



## Domicile of Origin vs Domicile of Choice: A Critical Study

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**Abstract:** This research undertakes a critical examination of the dual doctrines of domicile of origin and domicile of choice within the framework of Private International Law. Traditionally, domicile serves as a connecting factor determining a person's legal status, rights, and obligations across jurisdictions. However, the dichotomy between domicile of origin—acquired by birth—and domicile of choice—acquired through intention and residence—has long generated complex jurisprudential debates.

Using a doctrinal, analytical, and comparative legal approach, this study traces the historical evolution of domicile, explores its conceptual inconsistencies, and evaluates its modern relevance in the era of globalization, migration, and digital identity. It argues that while the domicile of origin is grounded in legal fiction and stability, the domicile of choice represents personal autonomy and volition; yet, both remain imperfect in addressing modern realities of transnational existence.

This paper proposes an “Unified Theory of Domicile Determination”, which harmonizes stability and choice by recognizing hybrid factors such as habitual residence, digital presence, and intention-based continuity. This theory aims to provide a comprehensive framework for determining an individual's domicile taking into account various factors and jurisdictional consideration. This work seeks to contribute to the modernization of Private International Law by offering reforms that ensure fairness, predictability, and coherence in domicile jurisprudence.

This paper aims to focus on six important aspects under different headings on par with the Introduction, i) Theoretical & Historical foundation, ii) Domicile of Origin and iii) Domicile of Choice iv) Comparative Legal Analysis, v) Critical Analysis of Conflict Between Stability and Volition vi) Unified Theory of Domicile Determination and finally conclusion and recommendations.

**Keywords:** Domicile, Private International Law, Globalisation, Migration and Identity

### 1: Introduction and Research Framework

#### 1.1 Background of the Study

Domicile remains a foundational concept in Private International Law, determining jurisdiction, applicable law, and personal status. The division between domicile of origin and domicile of choice, inherited from English common law, reflects the tension between inherited attachment and voluntary association. In other words domicile refers to the legal relationship between an individual and a particular jurisdiction, determining which country's laws apply to their personal and property matters.

However, with globalization, dual citizenship, and cross-border mobility, this distinction

increasingly challenges legal certainty. The issue gains further complexity in family law, succession, taxation, and digital migration cases, where courts must determine the true “home” of an individual.

#### 1.2 Statement of the Problem:

- The presumption favoring domicile of origin creates rigidity and injustice in modern contexts.
- The intention test for domicile of choice is subjective and inconsistent across jurisdictions.
- Global mobility and virtual presence blur the boundaries of residence and domicile.

#### 1.3 Objectives of the Study:



1. To examine the historical and theoretical foundations of domicile of origin and domicile of choice.
2. To analyze the doctrinal and judicial inconsistencies in domicile determination.
3. To compare domicile doctrines in India, the UK, the USA, and the EU.
4. To propose a harmonized framework that balances permanence with flexibility.

#### 1.4 Research Methodology

- **Type:** Doctrinal, analytical, and comparative study
- **Approach:** Examination of statutes, leading cases, and scholarly commentaries
- **Scope:** India, UK, EU, Canada, and common law jurisdictions
- **Sources:** Case law, international conventions, and academic commentaries (Dicey, Cheshire, Morris, Briggs, etc.)

### 2: Theoretical and Historical Foundations

#### 2.1 Concept and Definition of Domicile

A domicile is the legal home of a person, representing the jurisdiction with which they have the most permanent connection.

According to *Dicey & Morris*, domicile is “a person’s permanent home where he intends to return whenever he is absent.”

The concept of domicile is a crucial aspect of private international law, influencing the application of laws and jurisdiction in cross-border disputes.

This involves two key elements:

1. Residence (*factum*) — actual physical presence, and
2. Intention (*animus manendi*) — the intention to remain permanently or indefinitely.

#### 2.2 Historical Evolution

- **Roman Law:** Early notions of *domicilium* as a place of permanent residence.

