Law of persons

CHAPTER 3

Residence and Domicile

Introduction

- **Citizenship**, **Domicile** and **Residence** identify the location of persons for the purpose of legal transactions.
- **Citizenship** denotes the moral, social and political tie of a person to a State. The State is an entity with an international personality. (elements of statehood)
- **Domicile** defines a person's legal tie to a place that has its systems of law. A person can have only one domicile at a time.
- New domicile is acquired where a person establishes his residence in a new country with the intention to live there.
- a person may acquire new domicile without changing his citizenship.
- **Residence** is more specific and links a person to the particular place where he normally resides. Articles 174 to 191 deal with residence and domicile.

Residence

- A person's residence is the place where he has his habitation and legally, *Residence means the place where a person* ***normally resides*** *(Art 174). (French, habitual and Amharic …..)*
- If a person intends to reside or resides in a place for more than three months, he is deemed to have a Resident there (Art 175).
- Residence is different from a mere sojourn in a certain place for some days or weeks, thus mere sojourn in a place doesn't constitute residence (175/1).
- So If a person:
  - ✓ *intends to stay at a place (at a sojourn) for more than three months, or,*
  - ✓ *actually stays in such sojourn for more than three months without a prior intention of staying that long, he acquires residence (175/2)*

Residence con’t

- **Q)** Is the period of three month should be continues and uninterrupted or not?
- A sojourn which is intended to last for more than three months is considered as residence from the moment the person starts living there, provided that he intends to stay there beyond three months or
- A person has a residence in a place where he stays for less than three months provided that he comes **normally** to the place and not just **occasionally.**
- For instance, if one has a villa at the seaside and goes there regularly during his vacation, for a month or so. Such place could be considered a residence for that period, while this would not be true if each period of vacation was spent in a villa rented in a different place. Vand. Page 34

Residence con’t

- Therefore, Residence always exists as soon as the three month period has elapsed or
- when the three month period is not elapsed but if there is some normality in the sojourns during a specific year.
- The determination of **Residence** is essential for different legal purposes such as
  - ✓ marriage (597 CC., Art. 22 of the Revised Family Code),
  - ✓ successions (826), contracts (1755/2) and
  - ✓ for procedural matters like to serve the summons (Art.106 of the Civil Procedure Code).
- It is also essential during elections, or for taxation (Art 5 of the Income Tax procl. No 286/2002 and other purposes.

Principal & secondary Residence

- A person may have several residences (Art 177), and
- In such cases one of them shall be considered as "**principal residence**" while the others are considered as **secondary ones**.

Q) on what basis a Residence becomes the principal one while the others remain secondary?

- It could be the criteria of ***normality, frequency*** *and the* ***length of time*** *that a person relatively stays in one of the residences.*
- *Principal residence is* the one in which a person stays more **normally** or **frequently** or **for the longest periods**.

Stipulated Residence

- A person is also free to decide that his residence will be a give place for his relation with a specific person or for specific business activity and
  - ✓ such residence is called **Stipulated Residence.** Art 181
- The effect of stipulation residence are that the party for whose benefit the residence has been stipulated has an option (choice) to consider
  - ✓ the real residence or the stipulated residence as valid. But
- If the two parties expressly agreed to make the stipulated residence the only residence for any thing connected with the business,
  - ✓ then no party has the choice to use real residence Art 182. e.g., contracts as it provided under art 1755/1

Residences determined by the law

- The civil code also provides for some specific cases where a **Residence is determined by the law**. These are

1. **Public officials**:- The place where a public official exercises his functions is considered as his residence (179)
2. **Traders**:- the place where a person carries on trade shall be deemed to be the residence of the trader (180).
3. **Persons without proved residence**:- Every one must have a residence, a person is not free not to have a residence.
   - ✓ So if the persons residence is not known “The place where such **person is** shall deemed to be his residence” (176)
4. **Married women:-** Married couple shall live together in their conjugal residence (Art 640/1 of CC and Art 53 and 54 of RFC)
   - ✓ however, a married woman may have her own residence (178/1)

Residence …. con’t

5. **Minors and interdicted persons** may have residence of their own (178/2) but the place of residence shall be determined by the guardian (art 265 and 362)

Special rules of residence

- Although a person acquires residence if s/he stays in a place for three months,
  - ✓ there are special rules that require longer periods.
- For the purpose of **marriage, elections and taxation**, the law requires longer periods of residence owing to the fact that a minimum of six months have been considered to be necessary.
- For marriage, either one of future spouses or one of their ascendants or close relatives need to be residents of the place for over six months. Art 22 of RFC or 597 of CC

Residence con’t

- ***For income tax liability purpose residence is defined under art 5 of proclamation No 286/2002*** *and accordingly*

1. *An individual shall be deemed to be resident in Ethiopia, if he*
   a) *has a domicile in Ethiopia,*
   b) *has an habitual abode in Ethiopia,*
   c) *is a citizen of Ethiopia and consular, diplomatic or similar official posted abroad.*
2. *An individual who stays in Ethiopia for* ***more than 183*** *days in a period of twelve (12) calendar months, either continuously or intermittently, shall be resident for the entire tax period*

Domicile

- In civil code, we observe only the effect of residence and no effect of domicile seems to exist any where in the code.

The Reason are:-

- The draft civil code included a title on private international law (conflict of law) but it was omitted in promulgated text,
  - ✓ while kept the provisions on domicile
- And the issue of domicile arises when conflict of laws require the determination of the legal system that must be applicable
  - ✓ w/c is an issue of private int'l law or governing personal law
- Three distinct approaches have been taken toward the question of governing personal law and this are the **civil law**, the **common law** and the **Latin-American** approach.

