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Domicil *

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TOPIC 1. MEANING OF DOMICIL.

Section 10. Domicil is the place with which a person has a settled connection for legal purposes; either because his home is there or because it is assigned to him by the law.¹

Comment: (1) Jurisdiction often depends upon domicil, and it is therefore necessary in order to determine questions of jurisdiction to establish the principles upon which domicil is based. The principal rights determined by a person's domicil concern: (a) status such as legitimacy, adoption and divorce; (b) the transfer by act of law of a per-

*Part of Restatement of Conflict of Laws of American Law Institute. Reprinted by permission. Annotations added by Pennsylvania Bar Association. Reprinted by permission.

¹In *Price v. Price*, 156 Pa. 617—1893, Sterrett, C. J., defines a person's domicil as "the place where he has his true, fixed and permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning." In *Carey's Appeal*, 75 Pa. 201—1874, Gordon, J., defines it as "that place in which a person has fixed his habitation without any present intention of removing therefrom." These definitions have been frequently quoted with approval in later cases. In *Gearing v. Gearing*, 90 Pa. Superior Ct. 192—1926, Bishop's definition is quoted with approval: "It is the place which the fact and the intent, combined with each other and with the law, gravitate to center in, as the home."

Other definitions may be found in *Guier v. O'Daniel*, 1 Binn. 349—1806; *Fry's Election Case*, 71 Pa. 302 (s. c. 8 Phila. 575)—1872, and *Reed v. Reed*, 30 Pa. Superior Ct. 229—1906.

sonal estate as a whole, as for instance, upon death; (c) the incidence of personal taxes; (d) judicial jurisdiction.

(2) For the purpose of the Conflict of Laws, it is chiefly important to fix domicil within a state; but for other purposes of the law it may be necessary to fix it more definitely in a local sub-division of the state. Domicil is usually fixed in a particular house; in which case it would also be fixed in the city, county, and state which contain the house. On the other hand, it may not be possible to fix the domicil more definitely than in a city or state.²

1. The laws pertaining to the distribution of personal property on the death of the owner in state X and in state Y are respectively equally applicable to all persons domiciled in the state. A dies leaving personal property. In determining A's domicil for the purpose of deciding whether his personal property shall be distributed under the law of X or under the law of Y, it is immaterial whether the area of his domicil is regarded as the boundaries of X or Y, or the boundaries of a political division of X or Y.

2. Under the law of X the tax on A's personal property which A is obliged to pay and the place of payment depend on whether A is domiciled in one or another county of X. It is material that A's domicil shall be fixed within the boundaries of a county of X.

(3) Domicil cannot be fixed in a broader unit than a territory having a single system of law, since otherwise the determination of domicil would not determine the law which is applicable by reason of domicil.

3. Each unit of federal territory, including the District of Columbia, has its own law. A is domiciled in the city of Washington; his domicil is not in "federal territory" in general, but in the District of Columbia.

4. The District of Columbia was originally formed of a portion north of the Potomac ceded by Mary-

²See *Price v. Price*, 156 Pa. 617—1893 and *Reed v. Reed*, 30 Pa. Superior Ct. 229—1906.

land and a portion south of the Potomac, including Alexandria, ceded by Virginia. A different law prevailed in each portion of the District. The portion of the District south of the Potomac was afterwards retroceded to Virginia. While this portion was still a part of the District of Columbia, A was domiciled in Alexandria; his domicil was not in the District of Columbia, but in the southern portion of that District.

(4) It is correct to say either that domicil is a place or that domicil is in or at a place; but not to say that domicil is a relation between a person and a place.

Section 11. A question of domicil arising in litigation is determined by the law of the forum.³

Comment: (1) The principles or rules for ascertaining a person's domicil, hereinafter set forth, are those which are generally accepted in states where the Anglo-American common law prevails. In the legal systems of other civilized states there is a conception of domicil which, although it may differ in details from the common-law conception, in its broad outlines is the same. It is impossible for all legislatures and courts, in dealing with an idea or principle common to all countries, to express this idea or principle in identical language; and even if they agreed on identical language, it would be impossible that they should all attach the same meaning to such language. Each court in dealing with any case involving domicil will apply to the determination of the question its idea as to the law in its own state; for the law of domicil, like any law which is the expression of an international conception, is law only because it has been received as a part of the court's own domestic law; and it is as part of its own law that the court applies it to the solution of cases brought before it.

³Accord: Carey's Appeal, 75 Pa. 201—1874; Frick's Appeal, 114 Pa. 29—1886, and Dalrymple's Estate, 215 Pa. 367 (s. c. 31 Pa. C. C. 177)—1906.

Compare: Taney's Appeal, 97 Pa. 74—1881; Taylor Minor's Estate, 26 W. N. C. 576—1890, and Wilkins' Guardian, 146 Pa. 585—1892.

1. A judgment is obtained in X against A, without personal service, on the ground that A is domiciled in X. Suit is brought on the judgment in Y. According to the law of Y, A was not domiciled in X. The court in Y will refuse to enforce the judgment.

2. A's domicil is alleged to be in France, and evidence is given which tends to establish the fact alleged. An offer is made to show that according to the French law another fact, not required by the law of the forum, is required to establish a domicil in France. This is immaterial, since the question of domicil in France is to be determined by the court according to its own law.

(2) In many countries the word domicil is also used in a different sense to express a different legal conception, as, for instance, the French doctrine of the elected domicil at a person's place of business, at which legal service may be had upon him. In the law of war the expression "commercial domicil" is used to designate the national character attached to the carrying on of business in a country, and has nothing but the name in common with the domicil herein dealt with. Domicil in these different senses should be carefully distinguished from domicil in its general international sense, which is the only form of domicil known to the Conflict of Laws.

3. A decision that a person had a "commercial domicil" in X is cited as an authority on the law of domicil. No weight should be given it, since the question there decided is not properly one of domicil.

Section 12. The term "residence" is not always used in the sense of domicil, and its meaning in a legal phrase must be determined in each case.⁴

⁴"Residence is often used to express different meanings, according to the subject matter. * * * In ascertaining the meaning of the word 'residence' in a particular statute the legislative purpose as well as the context must be kept in view," Mestrezat, J., in *Raymond v. Leishman*, 243 Pa. 64—1914 on 68-9, and see *Hunter v. Bremer*, 256 Pa. 257—1917. *Raymond v. Leishman* contains a general discussion of the difference between residence and domicil.

Comment: (1) The term "residence" is sometimes used as equivalent to "domicil"; sometimes it has a broader meaning; and sometimes it has a narrower meaning. It may mean something more than domicil: the domicil, namely, at which a person is resident. On the other hand, it may mean something less than domicil: a dwelling-place adopted for the time being, but not necessarily with such an intention of making a home there as to create a domicil.

(2) In statutes relating to taxation⁵ and voting⁶ and in a statute of limitations⁷, residence means domicil unless the contrary is indicated in the statute.

⁵Accord: *Pennsylvania v. Ravenel*, 62 U. S. 103, 16 L. Ed. 33—1858; *School Directors v. James*, 2 W. & S. 568—1841; *Short's Estate*, 16 Pa. 63—1851; *Hood's Estate*, 21 Pa. 106—1853; *Orcutt's Appeal*, 97 Pa. 179—1881; *Kirby v. Bradford County*, 134 Pa. 109—1890; *Stewart's Case*, 265 Pa. 118—1919; *Dauphin County v. Banks*, 1 Pears. 40—1854; *Evan's Estate*, 17 Dist. R. 111—1907; *Reynard's Appeal*, 20 Dist. R. 932—1911; *Cushing v. Tax Assessment Board*, 66 Pitts. L. J. 451—1918, and *Milward's Appeal*, 66 Pitts. L. J. 747—1918.

Compare: *West Chester School District v. Darlington*, 38 Pa. 157—1861.

It is domicil, and not citizenship, which is the basis for imposing a tax: *Frantz's Appeal*, 52 Pa. 367—1866.

⁶*Fry's Election Case*, 71 Pa. 302 (s. c. 8 Phila. 575)—1872, seems to say that residence for voting means domicil; but *Simpson, J.*, thinks that it means the domicil at which a person is resident: "What constitutes a Voting Residence in Pennsylvania," 69 U. of Pa. L. R. 1—1920; and see *Chase v. Miller*, 41 Pa. 403—1862; *M'Daniels' Case*, 2 Clark 82—1844; *Taylor v. Reading*, 4 Brewst. 439—1870; *Lower Oxford Contested Election*, 11 Phila. 641—1875; *Commonwealth v. Devine*, 14 Dist. R. 3, 31 Pa. C. C. 108—1904; *Commonwealth v. Hoke*, 2 D. & C. 766—1922; *Dawson's Registration*, 9 D. & C. 9—1926, and *Kelly's Appeal*, 9 D. & C. 666—1927.

⁷Under the criminal statutes "residence" does not refer to the place, but to the manner of residence, i. e. whether the defendant has conducted "himself in accordance with his customary mode of life:" *Williams, J.*, in *Commonwealth v. Weber*, 67 Pa. Superior Ct. 497—1918 (affirmed in 259 Pa. 592). See also *Graham v. Commonwealth*, 51 Pa. 255—1865.

In civil cases, residence does not mean domicil. In *Hunter v. Bremer*, 256 Pa. 257—1917, *Moschzisker, J.*, says that it means "a residence of such permanency that the person in question may be found here and served with ordinary legal process, at any time,

(3) In statutes relating to gaining a settlement under the poor law⁸ and to competence of a divorce court,⁹ residence means a domicil at which the person in question resides unless the contrary is indicated in the statute.

(4) In statutes relating to attachment, residence

generally speaking. The existence of such a residence constitutes one a resident within the meaning of the act, and, on the other hand, its absence makes him a nonresident."

⁸In *Huston Twp. v. Benezette Twp.*, 135 Pa. 393—1890, Clark, J., says (399): "A settlement under the poor laws is a residence of such permanent and continuous character as, under certain circumstances, will entitle a person to support or assistance as a pauper. When not derived by birth or marriage, or from the relation of parent and child, when it is gained through the residence of others, it is acquired generally upon the basis of a settled personal residence, the permanency of which must be shown in a certain way, specified by law." Because of the similarity of requirements, decisions under the poor laws are cited herein as authorities on domicil.

⁹In *Gearing v. Gearing*, 83 Pa. Superior Ct. 423—1924, Keller, J., says: "Our decisions hold that the residence contemplated by our statutes relating to divorce is a permanent one with domiciliary intent; a temporary residence without intention to establish a domicil is not enough. But, on the other hand, a domiciliary intent not accompanied by actual bona fide residence within the Commonwealth for a year cannot give jurisdiction to our Courts." In accord with this statement are: *Hollister v. Hollister*, 6 Pa. 449—1847; *Reed v. Reed*, 30 Pa. Superior Ct. 229—1906; *Dulin v. Dulin*, 33 Pa. Superior Ct. 4—1907; *Heath v. Heath*, 44 Pa. Superior Ct. 118—1910; *Barning v. Barning*, 46 Pa. Superior Ct. 291—1911; *Halpine v. Halpine*, 52 Pa. Superior Ct. 80—1912; *Reed v. Reed*, 59 Pa. Superior Ct. 178 (s. c. 23 Dist. R. 603)—1915; *Harrison v. Harrison*, 69 Pa. Superior Ct. 580—1918; *Wilson v. Wilson*, 80 Pa. Superior Ct. 20—1922; *Starr v. Starr*, 78 Pa. Superior Ct. 579—1922; *Hilyard v. Hilyard*, 87 Pa. Superior Ct. 1—1926; *Lyon v. Lyon*, 13 Dist. R. 623—1904, and *Clee v. Clee*, 2 D. & C. 199—1922. On the other hand, compare *Lesh v. Lesh*, 13 Dist. R. 537—1903, and *Ames v. Ames*, 7 Pa. Superior Ct. 456—1898. As to the wife, it seems that the husband's residence establishes the wife's residence: *Spear v. Spear*, 80 Pa. Superior Ct. 285 (s. c. 1 D. & C. 699) 1922; at least until she acquires a new domicil: *Hilyard v. Hilyard*, 87 Pa. Superior Ct. 1—1926. But see *Sherwood's Appeal*, 17 W. N. C. 388—1886.

Under the acts authorizing procedure by bill in equity for maintenance, domicil alone seems sufficient: *Hunnings v. Hunnings*, 55 Pa. Superior Ct. 261—1913.

means a dwelling place¹⁰, without regard to domicile, unless the contrary is indicated in the statute.

(5) For other purposes¹¹ the word residence must be given a meaning by the application of the ordinary rules for interpretation of written language.

¹⁰Accord: *Raymond v. Leishman*, 243 Pa. 64—1914; *Saunders Coffee Co. v. Menges*, 62 Pitts. L. J. 662—1914; *Brown v. Wilson* 68 Pitts. L. J. 503—1920, and *Atlantic Refining Co. v. Fabian*, 2 D. & C. 16—1922. In *Raymond v. Leishman*, *Mestrezat, J.*, said (70): "If the debtor's absence is so protracted that he cannot be reached by the ordinary process of the court he is (a nonresident) within the meaning of the statute and the creditor is entitled to the writ." In the same case, the court quoted with approval the statement by Chancellor Runyan in *Stout v. Leonard*, 37 N. J. L. 492, 496, that, in determining residence, "the creditor and the courts must necessarily be guided by the ordinary and obvious indicia of residence or the absence of such indications, and the purposes of the act are not to be thwarted by the secret mental resolves or limitations of the debtor on the subject of his domicile."

However, the earlier cases seem to identify residence and domicile: *Lyle v. Foreman*, 1 Dall. 480—1789; *Kennedy v. Baillie*, 3 Yeats 55—1800; *Nailor v. French*, 4 Yeates 241—1805; *Fuller v. Bryan*, 20 Pa. 144—1852; *Pfoutz v. Comford*, 36 Pa. 420—1860; *Reed's Appeal*, 71 Pa. 378—1872; *Reed v. Ketch*, 1 Phila. 105—1850; *Burch v. Taylor*, 1 Phila. 224—1851; *Malone v. Lindley*, 1 Phila. 192—1851; *Hentz v. Asahl*, 1 W. N. C. 282—1875; *Labe v. Brauss*, 2 Dist. R. 157, 12 Pa. C. C. 225—1892; *Sheldon v. Forsman*, 17 Lanc. L. R. 85—1899, and *Wight v. Hovey*, 17 Dist. R. 1019, 35 Pa. C. C. 650—1908; and therefore these earlier cases are cited herein as authorities on domicile.

¹¹The meaning of the word "residence" as used in various statutes is illustrated by the following:

School Code: Residence means actual physical residence: *Ben Avon Boro S. D. v. Pittsburgh Sch. Dist.*, 77 Pa. Superior Ct. 75—1921; *Confluence School v. Ursina*, 88 Pa. Superior Ct. 299—1926, and *Commonwealth ex rel. v. Burnside Twp. School District*, 8 D. & C. 498—1926.

Feme Sole Act: Residence seems to mean domicile (see Section 30 *infra*): *Knauer's Petition*, 287 Pa. 115—1926.

