



Family LAW (Domicile) Notes

Family Law (Universiti Malaya)

DOMICILE

DOMICILE

Define: The place of residence or ordinary habitation; a house or home; the place where one has his permanent residence, to which, if absent, he has the intention of returning.

Domicile of Origin

Define: Domicile obtained by a person at birth

Characteristics

- (i) Obtained by a person at birth

Udny v Udny

Facts: Udny was originally from Scotland where he bought a house. He then lived in England for 32 years. He sold his house in England, together with its furnishings and furniture and left for France. At this point, his domicile of origin was revived because he intended to terminate his domicile of choice when he sold the house and its furnitures.

Held: A person's domicile of origin follow the father's domicile if they are a legitimate child. If not, the person follows the mother's. Hence, the law applicable to him was Scotland's law.

- (ii) Difficult to terminate

Harder to prove domicile of origin has been terminated compared to domicile of choice

- (iii) Can be revived after domicile of choice is terminated

Domicile of origin is revived after domicile of choice is terminated. Domicile of origin stays until a new domicile of choice exists and this is known as the revival rule.

Domicile of Choice

Define: Domicile that is obtained from intention and act after he reached the majority age.

S. 2 Age of Majority Act 1971: 18 years and above

If female, have to reach age of majority and unmarried

2 conditions:

- i. Intention

5 factors court will look at

- (a) Purchase of property

Udny v Udny

Shaik Abdul Latif v Shaik Elias Bux

Facts: Domicile of origin is in Hong Kong then moved to Singapore and subsequently to KL where he lived for 19 years. Here, he amassed wealth, built a home for his family and regarded the place as his place of residence. He did not have a house in HK. His wives embraced Islam and he never visited China.

Held: Domicile of choice is in Malaysia.

- (b) Place of residence of child and wife

Joseph Wong Phui Lun v Yeoh Loon Goit

Facts: Both of them were born in Kuala Lumpur. The husband had left them to Singapore for work and subsequently he opened a franchise in Singapore and only came back to Kuala Lumpur once or twice a week. He also had a mistress in Singapore and lived with him. After that, the husband and wife lived separately. The husband had 3 children with the mistress.

Held: Domicile of the husband had changed to Singapore, as the court looks at several factors (i) husband's relationship with his mistress was in a serious term as they had 3 children (ii) the marriage between the petitioner and the wife seem to broken down (iii) attempt to ask for citizenship in Singapore although he was still a Malaysian citizen.

This factor is important but where the marriage has broken down, the residence of the wife has lost its significance.

- (c) Living there for a fixed reason

Winans v AG

Held: It is necessary to prove that the person who is alleged to change his domicile had a fixed purpose to make the place of his new domicile as a permanent home.

- (d) Citizenship

Kanmani v Sundrampillai

Facts: Husband came to Federation of Malay to seek employment from Ceylon. He obtained employment and medically boarded out of work. He went on leave for about a year and a half in Ceylon. He returned to Malaya after that period.

Issue: Whether he had acquired a domicile of choice in FOM

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Held: The husband's colleague said Winans did not intend to stay in Malaya and the fact that he did not apply for citizenship although his wife did, shows he has no intention to make Malaya his permanent home.

Parameswari v Ayadurai (cf)

Facts: Parties were born in Malaya. Husband was permanently employed by government and both parties had taken out federal citizenship papers.

Held: They took out the citizenship papers, hence shows strong evidence of intention to stay in Malaya.

(e) Residency of a long time

Udny v Udny

Held: He can prove his domicile of choice in England because of he settled down there almost 32 years

Presumption can be rebutted:

Winans v AG

Facts: Winans was an American and he went to England upon the recommendation of his doctor. He lived there for a very long time and had a business there. He intended to go back to America once his business succeeded.

Held: It is an involuntary change of place.

ii. A change of place

Has to be voluntary. Not due to compulsion for example, health reasons, running away from creditors, duties or responsibilities.

Winans v AG

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Held: It is an involuntary change of place.

Domicile of Dependence

Define: for those who are not able to have domicile of choice because they are dependent on someone else.

Wife & children

Wife

Follows the domicile of her husband once she is married due to common law's perception of husband and wife as one entity

Ang Geck Choo v Wong Tiew Yong

Facts: Wife who originally came from Singapore was married to a Malaysian husband which was the respondent. R contended that her domicile is not in Malaysia

Held: Her domicile upon marriage was domicile of dependence and it remains that way until her marriage is dissolved

Pauline Chai v Khoo Kay Peng

Facts: The parties were married in Malaysia. The wife and 3 children moved to Australia. The husband continued living in Malaysia although he continuously travelled back and forth between Malaysia and Perth. Then, the wife lived in England.