Domicile

- By **personal law** we mean the law of a state with which an individual has some connection.
- The court must decide which law determines matters of a person's status such as marriage and succession. And
- The law that determine questions such as "does the person has the capacity to marry or succeed?" is called personal law.
- Rules of private int'l law or conflict of laws determines the applicable law. (choice of country "X" or country "Y" law)
- e.g., the law of the state of which the person is a national or the law of the state where the person is domiciled.
- In Ethiopia, the private international law has not been codified.
  - ✓ You will have a detailed discussion on choose of law or governing personal law under your conflict of law class

Approaches toward the Governing Personal Law

1. **The civil law approach:-**

   Civil law countries have adopted **nationality** as the governing personal law, though some are turning toward domicile.

- E.g the French rules of private int'l law hold that the personal law of foreigners residing in France is the law of their nationality.
- Nations with a large number of nationals residing abroad may fear to be governed by an alien legal system and adopts nationality as the basis of personal law.

2. **The common law approach:-**

- England and the United Sates adopted **Domicile** as the basis of personal law and followed the territoriality theory.
- Since, few Americans are domiciled abroad, by using domicile as the governing personal law, the American states exercised control over the large number of foreign immigrants;

Approaches … con’t

3. The Latin-American approach:

- A number of Latin-American states follow a mixed system.
- Local law is applied to foreigners domiciled there and However, national law is used to govern the personal relations of their national domiciled in other countries.
- ➢ There are no statutory provisions dealing with personal law in **Ethiopia.**
  - ✓ So, the question will have to be determined by case law.
- In the past, judicial decisions have gone both ways on the question, some holding nationality and others holding domicile to be the basis of personal law.
- But the recent trend of decisions would indicate that domicile is to be the basis of personal law

Domicile under the Civil Code

- Article 183 defines domicile as *"the place where such person has established the principal **seat of his business** and of his **interest**, with the **intention of living there permanently**".*
- *From the defn three elements need to be discussed.*

1. **Principal seat of business** refers to the place where occupational activities are carried out.
   - ✓ The word business refers to the economic of the activity; &
2. a person's seat of social and family life is considered as the **principal seat of his interest**. It refers to the social aspect.

- In most cases business and interest of a person located in the same place;
- But if business, social and family life take place in d/t location,
  - ✓ the law favour **social and family life** as a determinant factor insofar as domicile is concerned. Art 185

Domicile under … con't

3. Intention of living there permanently:-

- The third element is more difficult to ascertain as **Intentions** are psychological in nature and can be fully known only by the interest of the person.
- So the law provide a presumption under art 184/1 through factual tests: it says

➢ **Permanent intention to reside** in a certain place is presumed "where a person has his normal residence in such place".

Q) What is normal residence under art 184?

- It could be a principal residence (may be) and the above presumption is rebuttable.

Q) so what does it mean?

- What does permanently mean?

Domicile under … con't

- Permanently may mean "**for an indefinite period of time**" and "**floating intention to return**" is not sufficient to prevent a person from acquiring domicile here. E.g.,

✓ An American merchant who carrying on his private business in Ethiopia and had been resident here for six years is considered as Domiciled in Ethiopia even if he has an intention to leave the country some day in the future. (his intention is **not precise** art 184)

- So, a **mere declaration** of a person is not sufficient and
- it must be **clear** and **precise** or it must take place on the happening of **definite events**. . E.g.,

✓ An American law professor comes to Haramaya University (Ethiopian) to work in law collage on a five year contract, intending to leave after the expiration of five year,

  ✓ Then he is not domiciled in Ethiopia. (because he will return after the laps of the time)

Types of domicile

1. **Domicile of origin:-** domicile may be acquired primarily by birth and such domicile is called domicile of origin.
2. **Domicile of choice:-** it requires lawful presence in the place with the intention of living there permanently for an indefinite period.
   - ✓ It always presupposes the change of domicile (change of domicile of origin)
3. **Assigned domicile:-** there are some instances in which the domicile of a person is determined by the law and such domicile is named as “assigned domicile”
   - ✓ eg domicile of a person with lessened capacity (minor and interdicted person art 190 & 191 resp.) or married couple (art189)

- Unlike Residence, it’s not possible for the spouses to acquire a **Separate domicile**,
  - ✓ unless, one of them is affected by judicial or legal interdiction (178). The same is true for the minor.

Change of domicile

- Unlike residence, a person can have only one domicile at a time as per art 186 and
  - ✓ he shall keep it in that place as long as he does not establish it in another place. Art 187.
- The burden to prove that, he has effectively established his domicile in another place, lays on the person himself or on the one who claims the change?

Q) what are the test of whether a person acquired a new domicile (domicile of choice)?

- ❖ Assume that a person left his formal domicile with the clear intention not to return but, not acquired a new domicile,
  - ✓ i.e died on his way, before acquiring new domicile. e.g.,
- An American merchant domiciled here left Ethiopia with the intention not to return but dies on air crush before he reaches USA.

Change of domicile con’t

- He abandoned his Ethiopian domicile but he has not yet acquired American domicile;
  - ✓ since he is not physical present there.
- i.e the **Intention** and **physical presence** have not coincided..

➢ For such situation , there are two approach.

1. The person **Reacquires his domicile of origin** (he acquires American domicile in the above case) and the English courts follow this approach.
2. The person shall **Retain his formal domicile** until he acquires a new domicile (he retain Ethiopian domicile in the above case) and the American court follow this approach.

➢ Ethiopia follows the second approach as it is provided under art 187.