Guardian and Ward: Residence seems to mean physical residence, without regard to domicile: *Taney's Appeal*, 97 Pa. 74—1881; *Wilkins' Guardian*, 146 Pa. 585—1892; *Mintzer's Estate*, 2 Dist. R. 584, 13 Pa. C. C. 465—1893; but see *Reitmeyer v. Wolfe*, 2 Dist. R. 810, 13 Pa. C. C. 179—1893, and *Moore's Estate*, 18 Dist. R. 290—

TOPIC 2. GENERAL REQUIREMENTS OF DOMICIL

Section 13. Every person has at all times one domicil, and no person has more than one domicil at a time.¹²

Comment: Since jurisdiction depends in many cases upon domicil, it is essential that every person should have a domicil. In order that there should be no conflict as to the law affecting his rights, the law provides that he should have a single domicil.

1908. *Contra*: Ralston's Estate, 3 W. N. C. 392—1877; Taylor Minors' Estate, 26 W. N. C. 576—1890, and Cannon's Estate, 15 Pa. C. C. 312—1894.

Lunacy Proceedings: Residence means domicil, except for purposes of commitment: Commonwealth v. Rhoads, 37 Pa. 60—1860; Karmany's Appeal, 242 Pa. 300—1913; Butler County v. Dep. of Public Charities, 14 Pa. Superior Ct. 70—1900, and Commonwealth v. Emerson, 1 Pearsbn 204—1861.

Weak-Minded Proceedings: Residence means domicil: Re Guardian for Belle N. Nicholls, 86 Pa. Superior Ct. 38—1926.

Security for Costs: Residence seems to have the same meaning as under foreign attachment (note 10 ante): Appleton v. Ruth, 15 W. N. C. 127—1884; Kurie v. Dodson Day School, 9 D. & C. 453—1927. Compare: Hansen v. Ackley, 2 W. N. C. 569—1876, and McEwen v. Horton, 1 Pa. C. C. 498—1886.

Witness Fees: Residence means physical residence: Biegel v. Sedler, 74 Pitts. L. J. 64—1925.

Presumption of Death: The last known residence would seem to mean domicil: Francis v. Francis, 180 Pa. 644—1897; Morrison's Estate, 183 Pa. 155—1897; Groner v. Knights of Maccabees, 265 Pa. 129—1919; McFarlin's Estate, 267 Pa. 510—1920, and Shultz's Estate, 46 Pa. Superior Ct. 546—1911.

Exemption: Residence seems to be identical with domicil: Springer v. Lewis, 22 Pa. 191—1853, and Dock v. Cauldwell, 19 Pa. Superior Ct. 51—1902; although the decision in Yelverton v. Burton, 26 Pa. 351—1855, in conjunction with Raymond v. Leishman, 243 Pa. 64—1914, might lead to a different conclusion.

¹²Accord: Fry's Election Case, 71 Pa. 302 (s. c. 8 Phila. 575)—1872; Carey's Appeal, 75 Pa. 201—1874; Hindman's Appeal, 85 Pa. 466—1877; Dalrymple's Estate, 215 Pa. 367 (s. c. 31 Pa. C. C. 177)—1906; Winsor's Estate, 264 Pa. 552—1919; Re Guardian for Belle N. Nicholls, 86 Pa. Superior Ct. 38—1926; Hilyard v. Hilyard, 87 Pa. Superior Ct. 1—1926; Cushing v. Tax Assessment Board, 66 Pitts. L. J. 451—1918, and Kelly's Appeal, 9 D. & C. 666—1927; and see the cases collected in the notes to Section 25, *infra*.

1. A is a wanderer, without a home; a domicile is assigned him by law.

2. A has two homes; only one of them is his domicile.

Section 14. Except as stated in Sections 19, 29, 32, 34, 35, 36, 37, 39 and 41, where a person has one home and only one home, his domicile is the place where his home is.¹³

Comment: (1) The exceptions mentioned relate to domicile in a vehicle and to compelled domicile.

(2) The fundamental conception underlying domicile is that of home. The great majority of persons have homes; in normal cases a person's home is his domicile.

(3) Not all persons have homes; every person must have a domicile. (See Section 13.) Where a person has no home the law still assigns to such a person a domicile. The rule for determining domicile in such a case is set forth in Section 25. Some persons have more than one home; no person can have more than one domicile at a time. (See Section 13.) The rule for determining a person's domicile where he has two or more homes is set forth in Section 26.

Section 15. A home, as the word is employed in sections relating domicile, is a dwelling-place of the person whose home it is, distinguished from other dwelling-places, not homes, by its physical characteristics and by the re-

¹³Accord: *Guier v. O'Daniel*, 1 Binn. 349—1806; *Hood's Estate*, 21 Pa. 106—1853; *Fry's Election Case*, 71 Pa. 302 (s. c. 8 Phila. 575—1872; *Carey's Appeal*, 75 Pa. 201—1874; *Hindman's Appeal*, 85 Pa. 466—1877; *Dalrymple's Estate*, 215 Pa. 367 (s. c. 31 Pa. C. C. 177)—1906; *Stewart's Case*, 265 Pa. 118—1919; *Blessing's Estate*, 267 Pa. 380—1920; *Reed v. Reed*, 59 Pa. Superior Ct. 178 (s. c. 23 Dist. R. 603)—1915; *Burch v. Taylor*, 1 Phila. 224—1851; *Cushing v. Tax Assessment Board*, 66 Pitts. L. J. 451—1918; *Milward's Appeal*, 66 Pitts. L. J. 747—1918; *Commonwealth v. Hoke*, 2 D. & C. 766—1922; *Dawson's Registration*, 9 D. & C. 9—1926, and *Kelly's Appeal*, 9 D. & C. 666—1927.

In *Reed v. Reed*, 59 Pa. Superior Ct. 178—1915, *Trexler, J.*, said (182): "The presumption is that where a person lives, there is his domicile."

lations between the person and the place.¹⁴

Comment: (1) The idea of home is incapable of exact definition because it is not composed of a definite combination of definable elements. It is possible to analyze the idea and indicate at least those elements which should be considered when the question arises whether a dwelling-place is a person's home.

(2) In determining whether a dwelling-place is a person's home, consideration should be given to:

- (a) Its physical characteristics;
- (b) The time he spends therein;
- (c) The things he does therein;
- (d) The persons and things therein;
- (e) His mental attitude toward the place;
- (f) His intention when absent to return to the place;
- (g) Elements of other dwelling-places of the person concerned.

(a) Physical characteristics.

No special physical characteristics are necessary. A person usually has his home within the four walls of a house, or an apartment, or room. If a person lives in a

¹⁴Accord: *Guier v. O'Daniel*, 1 Binn. 349—1806; *Miller's Estate*, 3 Rawle 312—1832; *Hood's Estate*, 21 Pa. 106—1853; *Fry's Election Case*, 71 Pa. 302 (s. c. 8 Phila. 575)—1872; *Carey's Appeal*, 75 Pa. 201—1874; *Hindman's Appeal*, 85 Pa. 466—1877; *Kirby v. Bradford County*, 134 Pa. 109—1890; *Price v. Price*, 156 Pa. 617—1893; *Dalrymple's Estate*, 215 Pa. 367 (s. c. 31 Pa. C. C. 177)—1906; *Barclay's Estate*, 259 Pa. 401—1918; *Blessing's Estate*, 267 Pa. 380—1920; *Reed v. Reed*, 30 Pa. Superior Ct. 229—1906; *Halpine v. Halpine*, 52 Pa. Superior Ct. 80—1912; *Hunnings v. Hunnings*, 55 Pa. Superior Ct. 261—1913; *Reed v. Reed*, 59 Pa. Superior Ct. 178 (s. c. 23 Dist. R. 603)—1915; *Harrison v. Harrison*, 69 Pa. Superior Ct. 580—1918; *Malone v. Lindley*, 1 Phila. 192—1851; *Dauphin County v. Banks*, 1 Pears. 40—1854; *Harberger's Estate*, 13 Phila. 368—1880; *Mintzer's Estate*, 2 Dist. R. 584, 13 Pa. C. C. 465—1893; *Evans's Estate*, 17 Dist. R. 111—1907; *Wight v. Hovey*, 17 Dist. R. 1019, 35 Pa. C. C. 650—1908; *Bumpus's Estate*, 23 Dist. R. 654—1914; *Cushing v. Tax Assessment Board*, 66 Pitts. L. J. 451—1918; *Milward's Appeal*, 66 Pitts. L. J. 747—1918; *Harvey's Estate*, 67 Pitts. L. J. 467—1919; *Narr's Estate*, 1 D. & C. 786—1922; *Commonwealth v. Hoke*, 2 D. &

C. 766—1922, and Kelly's Appeal, 9 D. & C. 666—1927.

In Kennedy's Appeal, 81* Pa. 163—1874, home is defined as "a place of permanent residence."

In Hindman's Appeal, 85 Pa. 466—1877, the statement from *Abington v. North Bridgewater*, 23 Pick. 170, is quoted with approval: "It depends not upon proving particular facts, but whether all the facts and circumstances taken together, tending to show that a man has his home or domicile in one place, overbalance all the like proofs, tending to establish it in another." Accord are: *Guier v. O'Daniel*, 1 Binn. 349—1806; *Hunnings v. Hunnings*, 55 Pa. Superior Ct. 261—1913; *Reed v. Reed*, 59 Pa. Superior Ct. 178 (s. c. 23 Dist. R. 603)—1915; *Lyon v. Lyon*, 13 Dist. R. 623—1904, and *Chesebrough v. Chesebrough*, 7 D. & C. 357—1925.

In the following cases, the facts mentioned have been given great or little emphasis, depending upon all the other facts:

Voting: *Guier v. O'Daniel*, 1 Binn. 349—1806; *Miller's Estate*, 3 Rawle 312—1832; *Carey's Appeal*, 75 Pa. 201—1874; *Hindman's Appeal*, 85 Pa. 466—1877; *Kirby v. Bradford County*, 134 Pa. 109—1890; *Dalrymple's Estate*, 215 Pa. 367 (s. c. 31 Pa. C. C. 177)—1906; *Winsor's Estate*, 264 Pa. 552—1919; *Reed v. Reed*, 30 Pa. Superior Ct. 229—1906; *Reed v. Reed*, 59 Pa. Superior Ct. 178 (s. c. 23 Dist. R. 603)—1915; *Dauphin County v. Banks*, 1 Pears. 40—1854; *Commonwealth v. Emerson*, 1 Pearson 204—1861; *Mintzer's Estate*, 2 Dist. R. 584, 13 Pa. C. C. 465—1893; *Bumpus's Estate*, 23 Dist. R. 654—1914; *Harvey's Estate*, 67 Pitts. L. J. 467—1919; and *Kelly's Appeal*, 9 D. & C. 666—1927.

Payment of Taxes: *Guier v. O'Daniel*, 1 Binn. 349—1806; *Miller's Estate*, 3 Rawle 312—1832; *Carey's Appeal*, 75 Pa. 201—1874; *Hindman's Appeal*, 85 Pa. 466—1877; *Scranton Poor District v. Directors*, 106 Pa. 446—1884; *Kirby v. Bradford County*, 134 Pa. 109—1890; *Dalrymple's Estate*, 215 Pa. 367 (s. c. 31 Pa. C. C. 177)—1906; *Malone v. Lindley*, 1 Phila. 192—1851; *Bumpus's Estate*, 23 Dist. R. 654—1914; *Milward's Appeal*, 66 Pitts. L. J. 747—1918; *Harvey's Estate*, 67 Pitts. L. J. 467—1919 (but see *Cushing v. Tax Assessment Board*, 66 Pitts. L. J. 451—1918), and *Kelly's Appeal*, 9 D. & C. 666—1927.

Assessment or registration: *Hindman's Appeal*, 85 Pa. 466—1877.

Burial Directions: *Hood's Estate*, 21 Pa. 106—1853; *Barclay's Estate*, 259 Pa. 401—1918, and *Lowry's Estate*, 6 Pa. Superior Ct. 143 (s. c. 5 Dist. R. 729, 18 Pa. C. C. 591)—1897.

Declarations at time of making will, in will, at time of marriage, etc.: *Guier v. O'Daniel*, 1 Binn. 349—1806; *Miller's Estate*, 3 Rawle 312—1832; *Hood's Estate*, 21 Pa. 106—1853; *Carey's Appeal*, 75 Pa. 201—1874; *Price v. Price*, 156 Pa. 617—1893; *Dalrymple's Estate*, 215 Pa. 367 (s. c. 31 Pa. C. C. 177)—1906; *Barclay's Estate*, 259 Pa. 401—1918; *Winsor's Estate*, 264 Pa. 552—1919; *Blessing's Estate*, 267 Pa. 380—1920; *Lowry's Estate*, 6 Pa. Superior Ct. 143 (s. c. 5 Dist. R.

tent, or on a vessel, car or other moving vehicle, such tent, vessel or vehicle may be his home; but to prove it to be such, the other elements showing it to be a home, especially the mental attitude of the person concerned towards the permanency of the conditions, must be more pronounced than might be necessary if the usual physical characteristics of a home existed.

A person's home may be an area in which he has no one settled dwelling-place¹⁵. To prove it to be such, it must be shown that the person intends to move about within the area indefinitely or for a very considerable period of time, and that he has no intention of ultimately settling down in one particular house within the area.

1. A is in legal possession of land X. He erects a tent on X in which he sleeps, eats and does all the usual things done in a dwelling house. He has no intention of living anywhere else. These facts considered by themselves would warrant the conclusion that A's home is in the tent.

2. A owns a vessel. A sells his house in which he has had his home and lives with his family on the vessel until he can purchase a suitable house. The vessel is not A's home.

729, 18 Pa. C. C. 591)—1897; *Reed v. Reed*, 30 Pa. Superior Ct. 229—1906; *Re Guardian for Belle N. Nicholls*, 86 Pa. Superior Ct. 38—1926; *Malone v. Lindley*, 1 Phila. 192—1851; *Harberger's Estate*, 13 Phila. 368—1880; *Mintzer's Estate*, 2 Dist. R. 584, 13 Pa. C. C. 465—1893, and *Evans's Estate*, 17 Dist. R. 111—1907.

Situs of Property: *Price v. Price*, 156 Pa. 617—1893; *Dalrymple's Estate*, 215 Pa. 367 (s. c. 31 Pa. C. C. 177)—1906; *Barclay's Estate*, 259 Pa. 401—1918, and *Lowry's Estate*, 6 Pa. Superior Ct. 143 (s. c. 5 Dist. R. 729, 18 Pa. C. C. 591)—1897.

Church Membership: *Barclay's Estate*, 259 Pa. 401—1918.

Hotel Registration: *Barclay's Estate*, 259 Pa. 401—1918.

Naturalization: *Hood's Estate*, 21 Pa. 106—1853.

In *Reed v. Reed*, 30 Pa. Superior Ct. 229—1906, Orlady, J., says that "precedents with their necessary varying facts are but of slight assistance in its solution."

¹⁵See *Price v. Price*, 156 Pa. 617—1893, and *Reed v. Reed*, 30 Pa. Superior Ct. 229—1906.