Held: As long as the marriage has not been dissolved, the wife does not have a legal right to choose her domicile independent from her husband's domicile. The argument of the wife is no longer a Malaysian citizen, it made no difference to the law regarding her domicile of dependence

Lord Advocate v Jaffrey

Facts: The husband and wife were domiciled in Scotland. The husband then left to live in Queensland with the wife's consent. He got married to someone else in Queensland. The wife remained in Scotland where she passed away and the proceedings were brought there

Held: The wife follows the husband's domicile which was in Queensland even though she had never visited there. The domicile of the wife was inseparable from her husband.

Children

Depends on their father until they reach the age of 18. If the father dies, domicile follows the mother if she changed hers. If not, follows the deceased father.

If their mother is married to a new husband, the children may change their domicile to follow up with their new father, if it is bona fide.

Re Beaumont

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Facts: The mother and children domiciled in Scotland. Upon her remarriage, her second husband reside permanently in England. All children followed (and acquired English domicile) except Catherine. She remained in Scotland until she died.

Held: Change of domicile of a fatherless infant is not when the mother changes the domicile but when the mother exercise the power vested in her. The mother may abstained from doing so. In this case, Catherine's domicile is in Scotland.

If their mother is married to a new husband, the children may change their domicile to follow up with their new father, if it is bona fide.

Pottinger v Wightman

Held: Mother may not change a child's domicile to benefit herself. For example, the law of estate in the new country benefits her more.

RESIDENCE

Define: (Fox v Stirk) Physical presence and intention to remain in a place sufficiently a long period, making it more than a transitory.

IMPORTANCE OF DOMICILE

1. For LRA's usage

S. 3(1): Act apply to everyone in Malaysia and to all who domiciled in Malaysia but resident outside it.

2. Marriage

S. 26(1)(c): Registrar may solemnise a marriage at the Malaysian embassy, consulate or high commission in any country, provided that the Registrar is satisfied that either party is not domiciled in in Malaysia.

S. 104: A marriage contracted outside Malaysia other than stated in S. 26, shall be recognised as valid if (b) each party (at the time of marriage) had capacity to marry under the law of country they domicile (c) either party is a citizen/domicile in Malaysia

S. 105: A marriage contracted in any foreign embassy, consulate or high commission in Malaysia shall recognised as valid if (b) each party (at the time of marriage) had capacity to marry under the law of country they domicile (c) either party is a citizen/domicile in Malaysia

Re Maria Hertogh

Reason: Before a marriage is valid, it must be valid in accordance with the law of domicile of both parties.

3. Divorce

S. 48(1)(c): Requires the domicile of parties to the marriage at the time petition presented is in Malaysia

S. 49(1): Court shall have jurisdiction for a wife to bring petition if (a) wife has been deserted/husband was deported but husband once domiciled in Malaysia (b) wife resident in Malaysia and has been ordinarily resident for 2 years (this is to help Malaysian wives)

Joseph Wong Phui Lun v Yeoh Loon Goit

Reason: Court has jurisdiction after satisfied that the husband had acquired domicile of choice in SG.

4. Legitimacy

S. 75(3): A child of void marriage shall be trated as legitimate child if both parties believed that it was a valid marriage at the time of solemnization and the father was domiciled in Malaysia at the time of marriage

S. 4 of Legitimacy Act: Legitimacy by subsequent marriage can be done if (i) the father domiciled in Malaysia at the time of marriage

IMPORTANCE OF RESIDENCE

1. For LRA's usage

S. 3(1): Act apply to everyone in Malaysia and to all who domiciled in Malaysia but resident outside it.

2. Marriage

S. 14: When a person wants to get married, they shall be a resident of the area for 7 days before give notice to the Registrar of that district.

If both parties resident in the same area, only one notice should be given.

Residence determines the marriage district

3. Divorce

S. 49(1): Court shall have jurisdiction for a wife to bring petition if (b) wife resident in Malaysia and has been ordinarily resident for 2 years (this is to help Malaysian wives)

4. Judicial separation

S. 48(2)(c): Both parties are required to be a resident in Malaysia at the time of proceeding for the court to

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has jurisdiction to make a decree of judicial separation.

5. Adoption

S. 4(3) of Adoption Act: A child and applicant for adoption shall ordinarily resident in West Malaysia

TPC v ABU

6. Nullity of marriage

S. 67: For a court to has jurisdiction in making decree of nullity, both parties shall reside in Malaysia at the time of commencement of proceeding

Ng Wee Why v Wong Sook Heng

Facts: Husband filed a petition to annul his marriage.
But at that time, the wife was resident in Penang

Held: Court has no jurisdiction