A Roman citizen’s domicile was determined by their family’s domicile or their place of registration. The Praetor’s edict introduced the concept of ‘forum domicili’ allowing lawsuits to be brought in the defendant’s domicile. Domicile became a crucial

factor in determining jurisdiction and applicable law. Roman Jurists like Cicero and Justinian discussed domicile in the context of taxation, marriage and inheritance. Justinian’s reforms emphasised the importance of domicile in determining jurisdiction and applicable law. The Roman concept of domicile has influenced the development of domicile laws in many countries shaping the modern concept of domicile in private international law.

**English Common Law:** Developed rigid distinctions to maintain stability of personal law. The domicile assigned at birth typically the father’s domicile is considered as ‘Domicile of Origin’. A domicile acquired through intentional acts, such as moving to a new country with the intention of remaining. The intention to remain permanently or indefinitely is crucial in determining domicile. In other words physical presence alone is not enough, there must be a settled intention to remain. At the same time a person can only have one domicile at a time.

The concept of domicile in English common law has been influential in shaping domicile laws in many countries, including those that follow the common law tradition.

- **Colonial Context:** The concept of domicile in a colonial context is complex and has been shaped by the interplay of colonial laws, local customs, and the legacy of colonialism. Colonial powers imposed their own laws and concept of domicile on colonized territories, often disregarding local customs and traditions. In many colonies dual systems of law existed with separate laws and courts for European and natives. This led to complexities in determining domicile.

The other aspects are domicile and citizenship. The domicile was often linked to citizenship or subjecthood, determining an individual’s rights and obligations under colonial law. The important part of domicile in colonial context is forced migration. The transatlantic slave trade and indentured



labour systems forcibly relocated people, creating complex domicile issues that persist today. But, after Independence, many countries faced challenges in defining domicile and citizenship, particularly for indigenous populations and those with complex colonial histories.

The Legacy of colonialism continues to shape the concept of domicile in many countries, requiring careful consideration of historical context and ongoing impacts. This imported into India and Commonwealth jurisdictions, where domicile serves as the anchor for personal law.

### 2.3. Philosophical Foundations:

The philosophical aspect of domicile invites us to think critically about the concept and its implications for individual and collective identity, belonging and community. In other words, the philosophical aspect of domicile explores the fundamental questions and concepts underlying the idea of a person's permanent home or residence. The fundamental questions include the following issues:

- i) Identity and Belonging: How does domicile relate to personal identity and a sense of belonging? Does one's domicile shape who they are, or is it a reflection of their identity?
- ii) Freedom and Choice: To what extent do individuals have control over their domicile? Is domicile a matter of personal choice, or is it determined by external factors like birth, family or circumstances?
- iii) Roots and Rootslessness: How important is having a fixed domicile in a world where people are increasingly mobile? Does a lack of fixed domicile lead to a sense of rootlessness or disconnection?
- iv) Territoriality and Sovereignty: How does domicile relate to territoriality and sovereignty? Does domicile imply a certain level of allegiance or loyalty to a particular state or country?
- v) Globalization and Transnationalism: In an era of globalization, do traditional

notions of domicile remain relevant? How do translational identities and practices challenge or reinforce traditional concepts of domicile?

Hence, domicile of origin and domicile of choice reflects the broader legal conflict between determinism and autonomy.

### 3: Domicile of Origin

#### 3.1 Nature and Acquisition

It can be acquired automatically at birth, generally from the father's domicile (or mother's if the child is illegitimate). And it is retained until a new domicile of choice is acquired. And it cannot be extinguished but only suspended or displaced by domicile of choice.

#### 3.2 Legal Characteristics

- Presumed to continue indefinitely (*presumption of continuity*).
- Revives upon abandonment of domicile of choice.
- Serves as a fallback domicile ensuring everyone always has a legal home.

#### 3.3 Judicial Interpretation

Key cases:

- *Udny v. Udny* (1869) LR 1 Sc & Div 441 — "Domicile is the legal relation between an individual and a territory."
- *Winans v. AG* (1904) AC 287 — The domicile of origin is retained until clearly replaced.
- *Satya v. Teja Singh* (AIR 1975 SC 105) — Domicile as a question of intention and fact in Indian law.