3. A sells his house in Pennsylvania in which he has had his home and moves to California. He intends to live always in hotels in that State, but he has no intention of remaining long in any one hotel or of living in the same hotels each year. A's home is in California.¹⁶

4. A sells his house in Iowa in which he has his home, and purchases an automobile. He goes with his family in the automobile to California. He intends to move from one point of California to another, traveling in the automobile by day and camping in a tent by night, until he finds a place in which he would like to establish a home. A has no home in California until he finds such place and settles down in it.¹⁷

(b) The time he spends therein.

It is not possible for a person to acquire a home without ever being therein (Section 18).¹⁸

No definite amount of time spent in a place is essential to make that place a home; but the fact that a person lives a considerable time in a dwelling-house has a strong tendency to show that the house is his home.¹⁹

5. A purchases a house in X, sends his family to X, directing them to occupy the house. A intends to follow in a short time. The family occupy the house. The house is not A's home until A enters it; it is his home the instant he enters it.²⁰

6. A is an officer in the Navy. His family live in a house in X. A is away much of the time and often for more than a year at one time. These absences in

¹⁶Accord: *Hindman's Appeal* 85 Pa. 466—1877. Compare *Harvey's Estate*, 67 Pitts. L. J. 467—1919.

¹⁷Compare: *Reed's Appeal*, 71 Pa. 378—1872, and *Kelly's Appeal*, 9 D. & C. 666—1927.

¹⁸In 3 Proceedings A. L. I., 246, the elimination of this paragraph is recommended.

¹⁹Accord: *Hindman's Appeal*, 85 Pa. 466—1877; *Harrison v. Harrison*, 69 Pa. Superior Ct. 580—1918; *Kelly's Appeal*, 9 D. & C. 666—1927, and see *Halpine v. Halpine*, 52 Pa. Superior Ct. 80—1912,

²⁰See *Casey's Case*, 1 Ashm, 126—1827,

themselves do not prevent the house in X from being A's home.²¹

(c) The things done therein.

It is usual for a person to eat and sleep in his home. A person may have his home where he never eats, especially when all other elements that ordinarily go with a home exists. It is conceivable that a person can have a home in a place in which he never sleeps. Doing business in a place is not an important element in fixing his home there.²² Though a person does business in a place and spends more than half his time there, it is presumably not his home if he does not sleep there.²³

(d) The person and things therein.

When a person has his family living with him in a dwelling-place, it is strong evidence that the dwelling-place is his home, if, in addition, the person concerned has his furniture, pictures, books and other personal belongings in the place, the evidence that it is his home is strengthened;²⁴ it is not conclusive, since he and his family may be living there temporarily without the intention of having a home there.²⁵

(e) His mental attitude towards the place.

The mental attitude of the person concerned towards the dwelling-place in respect to its character and perman-

²¹Accord: *Guier v. O'Daniel*, 1 Binn. 349—1806; see *Graham v. Commonwealth*, 51 Pa. 255—1865; *Gearing v. Gearing*, 83 Pa. Superior Ct. 423—1924; and *Gearing v. Gearing*, 90 Pa. Superior Ct. 192—1926.

Compare: *Hansen v. Ackley*, 2 W. N. C. 569—1876.

²²Accord: *Malone v. Lindley*, 1 Phila. 192—1851.

²³See *Blessing's Estate*, 267 Pa. 380—1920.

²⁴Accord: *Guier v. O'Daniel*, 1 Binn. 349—1806; *Hindman's Appeal*, 85 Pa. 466—1877; *Kirby v. Bradford County*, 134 Pa. 109—1890; *Lipps v. Lipps*, 90 Pa. Superior Ct. 86—1926; *Cushing v. Tax Assessment Board*, 66 Pitts. L. J. 451—1918, and *Kelly's Appeal*, 9 D. & C. 666—1927.

²⁵Accord: *Carey's Appeal*, 75 Pa. 201—1874, and *Harrison v. Harrison*, 69 Pa. Superior Ct. 580—1918. See *Nailor v. French*, 4 Yeates 241—1805.

ency is an important factor in determining whether the place is or is not his home but is not conclusive.²⁶

7. A is born and reared in X. A lives with his family in a house in Y for ten months in the year. For one month he and his family live in a hotel in X. A detests Y, and always speaks of X as his home, deeply regretting that there is no prospect of his being able to live anywhere else than Y for the greater part of each year. These facts are consistent with A's home being in the house in Y; not consistent with his home being in the hotel in X.

(f) His intention when absent to return to the place.

The intention to return to a dwelling-place existing whenever one is absent from that place is an important element in determining that the place is his home; but a person may regard a place as his home, though he intends to be absent even for long intervals. An intention to make a place one's home is not necessarily an intention to remain in that place constantly.²⁷

²⁶Accord: *Guier v. O'Daniel*, 1 Binn. 349—1806; *Miller's Estate*, 3 Rawle 312—1832; *Hood's Estate*, 21 Pa. 106—1853; *Carey's Appeal*, 75 Pa. 201—1874; *Hindman's Appeal*, 85 Pa. 466—1877; *Kirby v. Bradford County*, 134 Pa. 109—1890; *Price v. Price*, 156 Pa. 617—1893; *Dalrymple's Estate*, 215 Pa. 367 (s. c. 31 Pa. C. C. 177)—1906; *Barclay's Estate*, 259 Pa. 401—1918; *Winsor's Estate*, 264 Pa. 552—1919; *Blessing's Estate*, 267 Pa. 380—1920; *Lowry's Estate*, 6 Pa. Superior Ct. 143 (s. c. 5 Dist. R. 729, 18 Pa. C. C. 591)—1897; *Reed v. Reed*, 30 Pa. Superior Ct. 229—1906; *Halpine v. Halpin*, 52 Pa. Superior Ct. 80—1912; *Hunnings v. Hunnings*, 55 Pa. Superior Ct. 261—1913; *Reed v. Reed*, 59 Pa. Superior Ct. 178 (s. c. 23 Dist. R. 603)—1915; *Re Guardian for Belle N. Nicholls*, 86 Pa. Superior Ct. 38—1926; *Commonwealth v. Emerson*, 1 Pearson 204—1861; *Harberger's Estate*, 13 Phila. 368—1880; *Mintzer's Estate*, 2 Dist. R. 584, 13 Pa. C. C. 465—1893; *Wight v. Hovey*, 17 Dist. R. 1019, 35 Pa. C. C. 650—1908; *Cushing v. Tax Assessment Board*, 66 Pitts. L. J. 451—1918; *Milward's Appeal*, 66 Pitts. L. J. 747—1918; *Harvey's Estate*, 67 Pitts. L. J. 467—1919, and *Kelly's Appeal* 9 D. & C. 666—1927.

²⁷Accord: *Guier v. O'Daniel*, 1 Binn. 349—1806; *Miller's Estate*, 3 Rawle 312—1832; *Hood's Estate*, 21 Pa. 106—1853; *Carey's Appeal*, 75 Pa. 201—1874; *Hindman's Appeal*, 85 Pa. 466—1877; *Kirby v. Bradford County*, 134 Pa. 109—1890; *Barclay's Estate*, 259 Pa. 401—

(g) Elements connected with other dwelling-places of the person concerned.

Whether a dwelling-place is the home of the person concerned may depend on the elements connected with other places in which he lives.²⁸

8. A lives entirely in hotels, remaining each year for nine months in a hotel in X, always occupying the same room. These facts are compatible with the room being his home.

9. A (all other facts being the same as in the preceding illustration) for three months each summer lives in his own house in Y. These facts are compatible with the house in Y, rather than the room in the hotel, being his home.

TOPIC 3. ACQUISITION AND CHANGE OF DOMICIL.

Section 16. The domicile of origin is the domicile assigned to every child at its birth. If the child is the legitimate child of its father, the domicile of its father is assigned to it; if the child is not the legitimate child of its father, or is posthumous, the domicile assigned is that of its mother.²⁹

Comment: It may be difficult to determine in a particular case what was the domicile of the parent at the birth

1918; and *Wight v. Hovey*, 17 Dist. R. 1019, 35 Pa. C. C. 650—1908. See *Lowry's Estate*, 6 Pa. Superior Ct. 143 (s. c. 5 Dist. R. 729, 18 Pa. C. C. 591)—1897, and *Reed v. Reed*, 59 Pa. Superior Ct. 178 (s. c. 23 Dist. R. 603)—1915.

²⁸Accord: *Dalrymple's Estate*, 215 Pa. 367 (s. c. 31 Pa. C. C. 177)—1906; *Barclay's Estate*, 259 Pa. 401—1918; *Winsor's Estate*, 264 Pa. 552—1919; *Blessing's Estate*, 267 Pa. 380—1920; *Lowry's Estate*, 6 Pa. Superior Ct. 143 (s. c. 5 Dist. R. 729, 18 Pa. C. C. 591)—1897; *Hunnings v. Hunnings*, 55 Pa. Superior Court 261—1913; *Reed v. Reed*, 59 Pa. Superior Ct. 178 (s. c. 23 Dist. R. 603)—1915; *Harrison v. Harrison*, 69 Pa. Superior Ct. 580—1918; *Bumpus's Estate*, 23 Dist. R. 654—1914; *Cushing v. Tax Assessment Board*, 66 Pitts. L. J. 451—1918; *Milward's Appeal*, 66 Pitts. L. J. 747—1918; *Harvey's Estate*, 67 Pitts. L. J. 467—1919, and *Kelly's Appeal*, 9 D. & C. 666—1927.

²⁹Accord: *Guier v. O'Daniel*, 1 Binn. 349—1806; *School Directors v. James*, 2 W. & S. 568—1841, and *Price v. Price*, 156 Pa. 617—1893. See also the authorities cited in the notes to sections 32 and 35 *infra*.

of the child; but the domicil of the parent having been determined, the domicil of the child is fixed at that of the parent. There will be particular difficulty if the domicil of origin of a vagrant or a gipsy is in question; for it is usually impossible to determine his parentage and if that can be determined it is probably more than ordinarily difficult to determine the parents' domicil at the child's birth. The court would accept as the domicil of origin the place to which the person in question could earliest be traced; but this is simply a method of proof in case other proof fails.³⁰

1. A, an army officer, who has never acquired a domicil for himself, is son of another officer who also had never acquired a domicil for himself; the grandfather was always domiciled in Scotland. A is domiciled in Scotland, though he has never been there.³¹

2. A, a gipsy, arrives in X with his young son B. Where A comes from is unknown. X will be taken to be B's domicil of origin.

Section 17. (1) A domicil of choice is a domicil acquired by a person legally capable of changing his domicil through the exercise of his own will.³²

(2) To acquire a domicil of choice, a person must give up his home, if he has one, and establish a dwelling-place with the intention of making it his home.³³

³⁰See the rule adopted in the poor settlement cases: *Crossley v. Demott*, 2 Leg. Op. 161—1871; *Overseers of Washington v. Overseers of Beaver*, 3 W. & S. 548—1842; *Wayne Twp. v. Jersey Shore*, 81* Pa. 264—1875, and *Northumberland etc. Overseers v. Milton etc. Overseers*, 20 W. N. C. 84—1887.

³¹See *Gearing v. Gearing*, 83 Pa. Superior Ct. 423—1924.

³²In 3 Proceedings A. L. I., 249 the Reporter adds here the words "being present there."

³³Accord: *Lyle v. Foreman*, 1 Dall. 480—1789; *Miller's Estate*, 3 Rawle 312—1832; *Fuller v. Bryan*, 20 Pa. 144—1852; *Hood's Estate*, 21 Pa. 106—1853; *Pfoutz v. Comfort*, 36 Pa. 420—1860; *Fry's Election Case*, 71 Pa. 302 (s. c. 8 Phila. 575)—1872; *Reed's Appeal*, 71 Pa. 378—1872; *Carey's Appeal*, 75 Pa. 201—1874; *Hindman's Appeal*, 85 Pa. 466—1877; *Overseers v. Overseers*, 6 Sadler 591—1887; *Kirby v. Brad-*

(3) The fact of a dwelling-place and the intention to make it a home must concur; if they do so even for a moment, the change of domicil takes place.³⁴

(4) A person can acquire a domicil of choice only in one of these three ways:

(a) having no home, he acquires a home in a place other than his former domicil.³⁵

(b) having a home, he gives it up as such and acquires a new home;³⁶

ford County, 134 Pa. 109—1890; Price v. Price, 156 Pa. 617—1893; Dalrymple's Estate, 215 Pa. 367 (s. c. 31 Pa. C. C. 177)—1906; Barclay's Estate, 259 Pa. 401—1918; Stewart's Case, 265 Pa. 118—1919; Blessing's Estate, 267 Pa. 380—1920; Lowry's Estate, 6 Pa. Superior Ct. 143 (s. c. 5 Dist. R. 729, 18 Pa. C. C. 591)—1897; Reed v. Reed, 30 Pa. Superior Ct. 229—1906; Dulin v. Dulin, 33 Pa. Superior Ct. 4—1907; Halpine v. Halpine, 52 Pa. Superior Ct. 80—1912; Hunnings v. Hunnings, 55 Pa. Superior Ct. 261—1913; Reed v. Reed, 59 Pa. Superior Ct. 178 (s. c. 23 Dist. R. 603)—1915; Harrison v. Harrison, 69 Pa. Superior Ct. 580—1918; Spear v. Spear, 80 Pa. Superior Ct. 285 (s. c. 1 D. & C. 699)—1922; Wilson v. Wilson, 80 Pa. Superior Ct. 20—1922; Malone v. Lindley, 1 Phila. 192—1851; Commonwealth v. Emerson, 1 Pearson 204—1861; Harberger's Estate, 13 Phila. 368—1880; Cushing v. Tax Assessment Board, 66 Pitts. L. J. 451—1918; Narr's Estate, 1 D. & C. 786—1922, and Kelly's Appeal, 9 D. & C. 666—1927.

³⁴Accord: Guier v. O'Daniel, 1 Binn. 349—1806; Miller's Estate, 3 Rawle 312—1832; Hood's Estate, 21 Pa. 106—1853; Pfoutz v. Comfort, 36 Pa. 420—1860; Reed's Appeal, 71 Pa. 378—1872; Carey's Appeal, 75 Pa. 201—1874; Hindman's Appeal, 85 Pa. 466—1877; Price v. Price, 156 Pa. 617—1893; Barclay's Estate, 259 Pa. 401—1918; Stewart's Case, 265 Pa. 118—1919; Reed v. Reed, 30 Pa. Superior Ct. 229—1906; Barning v. Barning, 46 Pa. Superior Ct. 291—1911; Halpine v. Halpine, 52 Pa. Superior Ct. 80—1912; Hunnings v. Hunnings, 55 Pa. Superior Ct. 261—1913; Reed v. Reed, 59 Pa. Superior Ct. 178 (s. c. 23 Dist. R. 603)—1915; Casey's Case, 1 Ashm. 126—1827, and Narr's Estate, 1 D. & C. 786—1922.

³⁵See Price v. Price, 156 Pa. 616—1893, and Barclay's Estate, 259 Pa. 401—1918.

