

LOUISIANA MY HOME SWEET HOME:** DECODIFYING DOMICILE

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In memoriam A.N. Yiannopoulos: eminent jurist, aesthetic philosopher, loyal friend, and citizen of the world. Ἀνδρῶν γὰρ ἐπιφανῶν πᾶσα γῆ τάφος. *See infra* note 440.

** LA. STAT. ANN. § 49:155.1 (2018) (“There shall be, and is, hereby adopted and established as the official state march song for the state of Louisiana, a musical composition, with lyrics by Sammie McKenzie and Lou Levoy and music by Castro Carazo, and entitled, *Louisiana My Home Sweet Home*.”) (emphasis added).

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I. INTRODUCTION

Articles 38 through 46 of the Louisiana Civil Code on domicile were revised in 2008.¹ These relatively new provisions codify a concept that is ancient but still useful.² The concept of domicile traces its roots to Greco-Roman sources.³ It is based on the idea that every individual has a personal and persistent relationship with a specific location—one's home. "That is properly the domicile of a person where he has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning."⁴

1. Act No. 801 § 1, 2008 La. Acts 3046. The Domicile Committee of the Louisiana State Law Institute, chaired by Professor A.N. Yiannopoulos, prepared the initial draft of these revised articles. Professor Yiannopoulos also chaired the committees that revised other titles of Book I of the Louisiana Civil Code. See Jeanne Louise Carriere, *From Status to Person in Book I, Title 1 of the Civil Code*, 73 TUL. L. REV. 1263 (1999) (commenting on Prof. Yiannopoulos's work in revising Book I of the Louisiana Civil Code); see also A.N. YIANNOPOULOS, CIVIL LAW SYSTEM: LOUISIANA AND COMPARATIVE LAW 76–80 (2d ed. 1999) (discussing the ongoing revision of the Louisiana Civil Code of 1870).

2. See PETER HAY, PATRICK J. BORCHERS & SYMEON C. SYMEONIDES, CONFLICT OF LAWS §§ 4.1–4.3 (5th ed. 2010); RUSSELL J. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS § 2.1 (6th ed. 2010); Peter M. North, *Reform, but not Revolution: General Course on Private International Law*, in 220 RECUEIL DES COURS 26, 141 (1990); ANASTASIA GRAMMATICAKI-ALEXIOU, E KATOIKIA TOU FYSIKOU PROSOPOU STO IDIOTIKO DIETHNES DIKAIΟ [DOMICILE OF THE NATURAL PERSON IN PRIVATE INTERNATIONAL LAW] 17–18 (1980) (Greece).

3. See FRIEDRICH CARL VON SAVIGNY, PRIVATE INTERNATIONAL LAW AND THE RETROSPECTIVE OPERATION OF STATUTES § 350 (William Guthrie trans., T. & T. Clark 2d ed. 1880) (English translation of 8 FRIEDRICH CARL VON SAVIGNY, SYSTEM DES HEUTIGEN RÖMISCHEN RECHTS (1849)).

4. JOSEPH STORY, COMMENTARIES ON THE CONFLICT OF LAWS, No. 41 (8th ed. 1883). See also 1 JOSEPH H. BEALE, A TREATISE ON THE CONFLICT OF LAWS § 9.5 (1935); RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 11–12 (AM. LAW INST. 1971). Justice Story's definition conveys the meaning of the classical Roman definition of domicile. CODE JUST. 10.39.7 (Diocletian & Maximian 290/293) ("There is no doubt that individuals have their domicile where they have placed their household goods and the greater part of their property and fortunes, and no one shall depart from this place unless something requires him to do so, and whenever he does leave the place, he is considered to be on a journey, and when he returns, to have completed it."). Translated texts from the Digest of Justinian are taken from THE DIGEST OF JUSTINIAN (Theodor Mommsen et al. eds., 1985). Translated texts from Justinian's Code are taken from SAMUEL P. SCOTT, THE CIVIL LAW (1932). Bracketed terms are additions by the Author. Translations from the original texts in French, German, and Greek are by the Author.