#### 3.4 Criticisms

- Overly rigid and fictional — assumes permanent attachment to birthplace.
- Disadvantages migrants, refugees, and transnationals.
- Inconsistent with modern notions of equality and autonomy.

### 4: Domicile of Choice

#### 4.1 Nature and Requirements

Domicile of choice is acquired by the combination of residence and intention.

Two essential components:

1. Physical presence in the new territory, and
2. Intention to reside permanently or indefinitely (*animus manendi*).

#### 4.2 Judicial Precedents



- *Bell v. Kennedy* (1868) LR 1 Sc & Div 307 — Intention is the essence of domicile of choice.
- *IRC v. Duchess of Portland* (1982) — Temporary absence does not destroy domicile.
- *Kedar Pandey v. Narain* (AIR 1966 SC 160) — Indian courts affirm intention as a key determinant.

**4.3 Tests for Determination**

- Duration and continuity of residence

- Employment, property, family ties, and civic participation
- Declarations of intention
- Evidence of abandoning previous domicile

**4.4 Criticisms**

- **Subjectivity of intention** makes it unpredictable.
- Encourages manipulation in tax and matrimonial cases.

Lacks objective criteria for proof

**5: Comparative Legal Analysis**

Jurisdiction	Domicile of Origin	Domicile of Choice	Distinct Features
India	Based on common law; follows from parents at birth	Acquired through intention and residence	No codified statute; relies on case law
United Kingdom	Retains strong presumption in favor of origin	Must show clear, permanent intention	Reformed via Domicile and Matrimonial Proceedings Act 1973
United States	State-based domicile; emphasis on intention	Domicile determines citizenship rights	Clearer statutory guidance
EU	Shifting to “habitual residence” concept	Domicile largely replaced	Modern, flexible approach
Canada	Dual system: domicile & residence	Recognizes equality and gender neutrality	Emphasizes fairness and mobility

**Comparative Insight:**

Civil law jurisdictions emphasize habitual residence for flexibility, while common law jurisdictions still struggle with rigid origin-based domicile presumptions.

**6: Critical Analysis — Conflict Between Stability and Volition**

**6.1 Theoretical Conflict**

- Domicile of origin ensures stability but lacks realism.
- Domicile of choice promotes autonomy but lacks certainty.
- The legal tension reflects an unresolved balance between status-based identity and voluntary association.

**6.2 Modern Challenges**

- Dual citizenship and globalization blur the permanence of domicile.
- Digital mobility (e-residency, online work) complicates residence requirements.
- Migration crises and statelessness raise humanitarian concerns about domicile recognition.

**6.3 Doctrinal Gaps**

- Ambiguity in intention test
- Revival rule of domicile of origin outdated
- Lack of statutory uniformity across jurisdictions

**7: Unified Theory of Domicile Determination**

**7.1 The “Unified Domicile Doctrine” (UDD)**

This paper proposes a new conceptual model integrating both stability and volition through three principles:

1. **Continuity Principle** — Legal stability should exist, but not as a presumption of birth.
2. **Autonomy Principle** — Domicile should reflect genuine personal choice without rigid proof of permanence.
3. **Functional Nexus Principle** — Recognition of transnational and digital ties as domicile determinants.

**7.2 Key Features of UDD**



- Replace “permanent home” with “habitual legal centre of life.”
- Allow **multiple domicile recognition** for limited legal purposes.
- Codify domicile determination under **model international standards** (similar to Hague Conventions).

### 7.3 Proposed Indian Reform

- Enact a **Comprehensive Domicile Act** codifying origin and choice principles.
- Abolish automatic dependency in domicile acquisition.
- Incorporate “habitual residence” as a legal fallback test.

### 8: Conclusion and Policy Recommendations

- The dual domicile system retains historical logic but fails modern practicality.
- The presumption favoring origin must yield to intent-based but objective domicile determination.
- Legal modernization must balance stability with fairness and autonomy.

### Recommendations

1. Codify domicile laws in India for uniformity.
2. Adopt **gender-neutral, autonomy-oriented criteria** for domicile of choice.

3. Integrate **habitual residence** and **digital presence** into domicile jurisprudence.
4. Harmonize international standards through the Hague Conference.

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