³⁶Accord: Nailor v. French, 4 Yeates 241—1805; Guier v. O'Daniel, 1 Binn. 349—1806; Miller's Estate, 3 Rawle 312—1832; Pfoutz v. Comfort, 36 Pa. 420—1860; Fry's Election Case, 71 Pa. 302 (s. c. 8 Phila. 575)—1872; Reed's Appeal, 71 Pa. 378—1872; Hindman's Appeal, 85 Pa. 466—1877; Kirby v. Bradford County, 134 Pa. 109—1890; Price v. Price, 156 Pa. 617—1893; Stewart's Case, 265 Pa. 118—1919; Lowry's

(c) having two homes, he comes to regard one of them as his principal home.⁸⁷

Comment: The requisites for acquiring a domicile of choice are (1) absence of intention to have a home at the former domicile; (2) presence in a new dwelling-place; (3) intention to make this new dwelling-place a home. To acquire a new domicile, these are necessary; but the order of occurrence of these facts is not material; if they all eventually coexist, the change is accomplished.

To retain a domicile once acquired, it is not necessary that all these facts should continue to exist. (See Section 25).

1. A without giving up his home in X acquires a new dwelling-place in Y, and lives there with an intention of making it his home, his domicile remains in Y.⁸⁸ A now decides to give up his former home in X. His domicile is immediately changed to Y.

2. A, intending to give up his old home in X, acquires a new dwelling-place in Y, in which he lives without intending to make it his home; he does not acquire a domicile in Y.⁸⁹ A now decides to make his

Estate, 6 Pa. Superior Ct. 143 (s. c. 5 Dist. R. 729, 18 Pa. C. C. 591)—1897; Reed v. Reed, 30 Pa. Superior Ct. 229—1906; Harrison v. Harrison, 69 Pa. Superior Ct. 580—1918; Wilson v. Wilson, 80 Pa. Superior Ct. 20—1922; Casey's Case, 1 Ashm. 126—1827; Malone v. Lindley, 1 Phila. 192—1851, and Cushing v. Tax Assessment Board, 66 Pitts. L. J. 451—1918.

⁸⁷Accord: Dalrymple's Estate, 215 Pa. 367 (s. c. 31 Pa. C. C. 177)—1906; Winsor's Estate, 264 Pa. 552—1919; Blessing's Estate, 267 Pa. 380—1920; Re Guardian for Belle N. Nicholls, 86 Pa. Superior Ct. 38—1926; Reynard's Appeal, 20 Dist. R. 932—1911; Bumpus's Estate, 23 Dist. R. 654—1914; Milward's Appeal, 66 Pitts. L. J. 747—1918; Harvey's Estate, 67 Pitts. L. J. 467—1919; Kelly's Appeal, 9 D. & C. 666—1927; and see Section 26 *infra*.

⁸⁸Accord: Miller's Estate, 3 Rawle 312—1832; Fuller v. Bryan, 20 Pa. 144—1852; Kirby v. Bradford County, 134 Pa. 109—1890; Barclay's Estate, 259 Pa. 401—1918; Lowry's Estate, 6 Pa. Superior Ct. 143 (s. c. 5 Dist. R. 729, 18 Pa. C. C. 591)—1897, and Harvey's Estate, 67 Pitts. L. J. 467—1919.

⁸⁹Accord: Fuller v. Bryan, 20 Pa. 144—1852; Price v. Price, 156 Pa. 617—1893; Lowry's Estate, 6 Pa. Superior Ct. 143 (s. c. 5

new dwelling-place his home; at the moment he reaches that decision he acquires a domicile in Y.⁴⁰

Section 18. A person cannot acquire a domicile in a place without being physically present there;⁴¹ but a home in a particular building is not necessary for the acquisition of a domicile.⁴²

Comment: (1) The presence of a member of a person's family at the intended new home is not enough to change his domicile to the new home if he is not present there himself.

1. A and his sister B live together and plan a change of home. A goes to the new dwelling-place but B, being ill, remains behind in a hospital. B's domicile does not change.

(2) Even the presence of a person's wife sent by him to take possession of a new dwelling-place is not enough to change his domicile if he is not present there himself. This would be true even if the doctrine of identity of husband and wife still prevailed in the law; since the conception in this case has ceased.

Dist. R. 729, 18 Pa. C. C. 591)—1897; *Wilson v. Wilson*, 80 Pa. Superior Ct. 20—1922, and *Narr's Estate*, 1 D. & C. 786—1922.

⁴⁰Accord: *Hood's Estate*, 21 Pa. 106—1853; *Reed's Appeal*, 71 Pa. 378—1872; *Hindman's Appeal*, 85 Pa. 466—1877, and *Price v. Price*, 156 Pa. 617—1893.

⁴¹Accord: *Lyle v. Foreman*, 1 Dall. 480—1789; *Hindman's Appeal*, 85 Pa. 466—1877; *Price v. Price*, 156 Pa. 616—1893; *Barning v. Barning*, 46 Pa. Superior Ct. 291—1911; *Gearing v. Gearing*, 83 Pa. Superior Ct. 423—1924; *Casey's Case*, 1 Ashm. 126—1827, and *Commonwealth v. Devine*, 14 Dist. R. 3, 31 Pa. C. C. 108—1904. However, see the dicta as to the revival of the domicile of origin, cited in the notes to Section 25 *infra*.

⁴²See *Price v. Price*, 156 Pa. 617—1893; *Barclay's Estate*, 259 Pa. 401—1918; *Reed v. Reed*, 30 Pa. Superior Ct. 229—1906; *Hunnings v. Hunnings*, 55 Pa. Superior Ct. 261—1913; *Milward's Appeal*, 66 Pitts. L. J., 747—1918, and *Harvey's Estate*, 67 Pitts. L. J. 467—1919.

This section does not apply to cases of compelled domicile: 3 Proceedings A. L. I. 250.

2. A, while absent from the country, desires to acquire a new home, and sends his wife to take possession of the new dwelling-house. A's domicile is not changed.⁴³

(3) A change of domicile may be accomplished when the person whose domicile is in question is present in the new dwelling-place with the intention of making it his home, though he has not yet eaten or slept there.⁴⁴

3. A having no home is domiciled in X. Being about to marry, A procures and furnishes a dwelling-house in Y and goes there and makes it ready for occupation. He never actually eats or sleeps in the house before going away on his wedding journey. While he is on his wedding journey his domicile is in Y.

(4) A person may acquire a domicile of choice in a city by making a home there.

4. A leaves the state in which he has been domiciled and comes to X, a city in another state, intending to make his home in the city; he lives in temporary lodgings, in hotels and clubs. He is domiciled in X.⁴⁵

Section 19. When a person makes his home in a vehicle (as a boat, a car, or a van), he acquires⁴⁶ a domicile in the place, if any, where the vehicle regularly remains for a considerable time each year, and for a longer time than it regularly remains in any other place.⁴⁷

⁴³Accord: *Casey's Case*, 1 Ashm. 126—1827.

⁴⁴Accord: *Reed v. Ketch*, 1 Phila. 105—1850.

⁴⁵See *Reed's Appeal*, 71 Pa. 378—1872; *Reed v. Reed*, 30 Pa. Superior Ct. 229—1906; *Hunnings v. Hunnings*, 55 Pa. Superior Ct. 261—1913; *Wilson v. Wilson*, 80 Pa. Superior Ct. 20—1922, and *Spear v. Spear*, 80 Pa. Superior Ct. 285 (s. c. 1 D. & C. 699)—1922. Compare *Halpine v. Halpine*, 52 Pa. Superior Ct. 80—1912; *Harrison v. Harrison*, 69 Pa. Superior Ct. 580—1918; *Re Guardian for Belle N. Nicholls*, 86 Pa. Superior Ct. 38—1926, and *Harvey's Estate*, 67 Pitts. L. J. 467—1919.

⁴⁶In 3 Proceedings A. L. I. 250, it is suggested that "may acquire" be substituted for "acquires."

⁴⁷See *Guier v. O' Daniel*, 1 Binn. 349—1806 (sea captain); and *Hansen v. Ackley*, 2 W. N. C. 569—1876 (sailor).

Comment: If the location of the vehicle is not so fixed during a considerable part of the year, the domicile of the occupant remains his last previous domicile. (See Section 25).

1. A traveling circus remains in quarters in X every winter, and travels during the remainder of the year. The domicile of persons whose homes are in the vans of the circus is in X.

2. T owner of a vessel has his home on the vessel. The vessel is laid up each winter in X. The owner is domiciled in X.

3. A laborer on a railroad has his home in a box car, which is continually carried from place to place as his services are needed. He does not acquire a domicile of choice in any of the places to which the car is taken.

Section 20. A person cannot change his domicile by removal to a new dwelling-place without an intention to make the new dwelling-place his home.⁴⁸

⁴⁸Accord: *Miller's Estate*, 3 Rawle 312—1832; *Commonwealth v. Jones*, 12 Pa. 365—1849; *Fuller v. Bryan*, 20 Pa. 144—1852; *Pfoutz v. Comford*, 36 Pa. 240—1860; *Fry's Election Case*, 71 Pa. 302 (s. c. 8 Phila. 575)—1872; *Carey's Appeal*, 75 Pa. 201—1874; *Kirby v. Bradford County*, 134 Pa. 109—1890; *Price v. Price*, 156 Pa. 617—1893; *Dalrymple's Estate*, 215 Pa. 367 (s. c. 31 Pa. C. C. 177)—1906; *Barclay's Estate*, 259 Pa. 401—1918; *Winsor's Estate*, 264 Pa. 552—1919; *Flaherty's Estate*, 285 Pa. 287 (s. c. 6 D. & C. 703)—1925; *Lowry's Estate*, 6 Pa. Superior Ct. 143 (s. c. 5 Dist. R. 729, 18 Pa. C. C. 591)—1897; *Reed v. Reed*, 30 Pa. Superior Ct. 229—1906; *Halpine v. Halpine*, 52 Pa. Superior Ct. 80—1912; *Hunnings v. Hunnings*, 55 Pa. Superior Ct. 261—1913; *Reed v. Reed*, 59 Pa. Superior Ct. 178 (s. c. 23 Dist. R. 603)—1915; *Harrison v. Harrison*, 69 Pa. Superior Ct. 580—1918; *Spear v. Spear*, 80 Pa. Superior Ct. 285 (s. c. 1 D. & C. 699)—1922; *Wilson v. Wilson*, 80 Pa. Superior Ct. 20—1922; *Re Guardian for Belle N. Nicholls*, 86 Pa. Superior Ct. 38—1926; *Davis v. Davis*, 91 Pa. Superior Ct. 354—1927; *Malone v. Lindley*, 1 Phila. 192—1851; *Commonwealth v. Emerson*, 1 Pearson 204—1861; *Harberger's Estate*, 13 Phila. 368—1880; *Mintzer's Estate*, 2 Dist. R. 584, 13 Pa. C. C. 465—1893; *Wight v. Hovey*, 17 Dist. R. 1019, 35 Pa. C. C. 650—1908.

Comment: (1) The intention to make a new home involves to a certain extent the idea of fixity. A person does not intend to make a place his home unless he has an intention to remain there for a time at least. If he intends to remain there permanently, it is easier to find that he intends to make his home there than if he intends to move away at some time in the future.⁴⁹ If he does not intend to move at a definite time, it is easier to find that he has made his home there than if he intends to move at a definite time⁵⁰ It is possible, however, for a person to make his home in a place even though he does intend to move at a definite time;⁵¹ although the more distant that time is the easier it is to find that he has an intention to make his home there.

1. A, abandoning his former home, fixes his dwelling-place in X with the intention of staying there so long as he can get a good job, but when work is slack he intends to move on to another place where he can get better work; he takes his family to his dwelling-place and moves his belongings there. A has a home and a domicile in X.⁵²

2. A, a student in the academic department of a University, is in the habit of returning to his father's home for his vacation and is dependent in part upon

⁴⁹See *Miller's Estate*, 3 Rawle 312—1832, and *Halpine v. Halpine*, 52 Pa. Superior Ct. 80—1912.

⁵⁰Accord: *Nailor v. French*, 4 Yeates 241—1805; *Miller's Estate*, 3 Rawle 312—1832; *Hindman's Appeal*, 85 Pa. 466—1887; *Reed v. Reed*, 59 Pa. Superior Ct. 178 (s. c. 23 Dist. R. 603)—1915; *Cushing v. Tax Assessment Board*, 66 Pitts. L. J. 451—1918, and *Milward's Appeal*, 66 Pitts. L. J. 747—1918.

⁵¹But see dicta in *Miller's Estate*, 3 Rawle 312—1832, and *Fry's Election Case*, 71 Pa. 302 (s. c. 8 Phila. 575)—1872.

⁵²Accord: *Reed's Appeal*, 71 Pa. 378—1872; *Reed v. Reed*, 59 Pa. Superior Ct. 178 (s. c. 23 Dist. R. 603)—1915; and *Lipps v. Lipps*, 90 Pa. Superior Ct. 86—1926, Compare *Fuller v. Bryan*, 20 Pa. 144—1852; *Hunnings v. Hunnings*, 55 Pa. Superior Ct. 261—1913, and *Commonwealth v. Hoke*, 2 D. & C. 766—1922.

his father for support. A has no domicil at the University.⁵³

3. A, after graduation from college, teaches school for several years and then comes to the Law School of a University. His expenses are paid partly from his own money and partly from money borrowed from his father which he is under obligation to repay. If he intends to make it his home he has a domicil in the University town.

4. A has earned his own living for several years. He comes to the University to attend the academic department. If he intends to live there, he has domicil in the University town.⁵⁴

(2) When a person having a home in a dwelling-place acquires a new dwelling-place, it is easier to find an intention to make his home at the new dwelling-place if he gives up the former dwelling-place than it is if he retains it.⁵⁵ It is possible for a person although he still regards the old dwelling-place as his home to regard the new dwelling-place as his home also.⁵⁶ It is possible, however, for a person to retain his old dwelling-place and to cease to regard

⁵³Accord: *Fry's Election Case*, 71 Pa. 302 (s. c. 8 Phila. 575)—1872; and see Section 13 of Article VIII of the Constitution of 1874, and *Lower Oxford Contested Election*, 11 Phila. 641—1875.

⁵⁴But see *Fry's Election Case*, 71 Pa. 302 (s. c. 8 Phila. 575)—1872.

⁵⁵Accord: *Carey's Appeal*, 75 Pa. 201—1874; *Hindman's Appeal*, 85 Pa. 466—1877; *Kirby v. Bradford County*, 134 Pa. 109—1890; *Dalrymple's Estate*, 215 Pa. 367 (s. c. 31 Pa. C. C. 177)—1906; *Harrison v. Harrison*, 69 Pa. Superior Ct. 580—1918; *Commonwealth v. Hoke*, 2 D. & C. 766—1922. See, however, *Price v. Price*, 156 Pa. 617—1893; *Stewart's Case*, 265 Pa. 118—1919; *Lowry's Estate*, 6 Pa. Superior Ct. 143 (s. c. 5 Dist. R. 729, 18 Pa. C. C. 591)—1897; *Dulin v. Dulin*, 33 Pa. Superior Ct. 4—1907; *Commonwealth v. Emerson*, 1 Pearson 204—1861; *Harberger's Estate*, 13 Phila. 368—1880, and *Cushing v. Tax Assessment Board*, 66 Pitts. L. J. 451—1918.