Traditional doctrine has identified two elements of domicile: actual residence in a place (*corpus*)⁵ and requisite intent to reside there indefinitely (*animus*),⁶ that is, the desire to make this place the center of one's life,⁷ one's home.⁸

Domicile is a useful concept because it performs two key functions.⁹ First, domicile serves as a *connecting factor* in the

5. See HAY, BORCHERS & SYMEONIDES, *supra* note 2, §§ 4.18–4.19.

6. See HAY, BORCHERS & SYMEONIDES, *supra* note 2, § 4.20. Although the traditional definition speaks of “permanent home,” an indefinite intent to reside will also suffice. See SAVIGNY, *supra* note 3, § 353, at 97 (“The term *permanent* abode, however, excludes neither a temporary absence nor a future change, the reservation of which faculty is plainly implied; it is only meant that the intention of mere transitory residence must not at present exist.”); see also WEINTRAUB, *supra* note 2, § 2.4 (arguing that domicile does not require intent to reside permanently); RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 2.03 cmt. c (AM. LAW. INST., Preliminary Draft No. 2, 2016) (“To establish domicile, one does not need to establish the intent to make the place the center of one’s life for a minimum period of time. Because the act of making a place the center of one’s life suggests some degree of concerted action, the intent to do so includes the expectation that one will in fact stay in the place for a significant period.”); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 18 (AM. LAW INST. 1971) (“To acquire a domicil of choice in a place, a person must intend to make that place his home for the time at least.”).

7. DIG. 50.1.27.2 (Ulpian, Ad Edictum 2) (explaining that a person has his domicile in the municipality where this person “sells, buys and contracts there, frequents the forum, bath and entertainments there, celebrates festivals there, in fact enjoys all the facilities of [that] municipality . . .”); DIG. 50.16.239.2 (Pomponius, Enchiridion) (defining domiciliaries of a city (*incolae*) as those who “establish themselves there as if in a fixed abode”); DIG. 50.16.203 (Alfenus Varus, Digesta 7) (“[T]he home of each one of us must be regarded as being where one has one’s residence and keeps one’s accounts and organizes one’s affairs.”).

8. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 12 (AM. LAW INST. 1971) (“Home is the place where a person dwells and which is the center of his domestic, social and civil life.”). This notion of “home” is also conveyed in the definition of domicile offered by Judge—later Justice—Holmes in *Bergner & Engel Brewing Co. v. Dreyfus*, 172 Mass. 154, 157 (1898) (“[W]hat the law means by domicile is the one technically pre-eminent headquarters, which, as a result either of fact or of fiction, every person is compelled to have in order that by aid of it certain rights and duties which have been attached to it by the law may be determined.”). For other common law definitions of domicile, see ALBERT FARNSWORTH, *THE RESIDENCE AND DOMICILE OF CORPORATIONS* 34–36 (1939). For other uses of the term “home,” see generally LORNA FOX, *CONCEPTUALIZING HOME: THEORIES, LAWS AND POLICIES* (2007).

9. Cf. David F. Cavers, “*Habitual Residence*: A Useful Concept?”, 21 AM. U. L. REV. 475, 482–84 (1972) (discussing two functions of territorial links); 1 GEORGIOS MARIDAKIS, *IDIOTIKON DIETHNES DIKAION [PRIVATE INTERNATIONAL LAW]* 258 (2d ed. 1967) (Greece) (noting the distinction between domicile for domestic purposes and domicile for choice-of-law purposes); 1 BERNARD WINDSCHEID, *LEHRBUCH DES PANDEKTENRECHTS, ALLGEMEINER TEIL* § 36 (Theodor Kipp ed., 8th ed. 1900) (identifying two main functions of domicile: one for choice of law, and one for domestic law).

choice-of-law process for determining what law decides a variety of issues, such as personal status,¹⁰ marriage and its incidents,¹¹ and succession to movables.¹² In this sense, if a person is domiciled in a specific state,¹³ the law of that state may be applied by the courts of that state or another state to resolve such issues. Conflicts scholars have referred to this type of domicile as “international domicile,”¹⁴ a term that may be confusing, especially in cases of interstate conflicts within a federal nation. The term “domicile for external purposes”—shorthand “external domicile”¹⁵—is a better description of this function.¹⁶ External

10. See 1 ERNST RABEL, *THE CONFLICT OF LAWS: A COMPARATIVE STUDY* 113–15 (2d ed. 1958) (discussing the concept of “personal status” in the conflict of laws); see also LA. CIV. CODE ANN. art. 3519 cmt. (a) (2018) (explaining the meaning of the term “status of natural persons”); SAVIGNY, *supra* note 3, § 356 (explaining the concept of *lex domicilii* as the applicable law to status); YIANNOPOULOS, *supra* note 1, at 326–27 (discussing the concept of “status of persons” in the civil law).

