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Domicile of Dependents

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ABSTRACT

Generally Domicile means a permanent home or any place where the person has decided to reside with an intention to stay their permanently. It is an essential requirement that every person must have a domicile. Domicile is one of the concept under private international law. This Domicile helps in identifying a person where there is involvement of a foreign element and with a territory, that is subjected to a particular system of law i.e. his/her personal law. There are different types of domicile: domicile by origin, domicile by choice, domicile of dependency.

In this article the author mentioned about who are dependent persons, and how the domicile of various categories of dependent persons is decided. The author has critically analysed the domicile of dependency as to how one's domicile changes with the change of domicile of another person in certain situations with help of case laws discussed in this regard.

Keywords: *Illegitimate child, Legitimate, Natural Child, Adopted Child, Domicile, Insane, Minor*

I. INTRODUCTION

Unnatural Dependent persons cannot abandon the domicile imposed on them (domicile of dependency). The domicile of dependent persons changes with the change in domicile of the person on whom he/she is dependent on. This concept of domicile of dependent person is also known as 'domicile by operation of law'². There are different types of dependent persons :

- i. Married woman
- ii. Lunatic/insane person/ mentally disorder person
- iii. Minor:

(a). Adopted child

(b). Natural child:

- Legitimate child

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² Anmol Goal & Sunita Gupta, Concept of Domicile, JUSIMPERATOR., Dec.17, 1. 2, 8-9.

- Illegitimate child

II. DOMICILE OF MARRIED WOMEN

The domicile of married women is dependent on husband under English law. It means domicile of wife is same as husband and her domicile changes with domicile of husband. Earlier days, this rule was considered absolute. This rule was based upon an ancient common law maxim that the husband and wife was one and the same person in eyes of law. Later this rule was subject to criticism by writers and judges.

In India, sec-15 and 16 of Indian Succession Act are based on this English rule. This rule of dependency of domicile of married woman on husband has been already abolished in some countries like Canada, Australia, The Republic of Ireland, New Zealand. So that married woman would be treated as having her own independent domicile like others.

Now where marriage took place before 1st January, 1974, such married woman would have domicile of her husband as domicile of dependency.

But where marriage took place on or after 1st January, 1974, such married women would not be dependent on domicile of her husband rather will retain her own domicile of origin or may acquire domicile of her choice.

Where marriage took place before that date, such married woman has retained domicile of her husband but it is not treated as domicile of dependency rather it is treated as domicile of choice.

Case Law- In Puttick vs A.G. 1979 3 All E.R 463.³

The petitioner was a German National and has her Domicile of origin in Germany. She was charged for various offences and has been arrested but on bail she absconded and has obtained a passport illegally from German National and has come to England and then she has married an English man in 1975.

The Issue here is that whether she has acquired English domicile?

The court held that she did not acquire domicile in England because the rule of unity of domicile has been abolished by the Domicile and Matrimonial Proceedings Act, 1973.⁴ It was also said that she could not acquire domicile of choice because she is staying in England merely to avoid trial in Germany, there was no intention to setup home permanently there.

³ Case Law- In Puttick v A.G., (1979) 3 All E.R 463.

⁴ N Roja Rani, Analysis of Law of Domicile, Conflict of Law.output, <http://www.alsi.edu.in/images/conflict-of-law.output.pdf>.

According to court, her act of illegal entry and residence has barred her from acquiring domicile of choice in England⁵.

- So, wife takes the husband's domicile until she changes her domicile voluntarily.
- A widow acquires and retains her husband's domicile until she remarries (2nd marriage) or she changes it voluntarily.
- Once a widow remarries she will acquire the domicile of her 2nd husband.

Case Law- Lord Advocate Vs. Jaffery (1921) 1 AC 146.⁶

Mrs. Mickinon and Robert Mickinon got married. Robert Mickinon (husband of Mrs. Mickinon) was born in Campbeltown and was a chief quarter master in navy and after his retirement he and his wife lived in Aberdeen. Later Robert Mickinon has remarried (bigamy) Wilhemina and lived with her until his death. So, petition has been filed by Mrs. Mickinon for divorce on ground of her husband's desertion and adultery.

The issues in his case were:

- Whether Robert Mickinon had acquired a domicile in Queen's land at the date of petition filed by Mrs. Mickinon?
- Whether by virtue of rule of dependency, Mrs. Mickinon had acquired domicile in Queen's land.

The House of Lords said that Robert Mickinon had acquired a domicile in Queen's land but his wife (Mrs. Mickinon) domicile remains that of Scottish because of the special circumstances of this case.

III. DOMICILE OF LUNATIC/INSANE/MENTALLY DEFICIENT PERSONS

According to sec-8 of Indian Succession Act 1925, a lunatic cannot independently acquire a domicile. If a person is insane, such person will retain the domicile which he/she had just before being legally treated as insane. If a person is mentally retarded by birth or when he/she is still a child, then such person will be treated as a dependent child.

Similar rule is also applied in Canada and Australia.

In the following ways the changes in domicile of insane may occur:-

⁵ Sant Lal Nirvaan & Nikita Goel, Critical Analysis of Law of Domicile in the Domain of Private International Law Legal Service India - Law, Lawyers and Legal Resources, <http://www.legalserviceindia.com/legal/article-400-critical-analysis-of-law-of-domicile-in-the-domain-of-private-international-law.html>.

⁶ Case Law- Lord Advocate v Jaffery, (1921) 1 AC 146.

- If the person who is insane is a minor, then his/her domicile changes with parents.
- If the person who is insane is a married woman, then her domicile changes with domicile of her husband.
- If the person who is insane is a major, then his/her domicile changes with guardian.

IV. DOMICILE OF MINORS/CHILD :

1. Natural Children :

a. Domicile of legitimate child – his/her father's domicile is the one which such legitimate-child would acquire.

b. Domicile of illegitimate child - An illegitimate child will acquire the domicile of his/her-mother.

In Australia - the domicile is domicile of father if parents are living together but if not, the domicile of the parent with whom the child is living if parents are separated⁷.

c. Orphanage minor - The domicile of an orphan child cannot be changed until the minor attains majority and then can have his/ her domicile of choice.

2. Adopted Child :

The adopted child will acquire the domicile of adoptive parents as the child once adopted would be legally treated as a natural child.

Father's domicile is the one which such minor as well as lunatic will take the domicile of the father if father is alive but if father dies then the minor plus lunatic will take-domicile of mother-case.⁸

- Only when the parents direct, the domicile of the minor can be changed.
- Generally, the child should have a dependent-domicile of his/her parents but where there is weakened-tie with them, the independent-domicile will be the one taken by such child.
- In other circumstances, the child should be domiciled in a country with which he is more closely-connected.

V. CONCLUSION

It is essential for every person to have a domicile. However, determining the domicile differs

⁷ Lawnn.com -, Meaning of Domicile And Kinds of Domicile- The Law Regulating Domicile Homepage - Legal News India, Legal News World, Supreme Court -1 (2019), <https://www.lawnn.com/domicile/>.

⁸ Rosario vs. INS, 962 F.2d 220(2d Cir.1992).

from country to country. Domicile of dependent persons cannot have their own domicile of choice rather it is dependent on some other person. In case of domicile of dependency, the dependent persons domicile changes with change in domicile of another person.

Domicile of married woman- depends on husband's domicile.

Domicile of minor: depend on parent's domicile.

Legitimate child- depends on father

Illegitimate child- depends on mother

Domicile of mentally disorder person: depends on whether is minor, married person or major then depends on domicile of parents, husband, guardian respectively.