⁵⁶On this point, see *Winsor's Estate*, 264 Pa. 552—1919; *Lowry's Estate*, 6 Pa. Superior Ct. 143 (s. c. 5 Dist. R. 729, 18 Pa. C. C. 591)—1897; *Reed v. Reed*, 59 Pa. Superior Ct. 178 (s. c. 23 Dist. R. 603)—1915; *Milward's Appeal*, 66 Pitts. L. J. 747—1918, and *Harvey's Estate*, 67 Pitts. L. J. 467—1919.

it as his home. In that case if he regards the new dwelling-place as his home his domicile changes to the new dwelling-place.⁵⁷

Section 21. The intention required for the acquisition of a domicile of choice is an intention to make a home in fact, and not an intention to acquire a domicile.⁵⁸

Comment: A person sometimes desires to have his domicile in a certain place, in order to get the benefit of one or more of the legal consequences of having a domicile there, but does not wish to change his home to that place; this desire to have a domicile in a certain place has no effect in fixing his domicile there.

1. A, domiciled in X, desires to vote in Y; he goes there on the registration day, intending to claim a domicile there, but not intending to make a home there, and has his name put on the voting list as domiciled there. He is not legally listed in Y.⁵⁹

2. A, domiciled in X, desires to have his estate distributed at his death by the law of Y; he goes to Y, engages a room for a year, and declares himself do-

⁵⁷Accord: *Nailor v. French*, 4 Yeates 241—1805; *Blessing's Estate*, 267 Pa. 380—1920; *Cushing v. Tax Assessment Board*, 66 Pitts. L. J. 451—1918; *Milward's Appeal*, 66 Pitts. L. J. 747—1918, and *Kelly's Appeal*, 9 D. & C. 666—1927. Compare the facts in *Harvey's Estate*, 67 Pitts. L. J. 467—1919.

⁵⁸Accord: *Hindman's Appeal*, 85 Pa. 466—1877; *Kirby v. Bradford County*, 134 Pa. 109—1890; *Reed v. Reed*, 30 Pa. Superior Ct. 229—1906; *Halpine v. Halpine*, 52 Pa. Superior Ct. 80—1912; *Hunnings v. Hunnings*, 55 Pa. Superior Ct. 261—1913; *Reed v. Reed*, 59 Pa. Superior Ct. 178 (s. c. 23 Dist. R. 603)—1915; *Harrison v. Harrison*, 69 Pa. Superior Ct. 580—1918; *Narr's Estate*, 1 D. & C. 786—1922; *Commonwealth v. Hoke*, 2 D. & C. 766—1922, and *Kelly's Appeal*, 9 D. & C. 666—1927. See, however, *Winsor's Estate*, 264 Pa. 552—1919, and *Spear v. Spear*, 80 Pa. Superior Ct. 285 (s. c. 1 D. & C. 699)—1922.

Similarly, an intention not to acquire a domicile is immaterial: *Cushing v. Tax Assessment Board*, 66 Pitts. L. J. 451—1918.

⁵⁹Accord: *Commonwealth v. Hoke*, 2 D. & C. 766—1922; *Dawson's Registration*, 9 D. & C. 9—1926, and *Kelly's Appeal*, 9 D. & C. 666—1927.

miciled there. He however continues as before to live in X. His domicil remains in X.⁶⁰

Section 22. The intention to make a home must be an intention to make a home at the moment, not to make a home in the future.⁶¹

Comment: (1) In order to possess the requisite intention one must be able to say not, this is to be my home, but, this is now my home.

1. A comes to Y from X intending to go into business and make his home there; he buys and occupies a house and business premises and returns to X to bring his family to Y. He is domiciled in Y.⁶²

2. B comes from X to Y and buys a dwelling-house into which he intends to move and make his home at the expiration of the lease of his present home; and he employs workmen to fit the new dwelling-house for occupancy. B's domicil is still X.⁶³

⁶⁰Compare Hindman's Appeal, 85 Pa. 466—1877, and the converse case of Cushing v. Tax Assessment Board, 66 Pitts. L. J. 451—1918.

⁶¹Accord: Hood's Estate, 21 Pa. 106—1853; Pfoutz v. Comford, 36 Pa. 420—1860; Reed's Appeal, 71 Pa. 378—1872; Carey's Appeal, 75 Pa. 201—1874; Hindman's Appeal, 85 Pa. 466—1877; Kirby v. Bradford County, 134 Pa. 109—1890; Price v. Price, 156 Pa. 617—1893; Dalrymple's Estate, 215 Pa. 367 (s. c. 31 Pa. C. C. 177)—1906; Barclay's Estate, 259 Pa. 401—1918; Reed v. Reed, 30 Pa. Superior Ct. 229—1906; Barning v. Barning, 46 Pa. Superior Ct. 291—1911; Wilson v. Wilson, 80 Pa. Superior Ct. 20—1922, and Lipps v. Lipps, 90 Pa. Superior Ct. 86—1926.

In Price v. Price, 156 Pa. 617—1893, on 626, it is said: "The requisite animus is the present intention of permanent or indefinite residence in a given place or country, or negatively expressed, the absence of any present intention of not residing there permanently or indefinitely."

The intention to not acquire a domicil is immaterial, if the intention is to establish a home: Cushing v. Tax Assessment Board, 66 Pitts. L. J. 451—1918.

⁶²Accord: Reed v. Ketch, 1 Phila. 105—1850.

⁶³Accord: Overseers of Lake District v. Overseers of South Canaan, 87 Pa. 19—1878, and Wilson v. Wilson, 80 Pa. Superior Ct. 20—1922. Compare Reed v. Ketch, 1 Phila. 105—1850.

(2) The intention to make a home must be an absolute one, not conditional on the happening of a future event.

3. A goes to X intending to stay there only if he passes a certain examination, or if he can get work. A is not domiciled in X until the condition is fulfilled.⁶⁴

Section 23. A person cannot acquire a domicile of choice by an act done under legal or physical compulsion.⁶⁵

Comment: (1) A person does not acquire a domicile of choice in a place which he cannot legally leave when he chooses to do so.

The fact that he does not desire to leave is immaterial as is also his legal right and intention to remain after the period of legal detention expires.

1. A's domicile is X. A is released from jail on bond and required to live within a prescribed area, Y. A rents a house in Y, sends for his family, lives in Y for years and announces that he has no intention of leaving Y when the period of required residence expires. A during the period of required residence is still domiciled in X.

2. A's domicile is X. As an officer in the army, A is required to live in Y at an army post, his family being permitted to reside and residing with him. A is still domiciled in X.⁶⁶

⁶⁴See *Barning v. Barning*, 46 Pa. Superior Ct. 291—1911.

⁶⁵Accord: *Commonwealth v. Jones*, 12 Pa. 365—1849; *Covode v. Foster*, 4 Brewst. 414—1870, and *Election Law*, 9 Phila. 497—1872.

If paupers are discharged as such, but are re-employed as servants, they can acquire a domicile in the poorhouse: *Re Registry Lists*, 10 Phila. 213—1874, but compare *Murray's Petition*, 5 W. N. C. 9—1877.

Section 13 of Article VIII of the Constitution of Pennsylvania provides that "no person shall be deemed to have gained a residence by reason of his presence, or lost it by means of his absence, while" a soldier, sailor, civilian government employee, student, inmate of a poor house or prison, etc. This does not mean that such persons cannot acquire a new domicile: *Lower Oxford Contested Election*, 11 Phila. 641—1875.

⁶⁶Accord: *Gearing v. Gearing*, 90 Pa. Superior Ct. 192—1926, and *Taylor v. Reading*, 4 Brewst. 439—1870. But under the divorce

(2) The compulsion of poverty, or the compulsion arising from disgust with existing political and social conditions, is not legal or physical compulsion within the meaning of this Section.

3. A's domicile is X. A being destitute and unable to work becomes, though not legally compelled, an inmate of a charitable institution situated at Y. He has no expectation that he will leave the institution. A may acquire a domicile of choice at Y.

4. A's domicile is X. A gives up his home in X because of disgust at existing political or social conditions and acquires a home in Y without any intention of returning unless these conditions change. He hopes and expects such change. A acquires a domicile of choice in Y.⁶⁷

(3) Evidence ordinarily sufficient to establish a domicile of choice may be insufficient in the case of a person, (a) exiled from his domicile, or (b) resident in a place when performing the duties of a public office, though such persons may acquire a domicile of choice in the places where they reside if there is sufficient additional evidence.⁶⁸

5. A's domicile is X. A is exiled from X and resides with his family in Y intending to return to X when permitted to do so. A is still domiciled in X.

6. A (all other facts in the preceding illustration remaining the same) intends to continue to reside in Y irrespective of any action on the part of the authorities in X. A acquires a domicile of choice in Y.

statutes, domicile must be accompanied by actual residence: *Gearing v. Gearing*, 83 Pa. Superior Ct. 423—1924. For effect of military service on the statute of limitations, see *Graham v. Commonwealth*, 51 Pa. 255—1865.

⁶⁷See *Hindman's Appeal*, 85 Pa. 466—1877.

⁶⁸See *Miller's Estate*, 3 Rawle 312—1832; *Commonwealth v. Jones*, 12 Pa. 365—1849; *Dauphin County v. Banks*, 1 Pears. 40—1854, and *Commonwealth v. Hoke*, 2 D. & C. 766—1922.

But such persons, although there is no change of domicile, may be nonresidents within the meaning of the foreign attachment act: *Raymond v. Leishman*, 243 Pa. 64—1914.

7. A is elected Senator from State X. A purchases a house in Washington and lives there with his family. A is still domiciled in X.⁶⁹

8. A's domicile is X. A accepts an executive appointment in Washington of a character usually held for life. He sells his house in X, purchases a house in Washington and lives there with his family. He has no intention of resigning his position or returning to X and does not vote there. A acquires a domicile of choice in Washington.⁷⁰

9. A's domicile is X. A is an army officer stationed at Y. He is permitted to live outside the army post. A marries a resident of Y, purchases a house in Y and lives there with his family with the intention of making it his home. A acquires a domicile of choice in Y.⁷⁰

Section 24. The motive with which a person acquires a new dwelling-place does not determine the question of the establishment of a domicile of choice, but it may be important evidence tending to show whether or not, when a new dwelling-place is acquired, there is an intention to make a home there.⁷¹

⁶⁹Compare *Commonwealth v. Jones*, 12 Pa. 365—1849, and see *Raymond v. Leishman*, 243 Pa. 64—1914.

⁷⁰But compare Section 13 of Article VIII of the Constitution of 1874, and *Lower Oxford Contested Election*, 11 Phila. 641—1875; see also *Lesh v. Lesh*, 13 Dist. R. 537—1903.

⁷¹Accord: *Nailor v. French*, 4 Yeates 241—1805; *Miller's Estate*, 3 Rawle 312—1832; *Hood's Estate*, 21 Pa. 106—1853; *Fry's Election Case*, 71 Pa. 302 (s. c., 8 Phila. 575)—1872; *Hindman's Appeal*, 85 Pa. 466—1877; *Kirby v. Bradford County*, 134 Pa. 109—1890; *Price v. Price*, 156 Pa. 617—1893; *Dalrymple's Estate*, 215 Pa. 367 (s. c. 31 Pa. C. C. 177)—1906; *Barclay's Estate*, 259 Pa. 401—1918; *Flaherty's Estate*, 285 Pa. 287 (s. c. 6 D. & C. 703)—1925; *Lowry's Estate*, 6 Pa. Superior Ct. 143 (s. c. 5 Dist. R. 729, 18 Pa. C. C. 591)—1897; *Reed v. Reed*, 30 Pa. Superior Ct. 229—1906; *Dulin v. Dulin*, 33 Pa. Superior Ct. 4—1907; *Halpine v. Halpine*, 52 Pa. Superior Ct. 80—1912; *Hunnings v. Hunnings*, 55 Pa. Superior Ct. 261—1913; *Reed v. Reed*, 59 Pa. Superior Ct. (s. c. 23 Dist. R. 603)—1915; *Harrison v. Harrison*, 69 Pa. Superior Ct. 580—1918; *Shaw v. Shaw*, 72 Pa. Superior Ct. 191—1919; *Re Guardian for Belle N. Nicholls*, 86

Comment: (1) If the new dwelling-place is acquired with the necessary intention of making it a home, it becomes a domicile of choice even though there may be a special, even an unworthy motive, in making the change.

1. A changes his dwelling-place for the purpose of diminishing his taxes or avoiding the payment of a debt or for the purpose of securing a divorce. He intends, however, to make the new place his home. A's domicile is changed.⁷²

2. A leaves his home and establishes a dwelling-place elsewhere for the purpose of business, education, or health, at which he lives for a long time; there is no evidence of an intention to give up his former home. A's domicile is unchanged.⁷³

Pa. Superior Ct. 38—1926; *Burch v. Taylor*, 1 Phila. 224—1851; *Malone v. Lindley*, 1 Phila. 192—1851; *Dauphin County v. Banks*, 1 Pears. 40—1854; *Commonwealth v. Emerson*, 1 Pearson 204—1861; *Harberger's Estate*, 13 Phila. 368—1880; *Mintzer's Estate*, 2 Dist. R. 584, 13 Pa. C. C. 465—1893; *Wight v. Hovey*, 17 Dist. R. 1019, 35 Pa. C. C. 650—1908; *Reynard's Appeal*, 20 Dist. R. 932—1911; *Saunders Coffee Co. v. Menges*, 62 Pitts. L. J. 662—1914; *Milward's Appeal*, 66 Pitts. L. J. 747—1918; *Harvey's Estate*, 67 Pitts. L. J. 467—1919; *Narr's Estate*, 1 D. & C. 786—1922; *Commonwealth v. Hoke*, 2 D. & C. 766—1922, and *Kelly's Appeal*, 9 D. & C. 666—1927.

⁷²Accord: *Hindman's Appeal*, 85 Pa. 466—1877; *Reed v. Reed*, 30 Pa. Superior Ct. 229—1906; *Harrison v. Harrison*, 69 Pa. Superior Ct. 580—1918; *Spear v. Spear*, 80 Pa. Superior Ct. 285 (s. c. 1 D. & C. 699)—1922, and *Casey's Case*, 1 Ashm. 126—1827.

Compare: *Fuller v. Bryan*, 20 Pa. 144—1852; *Dulin v. Dulin*, 33 Pa. Superior Ct. 4—1907; *Hunnings v. Hunnings*, 55 Pa. Superior Ct. 261—1913; *Reed v. Reed*, 59 Pa. Superior Ct. 178 (s. c. 23 Dist. R. 603)—1915; *Abbott v. Abbott*, 75 Pa. Superior Ct. 483—1921; *Hilyard v. Hilyard*, 87 Pa. Superior Ct. 1—1926, and *Casey's Case*, 1 Ashm. 126—1827, most of these cases dealing with the somewhat stricter rule prevailing in divorce cases (see note 81).

⁷³Accord: *Miller's Estate*, 3 Rawle 312—1832; *Fry's Election Case*, 71 Pa. 302 (s. c. 8 Phila. 575)—1872; *Carey's Appeal*, 75 Pa. 201—1874; *Kirby v. Bradford County*, 134 Pa. 109—1890; *Price v. Price*, 156 Pa. 617—1893; *Dalrymple's Estate*, 215 Pa. 367 (s. c. 31 Pa. C. C. 177)—1906; *Barclay's Estate*, 259 Pa. 401—1918; *Lowry's Estate*, 6 Pa. Superior Ct. 143 (s. c. 5 Dist. R. 729, 18 Pa. C. C. 591)—1897; *Halpine v. Halpine*, 52 Pa. Superior Ct. 80—1912; *Malone v. Lindley*,

(2) The domicile in the following cases must be determined by considering whether the change of residence has been accompanied by an intention to change the home.