11. LA. CIV. CODE ANN. arts. 3520, 3522 (2018). See also HAY, BORCHERS & SYMEONIDES, *supra* note 2, § 4.1.

12. LA. CIV. CODE ANN. art. 3522 (2018). See also HAY, BORCHERS & SYMEONIDES, *supra* note 2, § 4.1.

13. Here, the term “state” signifies a sovereign territorial unit subject to one body of law. Such a unit could be a country with one unitary system of law—e.g., France or Greece—or a state of a federal nation—e.g., Louisiana—or a federal country as one unit—e.g., U.S. federal law. See LA. CIV. CODE ANN. art. 3516 (2018); see also RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 3 (AM. LAW INST. 1971) (“[T]he word ‘state’ denotes a territorial unit with a distinct general body of law.”); 1 ALBERT VENN DICEY, JOHN H. MORRIS & LAWRENCE COLLINS, *THE CONFLICT OF LAWS* No. 6–007 (Adrian Briggs et al. eds., 15th ed. Supp. 2017); GEOFFREY C. CHESHIRE, PETER M. NORTH & JAMES J. FAWCETT, *PRIVATE INTERNATIONAL LAW* 147 (Paul Torremans ed., 15th ed. 2017).

14. See DENIS MASMEJAN, *LA LOCALISATION DES PERSONNES PHYSIQUES EN DROIT INTERNATIONAL PRIVÉ* 27–30 (1994).

15. “External domicile” is synonymous with “state citizenship.” For the concept of “state citizenship,” see HAY, BORCHERS & SYMEONIDES, *supra* note 2, § 4.2. However, the term “state citizenship” is not preferable because it is confined to interstate conflicts within the United States, and thus, would not accurately describe a foreign domiciliary whose “state citizenship” may be mistaken with her national citizenship. The term “interstate domicile”—more precisely, “domicile for interstate purposes”—would also be accurate keeping in mind that the term “state” may refer to a territorial unit outside the United States. See *supra* note 13.

16. See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11 cmt. c (AM. LAW INST. 1971) (discussing the function of domicile in the conflict of laws). External domicile can also serve internal purposes. That will be the case when the forum court determines that a person is domiciled in the forum. Nonetheless, the forum court still applied its choice-of-law rules to make this determination. Therefore, an “external” element of domicile still remains in such a case. See LA. CIV. CODE ANN. art. 3518 cmt. (a) (2018) (explaining the concept of domicile for choice-of-law purposes); HAY, BORCHERS & SYMEONIDES, *supra* note 2, §§ 4.28–4.29 (discussing the geographic boundaries of domicile).

domicile denotes a person's connection with an entire state.¹⁷ Although this connection presupposes an established domicile within the state, pinpointing a particular subdivision of that state or a specific dwelling is not necessary.¹⁸ Usually, forum law will determine the place where a person is domiciled for external purposes.¹⁹

Second, domicile refers to the legal relationship between a person and a state or its political subdivisions²⁰ for specific intrastate purposes.²¹ This type of domicile will be referred to as "internal domicile," and its location can be pinpointed within a district, parish, municipality, or particular building depending on the issue.²² The domiciliary's relationship to a particular state or its political subdivisions may involve the judicial branch of government.²³ For instance, a person domiciled within a particular jurisdiction²⁴ may be sued before the local courts.²⁵

17. See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11 cmt. g (AM. LAW INST. 1971); BEALE, *supra* note 4, § 9.6.

18. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11 cmt. p (AM. LAW INST. 1971); RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 2.03 cmt. b (AM. LAW INST., Preliminary Draft No. 2, 2016); DICEY, MORRIS & COLLINS, *supra* note 13, No. 6–007. Thus, a person is domiciled in Louisiana when a domicile is established within the state. It is sufficient to show a connection with the state, without pinpointing a particular parish, municipality, or physical address. For instance, a person's external domicile is in Louisiana, even though it is uncertain whether this person is actually (internally) domiciled in New Orleans or Shreveport. Likewise, a homeless person or a nomad located within Louisiana is a Louisiana domiciliary for external purposes.

19. See LA. CIV. CODE ANN. art. 3518 (2018). Thus, a Louisiana judge will apply the substantive provisions of the Louisiana Civil Code on domicile (LA. CIV. CODE ANN. arts. 38–46 (2018)) to determine the domicile of a person. See also BEALE, *supra* note 4, §§ 9.13, 10.1. The outcome may be that the person is domiciled in Louisiana or in another state. LA. CIV. CODE ANN. art. 3518 cmt. (b) (2018); cf. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 13 (AM. LAW INST. 1971); DICEY, MORRIS & COLLINS, *supra* note 13, No. 6–022; GRAMMATICAKI-ALEXIOU, *supra* note 2, at 170–77; RABEL, *supra* note 10, at 150–59.

