. 4 (1); or S.9 Domicile Act 1982 (Australia); S.6 Domicile Act 1976 (New Zealand)

[2] Cheshire, North & Fawcett @176; *Potinger v. Wightman* (1817) 3 Mer 67

[3] Cheshire, North & Fawcett @178

[4] Cheshire & North's Private International Law (10th Edition), Butterworths, 1979 @188

[5] In my opinion

[6] In my humble view

[7] Private International Law (14th Edition), Oxford University Press, 2008 @179-180

domicile or nationality of a person should govern his status and personal rights. The two concepts should be taken to mean the same thing. However, if a citizen of country **A** gets a job in country **B**, the citizen should only be said to be *resident* with a work permit, and not domiciled in country **B**. Once that citizen decides to make country **B** his domicile, it should be taken that he intends to make that place his permanent home in which he won't only be resident there, but will equally be a national of country **B**. That should be taken to mean that he has lost his domicile of origin permanently for life for the domicile or nationality of choice which in this case is by naturalization. The concept of having two domicile at a time should be abolished.

Therefore, it is wiser to speak of *domicile/nationality* and *Residence* in different terms, the less ambiguous the concepts, the better for the world at large. There must be a solution to reducing crimes committed in different countries by one person and we must propagate ways of catching a criminal who commits crime in country **A** and tries to escape justice by running into country **B**. Generally, it is therefore better for one Law to govern a person's status and personal rights. The basic challenge being faced in unifying the concept of domicile and nationality is that some countries have diverse legal systems. For instance in Great Britain, it could be one system of Law in England, another in Scotland. In Canada, it could be one system in Ontario, another in Quebec. It remains my humble opinion that countries such as these should have a Uniform System of Laws which can be applicable to all the different States in them in addition to the different system of Laws already being operated by the different States (and that where there is conflict between the Uniform System of Laws and those of the different States on any subject, the Unified system of Laws should prevail).

Another opinion is that Laws of the different States in any particular country should be very similar in respect to all subjects, so that they can be left with only insignificant differences. This certainly unifies any country more, but when the Laws of different States within a particular country are very different, there is bound to be crisis as the Nationals begin to see themselves as more distant from each other than they actually are. These suggestions I have made are all efforts to ensure that only one Law governs a person irrespective of his status or personal rights.

CONCLUSION

Once a person has just one nationality (or one domicile), the requirements and establishment of *proof of intention* will be done away with, but this difficulty of establishing his intention remains with us all if we continue to allow people to abuse the concept of domicile by having a domicile of *origin* and a domicile of *choice.*

The conclusion that *as determinants of the personal law, nationality yields a predictable but frequently inappropriate law, and that domicile yields an appropriate but frequently unpredictable law*[1], will not be applicable once everybody has a single nationality or domicile status. Residence no matter how long in a place can never be regarded as domicile or nationality without the requisite intention that one wants to be a citizen of that country. Hence, a National of any country can live, work and retire in another country, before going back to his or her own country. Even where he chooses in retirement not to go back to his country or nationality, everything about his life will still be governed by the Law of his own country, even if he dies in the country of residence where he worked and retired. Dual nationality should be abolished. Domicile and nationality should be defined to have the same meaning or we abolish completely the concept of *domicile*. With this, even issues of jurisdiction over matters concerning people will be made easier to determine, no matter where the person affected is found at the particular time the issues or subject(s) for determination come up. Residence whether *habitual* or *ordinary* residence[2] remains mere residence and the place of residence which is not a person's nationality, cannot govern a person's status or personal rights[3].

[1] Cheshire, North & Fawcett supra @ 181

[2] As discussed fully in Cheshire, North & Fawcett @ pp. 183-186

[3] In my candid opinion.

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