(a) Presence for business.

3. A leaves his home in Turkey and comes to Massachusetts, earns money and transmits the money to his wife, who has remained at the Turkish home, to which he intends to return after earning a sufficient competence. A gets no domicile in Massachusetts.⁷⁴

4. A leaves his home in Massachusetts, and goes with his family to Shanghai, where he acquires and publishes a newspaper; he stays in Shanghai for many years, taking part in the life and affairs of the city and evincing no interest in his old home. A is domiciled in Shanghai.⁷⁵

(b) Presence for health or travel.

5. A, domiciled in New York, being advised to go abroad for his health, goes to Nice, takes a house on a long lease, and lives there for several years until his death; being unable on account of his health to return, although desirous of so doing. A remains domiciled in New York.⁷⁶

6. A goes abroad with his family, is delighted with the life in Dresden, takes a house there on a long lease,

1 Phila. 192—1851; *Commonwealth v. Emerson*, 1 Pearson 204—1861; *Harberger's Estate*, 13 Phila. 368—1880; *Wight v. Hovey*, 17 Dist. R. 1019, 35 Pa. C. C. 650—1908; *Harvey's Estate*, 67 Pitts. L. J. 467—1919, and *Narr's Estate*, 1 D. & C. 786—1922.

But see *Nailor v. French*, 4 Yeates 241—1805.

⁷⁴See *Nailor v. French*, 4 Yeates 241—1805, and compare *Cushing v. Tax Assessment Board*, 66 Pitts. L. J. 451—1918.

⁷⁵Accord: *Miller's Estate*, 3 Rawle 312—1832; *Hood's Estate*, 21 Pa. 106—1853; *Reynard's Appeal*, 20 Dist. R. 932—1911; *Cushing v. Tax Assessment Board*, 66 Pitts. L. J. 451—1918, and *Milward's Appeal*, 66 Pitts. L. J. 747—1918.

⁷⁶Accord: *Harberger's Estate*, 13 Phila. 368—1880; compare *Price v. Price*, 156 Pa. 617—1893; *Evans's Estate*, 17 Dist. R. 111—1907, and *Narr's Estate*, 1 D. & C. 786—1922.

and stays there until his death. A is domiciled in Dresden.⁷⁷

(c) Presence for the education of children.

7. A, a farmer, moves into a city in the autumn in order to place his children in good schools during the winter. A's domicile is unchanged.

8. A, a farmer's widow, sells the farm, and after examination of several places buys and occupies a dwelling-house in X, because she believes the schools in X will give her children the best education. A's domicile is X.

(d) Presence to attend an educational institution.

9. A, a young man aged twenty-one, leaves his father's home to enter the senior class in the X University, being undecided where to go upon graduation. A's domicile is unchanged.⁷⁸

10. A, a young man just graduated from college, marries and goes with his wife to X, where he enters a professional school. He takes a house there, intending to live there until he takes his professional degree. A's domicile is X.

(e) Presence to escape legal process, or to gain access to a court.

11. A, a married woman, goes to X for the purpose of obtaining a divorce there, intending to go elsewhere upon obtaining the divorce. A does not acquire a domicile in X.⁷⁹

12. A, college teacher, desiring to obtain a divorce,

⁷⁷But compare *Barclay's Estate*, 259 Pa. 401—1918, and *Lowry's Estate*, 6 Pa. Superior Ct. 143 (s. c. 5 Dist. R. 729, 18 Pa. C. C. 591)—1897.

⁷⁸Accord: *Fry's Election Case*, 71 Pa. 302 (s. c. 8 Phila. 575)—1872.

⁷⁹See *Reed v. Reed*, 30 Pa. Superior Ct. 229—1906; *Dulin v. Dulin*, 33 Pa. Superior Ct. 4—1907; *Halpine v. Halpine*, 52 Pa. Superior Ct. 80—1912; *Hunnings v. Hunnings*, 55 Pa. Superior Ct. 261—1913; *Reed v. Reed*, 59 Pa. Superior Ct. 178—1915; *Harrison v. Harrison*, 69 Pa. Superior Ct. 580—1918, and *Spear v. Spear*, 80 Pa. Superior Ct. 285 (s. c. 1 D. & C. 699)—1922.

solicits and obtains a teaching position in a college at X, choosing that college because the divorce laws at X are favorable to his needs. He intends to remain at the college unless he is later offered a better position elsewhere. A acquires a domicile in X.

(f) Presence to work in various places.

13. A, an unmarried man with a domicile at X, goes about from place to place harvesting and logging, expecting to stay in no one place more than six months. A's domicile remains at X.

14. A, a married man with a domicile at X, goes to Y where he obtains work in his trade, takes a house on a short lease, and brings his family and his furniture. He expects to be employed there about six months. A's domicile is changed to Y.⁸⁰

Section 25. A domicile once established continues until it is superseded by another domicile.⁸¹

Comment: If a man has no home, his domicile cannot be at his home. Every person must have a domicile (See Section 13). Therefore when a home is abandoned the domicile continues until a new home is acquired.

⁸⁰Accord: *Cushing v. Tax Assessment Board*, 66 Pitts. L. J. 451—1918, and *Commonwealth v. Hoke*, 2 D. & C. 766—1922.

⁸¹Accord: *Lyle v. Foreman*, 1 Dall. 480—1789; *Guier v. O'Daniel*, 1 Binn. 349—1806; *Miller's Estate*, 3 Rawle 312—1832; *Buffaloe v. Whitedeer*, 15 Pa. 782—1850; *Fuller v. Bryan*, 20 Pa. 144—1852; *Hood's Estate*, 21 Pa. 106—1853; *Pfoutz v. Comford*, 36 Pa. 420—1860; *Fry's Election Case*, 71 Pa. 302 (s. c. 8 Phila. 575)—1872; *Reed's Appeal*, 71 Pa. 378—1872; *Carey's Appeal*, 75 Pa. 201—1874; *Hindman's Appeal*, 85 Pa. 466—1877; *Overseers of Lake District v. Overseers of South Canaan*, 87 Pa. 19—1878; *Overseers v. Overseers*, 6 Sadler 591—1887; *Kirby v. Bradford County*, 134 Pa. 109—1890; *Price v. Price*, 156 Pa. 617—1893; *Dalrymple's Estate*, 215 Pa. 367 (s. c. 31 Pa. C. C. 177)—1906; *Barclay's Estate*, 259 Pa. 401—1918; *Stewart's Case*, 265 Pa. 118—1919; *Flaherty's Estate*, 285 Pa. 287 (s. c. 6 D. & C. 703)—1925; *Lowry's Estate*, 6 Pa. Superior Ct. 143 (s. c. 5 Dist. R. 729, 18 Pa. C. C. 591)—1897; *Reed v. Reed*, 30 Pa. Superior Ct. 229—1906; *Dulin v. Dulin*, 33 Pa. Superior Ct. 4—1907; *Halpine v. Halpine*, 52 Pa. Superior Ct. 80—1912; *Hunnings v. Hunnings*, 55 Pa. Superior Ct. 261—1913; *Reed v. Reed*, 59 Pa. Superior Ct. 178 (s. c. 23 Dist. R. 603)—1915; *Harrison v. Harrison*, 69 Pa. Superior

1. A having a domicil in X ceases to live there.
A gets no other dwelling-place. A's domicil is X.⁸²

Ct. 580—1918; *Shaw v. Shaw*, 72 Pa. Superior Ct. 191—1919; *Spear v. Spear*, 80 Pa. Superior Ct. 285 (s. c. 1 D. & C. 699)—1922; *Wilson v. Wilson*, 80 Pa. Superior Ct. 20—1922; *Gibson Poor Dist. v. Benton Poor Dist.*, 85 Pa. Superior Ct. 377—1925; *Lipps v. Lipps*, 90 Pa. Superior Ct. 86—1926; *Re Guardian for Belle N. Nicholls*, 86 Pa. Superior Ct. 38—1926; *Davis v. Davis*, 91 Pa. Superior Ct. 354—1927; *Burch v. Taylor*, 1 Phila. 224—1851; *Malone v. Lindley*, 1 Phila. 192—1851; *Commonwealth v. Emerson*, 1 Pearson 204—1861; *Harberger's Estate*, 13 Phila. 368—1880; *Mintzer's Estate*, 2 Dist. R. 584, 13 Pa. C. C. 465—1893; *Labe v. Brauss*, 2 Dist. R. 157, 12 Pa. C. C. 255—1892; *Wight v. Hovey*, 17 Dist. R. 1019, 35 Pa. C. C. 650—1908; *Harvey's Estate*, 67 Pitts. L. J. 467—1919, and *Narr's Estate*, 1 D. & C. 786—1922.

For the burden of proof of showing a change in domicil, see *Price v. Price*, 156 Pa. 617—1893; *Flaherty's Estate*, 285 Pa. 287 (s. c. 6 D. & C. 703)—1925; *Barclay's Estate*, 259 Pa. 401—1918; *Lowry's Estate*, 6 Pa. Superior Ct. 143 (s. c. 5 Dist. R. 729, 18 Pa. C. C. 591)—1897, and *Halpine v. Halpine*, 52 Pa. Superior Ct. 80—1912. In divorce cases, affirmative proof of the abandonment of the former domicil seems to be required: *Dulin v. Dulin*, 33 Pa. Superior Ct. 4—1907; *Harrison v. Harrison*, 69 Pa. Superior Ct. 580—1918; *Abbott v. Abbott*, 75 Pa. Superior Ct. 483—1921, and *Goga v. Goga*, 5 D. & C. 669—1924. But see *Davis v. Davis*, 91 Pa. Superior Ct. 354—1927.

The dicta in some of the cases support the theory that the domicil of origin revives immediately upon the abandonment of the domicil of choice: *Miller's Estate*, 3 Rawle 312—1832; *Reed's Appeal*, 71 Pa. 378—1872; *Lowry's Estate*, 6 Pa. Superior Ct. 143 (s. c. 5 Dist. R. 729, 18 Pa. C. C. 591)—1897; *Bremme's Estate*, 2 Dist. R. 455, 13 Pa. C. C. 177—1893; *Whitehill v. Eicherly*, 15 Pa. C. C. 593—1894, and *Sheldon v. Forsman*, 17 Lanc. L. R. 85—1899, but there is no case which directly decides this proposition. On the other hand, if that theory is the law, the following cases seem to be wrongly decided: *Buffaloe v. Whitdeer*, 15 Pa. 182—1850; *Hindman's Appeal*, 85 Pa. 466—1877; *Price v. Price*, 156 Pa. 617—1893; *Barclay's Estate*, 259 Pa. 401—1918, and *Reed v. Reed*, 59 Pa. Superior Ct. 178 (s. c. 23 Dist. R. 603)—1915.

The cases also seem to require a somewhat higher degree of proof when the contest is between a domicil of origin and a domicil of choice: *Lowry's Estate*, 6 Pa. Superior Ct. 143 (s. c. 5 Dist. R. 729, 18 Pa. C. C. 591)—1897, and *Narr's Estate*, 1 D. & C. 786—1922; but see *Nailor v. French*, 4 Yeates 241—1805.

⁸²Accord: *Fuller v. Bryan*, 20 Pa. 144—1852; *Pfoutz v. Comfort*, 36 Pa. 420—1860, and *Barclay's Estate*, 259 Pa. 401—1918.

2. A having a domicile in X goes to live in Y. A has not yet decided to make Y his home. A's domicile is X.⁸³

3. A having a domicile in X decides to make his home in Y. A has not yet gone to Y. A's domicile is X.⁸⁴

4. A having a domicile in X decides to make his home in Y. He leaves X and is on his way to Y but has not yet reached Y. His domicile is X.⁸⁵

Section 26. When a person who has capacity to acquire a domicile of choice has more than one home, his domicile is in the earlier home, unless he regards the second home as his principal home.⁸⁶

Comment: If a man has two dwelling-places, any one of the following situations may arise:

(a) One may be a home in the sense used in this Res-tatement, and the other merely a residence.⁸⁷

⁸³Accord: *Miller's Estate*, 3 Rawle 312—1832; *Price v. Price*, 156 Pa. 617—1893; *Dalrymple's Estate*, 215 Pa. 367 (s. c. 31 Pa. C. C. 177)—1906; *Barclay's Estate*, 259 Pa. 401—1918; *Lowry's Estate*, 6 Pa. Superior Ct. 143 (s. c. 5 Dist. R. 729, 18 Pa. C. C. 591)—1897, and *Narr's Estate*, 1 D. & C. 786—1922.

⁸⁴Accord: *Hindman's Appeal*, 85 Pa. 466—1877, and *Casey's Case*, 1 Ashm. 126—1827.

⁸⁵Accord: *Lyle v. Foreman*, 1 Dall. 480—1789, and *Wilkin's Guardian*, 146 Pa. 585—1892.

⁸⁶Except for the qualification mentioned in note 88, *infra*, the cases are in accord with this section: *Kirby v. Bradford County*, 134 Pa. 109—1890; *Dalrymple's Estate*, 215 Pa. 367 (s. c. 31 Pa. C. C. 177)—1906; *Winsor's Estate*, 264 Pa. 552—1919; *Blessing's Estate*, 267 Pa. 380—1920; *Re Guardian for Belle N. Nicholls*, 86 Pa. Superior Ct. 38—1926; *Commonwealth v. Emerson*, 1 Pearson 204—1861; *Mintzer's Estate*, 2 Dist. R. 584, 13 Pa. C. C. 465—1893; *Reynard's Appeal*, 20 Dist. R. 932—1911; *Bumpus's Estate*, 23 Dist. R. 654—1914; *Cushing v. Tax Assessment Board*, 66 Pitts. L. J. 451—1918; *Milward's Appeal*, 66 Pitts. L. J. 747—1918; *Harvey's Estate*, 67 Pitts. L. J. 467—1919, and *Kelly's Appeal*, 9 D. & C. 666—1927.

⁸⁷Accord: *Dalrymple's Estate*, 215 Pa. 367 (s. c. 31 Pa. C. C. 177)—1906; *Blessing's Estate*, 267 Pa. 380—1920; *Commonwealth v. Emerson*, 1 Pearson 204—1861; *Bumpus's Estate*, 23 Dist. R. 654—1914; *Cushing v. Tax Assessment Board*, 66 Pitts. L. J. 451—1918;

(b) Both may be homes in the sense used in this Restatement, but one may come to be his principal home as his civic and domestic interests attach themselves more and more to it rather than to the other. In this case the principal home is his domicil.

1. A, a city merchant, retaining his city home, acquires also a country home. As his children become older he desires them to be brought up in the country, and comes to regard the country home as his principal one. His domicil is his country home.

(c) Both may be homes in the sense used in this Restatement, and both in equal degree. In this unusual case, that one of the two homes which earlier became his domicil remains so.

The earlier home having become the domicil and that home never having been abandoned, it does not cease to be the domicil.⁸⁸

Milward's Appeal, 66 Pitts. L. J. 747—1918; Harvey's Estate, 67 Pitts. L. J. 467—1919, and Kelly's Appeal, 9 D. & C. 666—1927.

⁸⁸For the conflicting views on this question, reference is made to 3 Proceedings A. L. I., pages 266 to 274. The Pennsylvania cases seem to incline to the view that where a person has two dwelling places, both homes in equal degree, he may elect which one is to be his domicil. Thus in Winsor's Estate 264 Pa. 552—1919, the Court says, "It was for him to declare which of his two homes he regarded, and was to be regarded, as his family or principal residence." Mr. Justice Simpson says (Voting Residence in Pennsylvania, 69 U. of Pa. L. R. 17): "So also, if, as in Winsor's Estate, he has two real homes, occupied at different seasons of the year, one of which has been treated by him as his domicil and voting residence, he may change to the other eo instanti by a statement to that effect, if his future acts accord with the declaration. On the other hand, as in Blessing's Estate (267 Pa. 380—1920), if one moves with his family from a residence, no matter how long established, to another, which latter he and they occupy as a home, though the old house has never been entirely closed, but has been used by him, during the day time, for resting and eating, and he has frequently spoken and written of his as his home, these facts alone will not suffice to enable him to select it as his domicil or voting residence, for it is not his real home." In accordance with Winsor's Estate is *Re Nicholl's* Guardian, 86 Pa. Superior Ct. 38—1926.

2. A comes from the country to the city and engages in business, retaining his country home and establishing a new home in the city. The former home is his domicil. He does not regard either as his principal home.

3. A, a city merchant, retaining his city home, acquires also a country home. He does not regard either as his principal home. The former is his domicil.

Section 27. Where a person has his home in a dwelling-house which is situated upon a dividing line between political divisions of territory, his domicil is within that territorial division in which a preponderant part of his dwelling-house is situated; if there is no decided preponderance, the domicil is in the territorial division in which the principal entrance to the house is situated.⁸⁹

Comment: The situation is a technical one, caused by the purely arbitrary political division; and any rule adopted to solve the problem must be an artificial one.

1. A's dwelling-house is cut by the line between X and Y. Only three feet along the western end of the house is in X, the remainder in Y. A is domiciled in Y.

2. The line between X and Y nearly bisects A's dwelling-house. The principal entrance of the house is in Y. A is domiciled in Y.

Compare Reynard's Appeal, 20 Dist. R. 932—1911, and Bumpus's Estate, 23 Dist. R. 654—1914; and see the note 89.

⁸⁹The authorities seem to say that in such a case, the person may elect in which division his domicil is to be: *Follweiler v. Lutz*, 112 Pa. 107—1886. The act of May 24, 1878, P. L. 131, 4 Purdon 4630, Section 205; Pa. St. 1920, Section 20599, gives the owner the right to choose his place of residence; but a choice, once made, is binding on himself and on future owners. See also *Lancaster v. Bare*, 8 Dist. R. 472—1899, and compare *Re Registration*, 67 Pitts. L. J. 792—1919.

TOPIC 4. COMPELLED DOMICIL

Section 28. A person who has not capacity to acquire a domicile of choice has a domicile assigned to him regardless of his will. This domicile is a compelled domicile.⁹⁰

Comment: A person's domicile may be the place at which he has his home, or it may be a place assigned to him by law as his domicile, even though it is not his home. (See Section 10.) A person who is legally capable of acquiring a domicile of choice may acquire a domicile in a place by making his home in that place. (See Section 17.) Certain persons are incapable of acquiring a domicile in this manner; but since such persons must have a domicile, a place is assigned to them by law as their domicile whether or not they have a home in that place. The principles governing the fixing of the domicile of these persons are given in Sections 29 to 41.

Section 29... Except as stated in Section 30, a wife has the same domicile as that of her husband.⁹¹

⁹⁰This is a definitive section, and hence there are no authorities directly on this point.

⁹¹Accord: Dougherty v. Snyder, 15 S. & R. 84—1826; Dorsey v. Dorsey, 7 Watts 349—1838; School Directors v. James, 2 W. & S. 568—1841; Hollister v. Hollister, 6 Pa. 449—1847; Buffaloe v. Whitdeer, 15 Pa. 182—1850; Overseers of Lake District v. Overseers of South Canaan, 87 Pa. 19—1878; Scranton Poor District v. Directors, 106 Pa. 446—1884; Barclay's Estate, 259 Pa. 401—1918; Reed v. Reed, 30 Pa. Superior Ct. 229—1906; Wilson v. Wilson, 80 Pa. Superior Ct. 20—1922; Starr v. Starr, 78 Pa. Superior Ct. 579—1922; Spear v. Spear, 80 Pa. Superior Ct. 285 (s. c. 1 D. & C. 699)—1922; Gibson Poor Dist. v. Benton Poor Dist., 85 Pa. Superior Ct. 377—1925; Re Guardian for Belle N. Nicholls, 86 Pa. Superior Ct. 38—1926; City v. Bailey, 8 Phila. 485—1870, and Bumpus's Estate, 23 Dist. R. 654—1914.

An agreement to the contrary before marriage does not change the rule: Barning v. Barning, 46 Pa. Superior Ct. 291—1911.

In Starr v. Starr, 78 Pa. Superior Ct. 579—1922, it is said (582): "The husband, as traditional head of the family, and the only one primarily liable for its support, ordinarily selects the home. Under normal circumstances, therefore, the husband's domicile determines that of the wife, because her home in fact follows his."

Comment: The husband is the head of the family, which includes the wife and minor children, and in normal cases the members of the family have their domicil at the place where he has his domicil.

(1) On marriage, the wife takes the domicil the husband has at that time.

1. A has a dwelling-house in X, where he has his domicil. He marries B. A and B travel on their honeymoon. B has never been in X. B's domicil is X.

2. A is domiciled in X. He gives up his home in X but does not acquire a home elsewhere. He marries B. B's domicil is X.

(2) If the husband changes his domicil, the wife's domicil changes with it.

3. A is domiciled in X. He goes to Y and buys a house and acquires a domicil there. B, his wife, remains in X for a time and has never been in Y. B's domicil is Y.⁹²

(3) A void marriage has no effect upon the domicil of the woman. If she does in fact make her home with her supposed husband, she acquires a domicil of choice in the place where she lives with him.⁹³

This is true whether or not the woman knows that the marriage is void.

Section 30. If a wife lives apart from her husband without being guilty of desertion, she may acquire a separate domicil.⁹⁴

⁹²Accord: *Scranton Poor District v. Directors*, 106 Pa. 446—1884, (even if husband has deserted her); *City v. Bailey*, 8 Phila. 485—1870, (even if husband consented to separation).

But not for divorce jurisdiction: *Bishop v. Bishop*, 30 Pa. 412—1858, and *Colvin v. Reed*, 55 Pa. 375—1867. See also *Wilson v. Wilson*, 80 Pa. Superior Ct. 20—1922.

⁹³See *Elk Twp. Overseers v. Jordan Twp. Overseers*, 10 Pa. C. 245—1889, and *Wayne Twp. v. Porter Twp.*, 138 Pa. 181—1890.

Where the marriage was procured by fraud or by force, and was never ratified, the wife's domicil does not follow that of her husband: *Hines v. Hines*, 10 Pa. C. C. 74—1891.

⁹⁴Accord: *Hollister v. Hollister*, 6 Pa. 449—1847; *Reed v. Reed*, 30 Pa. Superior Ct. 229—1906; *Barning v. Barning*, 46 Pa. Superior Ct.

Comment: The determination of the circumstances under which a wife may live apart from her husband without being guilty of desertion is not a matter within the scope of this subject.⁹⁵

(1) If a wife lives apart from her husband without being guilty of desertion, she may retain her domicil, al-

291—1911; *Commonwealth v. Parker*, 59 Pa. Superior Ct. 74—1915; *Shaw v. Shaw*, 72 Pa. Superior Ct. 191—1919; *Spear v. Spear*, 80 Pa. Superior Ct. 285 (s. c. 1 D. & C. 699)—1922; *Commonwealth v. Shetzline*, 84 Pa. Superior Ct. 100—1924, and *Hilyard v. Hilyard*, 87 Pa. Superior Ct. 1—1926. Until she does acquire a separate domicil, her domicil is that of her husband: *Scranton Poor District v. Directors*, 106 Pa. 446—1884; *Luzerne etc. District v. Jenkins etc. Directors*, 4 Pa. Superior Ct. 16—1897, and *Hines v. Hines*, 10 Pa. C. C. 74—1891.

The decisions in *Dorsey v. Dorsey*, 7 Watts 349—1838; *Bishop v. Bishop*, 30 Pa. 412—1858, and *Colvin v. Reed*, 55 Pa. 375—1867 support the section. In addition see *Hunnings v. Hunnings*, 55 Pa. Superior Ct. 261—1913, and *City v. Bailey*, 8 Phila. 485—1870.

In *Starr v. Starr*, 78 Pa. Superior Ct. 579—1922 it is said (582): "It is well settled that a wife has not only the actual, but also the legal, right to establish a separate domicil when ill-treated by her husband. The man is lord of the domus only so long as he rules lawfully."

In *Hilyard v. Hilyard*, 87 Pa. Superior Ct. 1—1926, it is intimated that, by virtue of the 19th Amendment, a married woman's power to acquire a separate domicil is still further extended, at least so far as voting domicil is concerned.

If the parties agree to separate for a definite period, it is said that the wife cannot acquire a separate domicil until that period has ended: *Quinn v. Quinn*, 6 D. & C. 712—1925, and see *City v. Bailey*, 8 Phila. 485—1870.

If a wife becomes a feme sole under the act of May 4, 1885, P. L. 430, 2 Purd. 1663, Section 5, Pa. St. 1920; Section 14581, she may acquire a separate domicil: *Overseers v. Overseers*, 6 Sadler 591—1887 and see *Knauer's Petition*, 287 Pa. 115—1926.

⁹⁵In *Reed v. Reed*, 30 Pa. Superior Ct. 229—1906, it is said (236): "Our laws recognize the right of a wife to establish a domicil separate from that of her husband, when his conduct entitles her to have the marriage dissolved, and this without a judicial determination of the question." See also *Starr v. Starr*, 78 Pa. Superior Ct. 579—1922 and *Hilyard v. Hilyard*, 87 Pa. Superior Ct. 1—1926, referred to in note 94 *supra* and *Knauer's Petition*, 287 Pa. 115—1926, and *Hunnings v. Hunnings*, 55 Pa. Superior Ct. 261—1913.

though he changes his domicil.

1. A is domiciled with B, her husband, in X. B elopes with another woman and makes his domicil in Y. A continues to make her home in X. A's domicil is X.

2. A is domiciled with B, her husband, in X. B deserts her and goes to Y, where he establishes a domicil. A continues to make her home in X. A's domicil is X.⁹⁶

3. A is domiciled with B, her husband, in X. B goes to Y and becomes domiciled there. He requests A to come and live with him, but she refuses to do so and keeps her home in X. By the law of X she is not guilty of desertion in refusing to follow him. A's domicil is X.

(2) If a wife lives apart from her husband without being guilty of desertion, she may acquire a new domicil apart from his.

4. A is domiciled with B, her husband, in X. B commits adultery. A goes to Y and makes her home there. A is domiciled in Y.⁹⁷

5. A is domiciled with B, her husband, in X. By a decree of a court of X, a judicial separation is granted. A makes her home in Y. A's domicil is Y.⁹⁸

6. A is domiciled with B, her husband, in X. A and B separate by mutual consent. A makes her home in Y. A's domicil is Y.⁹⁹

⁹⁶Accord: *Commonwealth v. Parker*, 59 Pa. Superior Ct. 74—1915; *Shaw v. Shaw*, 72 Pa. Superior Ct. 191—1919; *Starr v. Starr*, 78 Pa. Superior Ct. 579—1922, and *Sherwood's Appeal*, 17 W. N. C. 338—1886; and see *Scranton Poor District v. Directors*, 106 Pa. 446—1884.

⁹⁷Accord: *Hollister v. Hollister*, 6 Pa. 449—1847; *Reed v. Reed*, 30 Pa. Superior Ct. 229—1906; *Spear v. Spear*, 80 Pa. Superior Ct. 285 (s. c. 1 D. & C. 699)—1922, and *Hilyard v. Hilyard*, 87 Pa. Superior Ct. 1—1926.

⁹⁸Accord: *Overseers of Williamsport v. Overseers of Eldred*, 84 Pa. 429—1877.

⁹⁹Compare *Quinn v. Quinn*, 6 D. & C. 712—1925, where the parties separated by mutual consent.

7. A is domiciled with B, her husband, in X. Against B's will, A goes to live and makes her home in Y. By the law of X this does not constitute desertion. A's domicile is Y.

Note: The rule as here stated goes to the limit of the law as it is generally accepted today. It is not intended to indicate an opinion that the law may not be modified in the future as a result of the undoubted trend of social opinion in favor of full legal emancipation of married women.

Section 31. Upon the termination of the marriage in any way, or upon judicial separation, the wife may acquire a new domicile; until she does so, she retains the domicile which she had at the time of the termination of the marriage relation.¹⁰⁰

Comment: Although the termination of the marriage, either by death or by divorce, does not of itself change the wife's domicile, it removes whatever disabilities she was subject to as a married woman and leaves her free to acquire a new domicile.

1. A is domiciled with B, her husband, in X. He dies. A's domicile is X.¹⁰¹

2. A is domiciled with B, her husband, in X. The marriage is terminated by a divorce. A's domicile is X.¹⁰²

3. A is the wife of B. Although B is domiciled in X, A is domiciled in Y. The marriage is terminated by a divorce. A's domicile is Y.¹⁰³

¹⁰⁰Accord: *Buffaloe v. Whitdeer*, 15 Pa. 182—1850; *Overseers of Williamsport v. Overseers of Eldred*, 84 Pa. 429—1877; *Overseers of Lake District v. Overseers of South Canaan*, 87 Pa. 19—1878, and *Barclay's Estate*, 259 Pa. 401—1918.

¹⁰¹Accord: *Barclay's Estate*, 259 Pa. 401—1918.

¹⁰²Accord: *Buffaloe v. Whitdeer*, 15 Pa. 182—1850, and *Overseers of Lake District v. Overseers of South Canaan*, 87 Pa. 19—1878.

¹⁰³See *Barning v. Barning*, 46 Pa. Superior Ct. 291—1911, and *Spear v. Spear*, 80 Pa. Superior Ct. 285 (s. c. 1 D. & C. 699)—1922.

Section 32. Except as stated in Sections 33, 34, 35 and 36, a minor child has the same domicil as that of its father.¹⁰⁴

Comment: (1) At birth, a legitimate child of a living father takes the domicil its father had at the time as its domicil of origin. (See Section 16.)

(2) The domicil of the child during its minority continues to be that of its father, and upon a change of domicil by its father the child takes the father's new domicil.¹⁰⁵

The fact that the child lives apart from the father, whether with the father's permission or not, is immaterial. The child has no power to acquire a domicil of choice, nor can the father fix the domicil of the child at any place other than that at which the father has his domicil.

1. A is domiciled in X. He sends B, his minor child, to school in Y. B's domicil is X.

2. A is domiciled in X. He sends B, his minor child to live with its grandfather in Y. B's domicil is X.¹⁰⁶

3. A is domiciled in X. His minor child, B, runs away from home and lives in Y. B's domicil is X.¹⁰⁷

¹⁰⁴Accord: *Guier v. O'Daniel*, 1 Binn. 349—1806; *School Directors v. James*, 2 W. & S. 568—1841; *Overseers of Washington v. Overseers of Beaver*, 3 W. & S. 548—1842; *West Chester School District v. Darlington*, 38 Pa. 157—1861; *Highland Twp. Poor District v. Jefferson County Poor District*, 25 Pa. Superior Ct. 601—1904; *Fermanagh Twp. v. Walker Twp.*, 4 Clark 32—1846; *Donegal Twp. Overseers v. Sugar Creek Twp. Overseers*, 20 W. N. C. 307—1887; *Taylor Minors' Estate*, 26 W. N. C. 576—1890; *Minzer's Estate*, 2 Dist. R. 584, 13 Pa. C. C. 465—1893; *Reitmeyer v. Wolfe*, 2 Dist. R. 810, 13 Pa. C. C. 179—1893; *Cannon's Estate*, 15 Pa. C. C. 312—1894, and *Yerkes v. Stetson*, 13 Dist. R. 696—1904.

¹⁰⁵Accord: *Guier v. O'Daniel*, 1 Binn. 349—1806, and *Overseers of Washington v. Overseers of Beaver*, 3 W. & S. 548—1842.

¹⁰⁶Accord: *Highland Twp. Poor District v. Jefferson County Poor District*, 25 Pa. Superior Ct. 601—1904; *Plum Creek Overseers v. South Bend Overseers*, 1 Penny. 408—1881; *Reitmeyer v. Wolfe*, 2 Dist. R. 810, 13 Pa. C. C. 179—1893; *Cannon's Estate*, 15 Pa. C. C. 312—1894, and *Yerkes v. Stetson*, 13 Dist. R. 696—1904.

¹⁰⁷Accord: *Fermanagh Twp. v. Walker Twp.*, 4 Clark 32—1846.

4. A is domiciled in X. B, his minor child, is bound out to service by the public authorities in Y. B's domicil is X.

(3) By statute in several states the father and mother are constituted "joint guardians" of their minor children. Where that is the case, if the father and mother have separate domicils, a minor child takes the domicil of the parent with whom it lives in fact.¹⁰⁸ If it lives with neither, its domicil is that of the father.

Section 33. An emancipated minor child may acquire a domicil of choice.¹⁰⁹

Comment: The determination of the circumstances under which a child is emancipated is not within the scope of this subject.

(1) A change of domicil by the father does not change the domicil of the emancipated child; for if a minor child is emancipated, the power of the parent to control the domicil of the child ceases.

(2) An emancipated child may acquire a new domicil as a domicil ceases.

1. A is domiciled in X. B, his minor son, marries with or without A's consent. By the law of X marriage emancipates a minor child. B makes his home in Y. B's domicil is Y.

2. A is domiciled in X. B, his minor daughter, is married with or without A's consent to C, whose domicil is Y. By the law of X, marriage emancipates a minor child. C dies while B is still a minor. B's domicil is Y.

3. A is domiciled in X. By the law of X, a father may voluntarily emancipate his minor child. A eman-

¹⁰⁸Compare: Cannon's Estate, 15 Pa. C. C. 312—1894.

¹⁰⁹See *Overseers of Washington v. Overseers of Beaver*, 3 W. & S. 548—1842; *Fry's Election Case*, 71 Pa. 302 (s. c. 8 Phila. 575)—1872; *Davidson, et al., Overseers v. Moreland, et al., Overseers*, 7 W. N. C. 12—1879, and *Hemlock Twp. Poor District v. Shickshinny Bor. Poor District*, 6 Kulp 169—1889.

cipates B, his minor child. A makes his home in Y. B makes his home in Z. B's domicil is Z.

4. A and his wife B are domiciled in X. They abandon C, their minor child. By the law of X, abandonment emancipates a minor child. C goes to Y and earns his living there, making Y his home. B's domicil is Y.

Section 34. In the case of divorce or separation of the parents, the minor child's domicil is that of the parent to whose custody it has been legally given; if there has been no legal fixing of the custody, its domicil is that of the parent with whom it lives, but if it lives with neither, it retains the father's domicil.¹¹⁰

Comment: This principle is applicable in the case of a divorce, judicial separation, or voluntary separation of the parents.

If the father abandons his family, the minor children living with the mother have the domicil of the mother.

Section 35. An illegitimate minor child has the same domicil as that of its mother.¹¹¹

Comment: (1) At birth, an illegitimate child takes the domicil its mother had at the time as its domicil of origin. (See Section 14.)

(2) Upon a subsequent change of domicil by its mother, the child takes the mother's new domicil.¹¹²

¹¹⁰Accord: *Overseers v. Overseers*, 6 Sadler 591—1887.

¹¹¹See *Nippenose Twp. Poor Overseers v. Jersey Shore Borough Poor Overseers*, 48 Pa. 402—1865; *Lower Augusta Twp. v. Selinsgrove*, 64 Pa. 166—1870; *Wayne Twp. v. Porter Twp.*, 138 Pa. 181—1890, and *Pine Twp. Overseers v. Franklin Twp. Overseers*, 4 Dist. R. 715—1894.

In *Crossley v. Demott*, 2 Leg. Op. 161—1871, it is held that, until an illegitimate child gains a settlement for itself, its place of settlement is where the mother was legally settled at the time of birth, and that the child's settlement does not follow its mother's settlement.

¹¹²But see *Crossley v. Demott*, 2 Leg. Op. 161—1871, and *Limestone Twp. Overseers v. Licking Twp. Overseers*, 1 Penny. 475—1881,

(3) If an illegitimate child is legitimized as to the father, the child acquires the domicile of the father; and if the act of legitimation legitimizes the child from birth, the child's domicile becomes that of the father as from the time of its birth. (For a discussion of legitimation, see Sections 140 to 144, *infra*.)

(4) If a child is legitimized as to the mother only, its domicile is unaffected by the legitimation.

Section 36. An adopted minor child has the same domicile as that of the adoptive parent.¹¹³

Comment: (1) The domicile of an adopted child becomes at the moment of adoption that of the adoptive parent.

(2) Upon a subsequent change of domicile by the adoptive parent, the domicile of the adopted child follows that of the adoptive parent.

(3) The domicile of the child, upon its adoption, ceases to follow that of the natural father.

Section 37. Upon the death of the father, the domicile which a minor child has at the time of the father's death continues to be its domicile during minority, unless its domicile is changed according to the principles stated in Sections 38, 39 and 40.¹¹⁴

Comment: The death of the father does not emancipate the child, and it cannot by its own choice acquire a new domicile.

¹¹³Accord: *Foley's Estate*, 11 Phila. 47, 1 W. N. C. 301—1875.

Jurisdiction to adopt may be exercised by the court of the minor's domicile: *McQuiston's Adoption*, 238 Pa. 304—1913, or by the court of the adoptive parent's domicile: *Thompson's Adoption*, 290 Pa. 586—1927. See also *Bumpus's Estate*, 23 Dist. R. 654—1914.

¹¹⁴Accord: *School Directors v. James*, 2 W. & S. 568—1841; *Wilkins' Guardian*, 146 Pa. 585—1892; *Donegal Twp. Overseers v. Sugar Creek Twp. Overseers*, 20 W. N. C. 307—1887, and *Mintzer's Estate*, 2 Dist. R. 584, 13 Pa. C. C. 465—1893.

Compare *Taney's Appeal*, 97 Pa. 74—1881 (involving only a change of residence).

1. A is domiciled in X. A tells B, his minor child, on A's death to go and live with his uncle C, domiciled in Y. A dies. B obeys A's request. B's domicil is X.

Section 38. If a guardian of the child's person is appointed, he may change the domicil of the child by establishing its home within but not outside the state in which he was appointed.¹¹⁵

Comment: (1) The ward may acquire a domicil in any place where the guardian causes him to live within the state in which the guardian was appointed.

(2) The ward may not acquire a domicil in any place outside the state in which the guardian was appointed.

(3) The ward does not take the domicil of the guardian unless he lives with the guardian.¹¹⁶

Section 39. If the father dies and no guardian of the child's person is appointed, the child has the same domicil as that of its mother.¹¹⁷

Comment: Upon the death of the father, if no legal guardian of the child's person is appointed, the mother is entitled to the custody of the child.

(1) If the father dies before the birth of the child, it takes the domicil of its mother as its domicil of origin. (See Section 16.)

¹¹⁵Accord: *School Directors v. James*, 2 W. & S. 568—1841; *Wilkins' Guardian*, 146 Pa. 585—1892, and *Fulton's Estate*, 14 Phila. 298—1881; although the guardian can (even fraudulently) change the residence of the minor to another state: *Taney's Appeal*, 97 Pa. 74—1881, and *Wilkins' Guardian*, 146 Pa. 585—1892; but see *Fulton's Estate*, 14 Phila. 298—1881. *Wilkins' Guardian*, supra, intimates that the domicil of the minor may be changed to another state with the consent of the domiciliary court; and in *Moffit's Account*, 32 Pitts. L. J. 414—1885, such consent seems to have been given. See also *Mintzer's Estate*, 2 Dist. R. 584, 13 Pa. C. C. 465—1893.

But a guardian of the minor's estate cannot change the domicil of the child: *West Chester School Dist. v. Darlington*, 38 Pa. 157—1861.

¹¹⁶Accord: *School Directors v. James*, 2 W. & S. 568—1841.

¹¹⁷Accord: *School Directors v. James*, 2 W. & S. 568—1841, and *Burrell Twp. v. Pittsburgh Poor Guardians*, 62 Pa. 472—1870.

(2) If the father dies after the birth of the child, it then takes the domicil of the mother and its domicil changes with hers.

(3) Even if the mother remarries, the child's domicil follows that of the mother, if the child continues to make its home with the mother;¹¹⁸ if not it remains during minority domiciled in the place of the mother's domicil immediately before her remarriage.

Section 40. If both parents of a minor child are dead and no guardian of the child's person is appointed, a grandparent who takes the child to his home to live becomes its natural guardian, and the domicil of the child is that of the grandparent so long as the child continues to live with him.¹¹⁹

Comment: No other relative than the mother or one of the grandparents can be a natural guardian of the child.

1. A, the surviving parent of B, a minor child, is domiciled in X. B is living with its grandfather in Y where the grandfather has his domicil. A dies. B's domicil is Y.

2. A, the surviving parent of B, a minor child, is domiciled in X. He dies. No legal guardian is appointed. The child goes to live with its grandfather who is domiciled in Y. B's domicil is Y.

3. A, the father of B, a minor child, is domiciled in X. A. dies. B lives with its mother, C, in Y where she is domiciled. C dies and no legal guardian

¹¹⁸Accord: *Mintzer's Estate*, 2 Dist. R. 584, 13 Pa. C. C. 465—1893; the dictum in *School Directors v. James*, 2 W. & S. 568—1841 is to the contrary.

¹¹⁹But see *Northumberland etc. Overseers v. Milton etc. Overseers*, 20 W. N. C. 84—1887; *Donegal Twp. Overseers v. Sugar Creek Twp. Overseers*, 20 W. N. C. 307—1887, and *Taylor Minors' Estate*, 26 W. N. C. 576—1890.

Compare *Taney's Appeal*, 97 Pa. 74—1881 (notice court's statement that domicil was not changed); *Wilkins' Guardian*, 146 Pa. 585—1892; *Moore's Estate*, 18 Dist. R. 290—1908 (contest between grandparents); and *Mintzer's Estate*, 2 Dist. R. 584, 13 Pa. C. C. 465—1893.

is appointed. B goes to live with D, its uncle who is domiciled in Z. B's domicile is Y.

4. A, the father of B, a minor child, is domiciled in X. The mother is dead. A dies. C, his brother, clandestinely takes B to Y. B is still domiciled in X.¹²⁰

Section 41. An insane person or one of unsound mind, who is possessed of sufficient mental capacity to choose a home, may acquire a domicile as if he were sane; if he is so far deprived of his reason as to be incapable of choosing his home, he cannot acquire a domicile of choice.¹²¹

Comment: (1) It is in every case a question of fact whether a person who is insane or of unsound mind has sufficient mental capacity to choose a home.

(2) If a person after coming of age becomes mentally incompetent to choose a home and no legal guardian of his person is appointed, his domicile continues to be in the place in which he had his domicile before he became insane.

(3) If a person before coming of age becomes mentally incompetent to choose a home and he continues to live with his parent and no legal guardian of his person is appointed, he does not become emancipated and he continues to have the same domicile as that of his parent so long as he remains insane and continues to live with his parent.¹²²

(4) Except as stated in comment (3), an insane person who is mentally incompetent to choose a home, and of

¹²⁰Accord: *Taylor Minors' Estate*, 26 W. N. C. 576—1890. But compare *Taney's Appeal*, 97 Pa. 74—1881; *Wilkins' Guardian*, 146 Pa. 585—1892; *Fulton's Estate*, 14 Phila. 298—1881, and *Mintzer's Estate*, 2 Dist. R. 584, 13 Pa. C. C. 465—1893.

¹²¹Accord: *Overseers of Washington v. Overseers of Beaver*, 3 W. & S. 548—1842; *Shippen v. Gaines*, 17 Pa. 38—1851; *Scranton Poor District v. Directors*, 106 Pa. 446—1884, and *Overseers v. Overseers*, 6 Sadler 591—1887. Compare *Re Guardian for Belle N. Nicholls*, 86 Pa. Superior Ct. 38—1926.

¹²²Accord: *Overseers of Washington v. Overseers of Beaver*, 3 W. & S. 548—1842, and *Shippen v. Gaines*, 17 Pa. 38—1851.

whose person no legal guardian is appointed, does not acquire a new domicile in a place in which he lives.

(5) If a guardian of an insane person who is incapable of acquiring a domicile of choice is appointed, the insane person acquires a domicile with the guardian if he lives with him, otherwise his domicile is unchanged.

(6) An insane person who is sent against his will to an asylum does not acquire a domicile in the asylum.

(7) If an insane person becomes sane, or mentally competent, to choose a home, he may thereafter acquire a domicile of choice.

Section 42. A corporation is domiciled in the state where it was chartered, and cannot acquire a domicile outside that state.¹²³

Comment: (1) The domicile of a corporation is in the state where it was chartered and at the place within the state where its principal office is located.

(2) Although the corporation does business outside the state where it was chartered, it cannot acquire a domicile outside that state.

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¹²³Accord: *Ohio Cities Gas Co. v. Hines*, 69 Pitts. L. J. 409—1921; *Petrucelli v. Capital Fire Ins. Co.*, 75 Pitts. L. J. 345—1927. In *Allegheny County v. Cleveland etc. Rd. Co.*, 51 Pa. 228—1865, it is said (231) that a corporation “can have no legal existence out of the bounds of the sovereignty by which it was created. It must dwell in the place of its creation.”