20. 1 C. AUBRY & C. RAU, COURS DE DROIT CIVIL FRANÇAIS No. 141 (Étienne Bartin ed., 5th ed. 1897–1923); LUTHER L. MCDUGAL, III, ROBERT L. FELIX & RALPH V. WHITTEN, AMERICAN CONFLICTS LAW § 9, at 19 (5th ed. 2001) ("The concept of domicile is one of a legal relation between a person and a place. Domicile is created by the law and not by the person, and is designed to serve the law's purposes.").

21. See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11 cmt. d (AM. LAW INST. 1971) (discussing the function of domicile in intrastate matters).

22. *Id.*

23. HAY, BORCHERS & SYMEONIDES, *supra* note 2, § 4.3.

24. The term "jurisdiction" refers to a territorial unit having its own judiciary, regardless of whether it also has its own unique body of law. In this sense, a jurisdiction could be a municipality, a parish or county, or a state or a country. See

This relationship may also involve the legislative and executive branches. Thus, a person domiciled within a state or its political subdivisions may participate in the local or national election process,²⁶ must pay state taxes,²⁷ must obtain local permits and licenses, and may also enjoy certain privileges.²⁸ Lastly, the relationship may be horizontal, that is, it may involve private relations. For example, performance of an obligation other than to give an individually determined thing is rendered at the domicile of the obligor.²⁹ Internal domicile is defined and delineated by local law.³⁰ In Louisiana, the general rules on internal domicile are found in articles 38 through 46 of the Louisiana Civil Code, while special rules for specific purposes are located in the Louisiana Revised Statutes.

Although the external and internal functions of domicile are distinguishable, they are linked in many ways. The degree of this correlation varies across legal systems. In common law systems, domicile prevails as the decisive personal connecting factor, and thus it functions both externally and internally.³¹ In civil law

SAVIGNY, *supra* note 3, § 359, at 126–27.

25. Here, domicile within a jurisdiction denotes a submission of the person to the courts of that jurisdiction. BEALE, *supra* note 4, § 10.7.

26. BEALE, *supra* note 4, § 10.5, at 112–13 (arguing that “residence in election statutes means domicil . . . [and that] [r]esidence as a qualification for holding office is for the same reasons to be interpreted as meaning domicil”).

27. HAY, BORCHERS & SYMEONIDES, *supra* note 2, §§ 4.3–4.7 (discussing preliminary finding of domicile in cases of divorce and tax litigation); BEALE, *supra* note 4, § 10.4 (arguing that the words “resident” or “inhabitant” in tax statutes are synonymous with “domicile”); FARNSWORTH, *supra* note 8, at 7–19 (comparing the British and American terms “resident” for tax purposes). Payment of federal taxes by “U.S. persons” depends largely on federal law provisions. *See, e.g.*, I.R.C. § 61 (2018) (imposing taxation of worldwide income of U.S. taxpayers). “U.S. taxpayer status” is accorded to U.S. citizens regardless of their residence. It is also accorded to noncitizen permanent residents and foreign citizens who are substantially present in the United States. I.R.C. § 7701(b) (2018). U.S. citizens or residents are exempted for certain income earned abroad if they are “bona fide residents of a foreign country” or noncitizens who are “present in a foreign country.” I.R.C. § 911(d) (2018); INTERNAL REVENUE SERVICE, PUBLICATION 54, TAX GUIDE FOR U.S. CITIZENS AND RESIDENT ALIENS ABROAD (2017). The terms “residence” and “presence” are defined solely for the purposes of federal taxation and thus do not correspond with the traditional meaning of domicile. *See* Willis L. M. Reese & Robert S. Greene, *That Elusive Word, “Residence,”* 6 VAND. L. REV. 561, 575–76 (1953); FARNSWORTH, *supra* note 8, at 286–91.

28. BEALE, *supra* note 4, § 10.4.

29. LA. CIV. CODE ANN. art. 1862 (2018).

30. *See* MARIDAKIS, *supra* note 9, at 256–64.

31. *See* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11 cmt. j (AM. LAW

systems, on the other hand, national citizenship has been the prevailing personal connecting factor, thus confining domicile to its internal functions.³² Lately, there have been noticeable changes in both legal systems. Courts and scholars in the United States have begun to question the efficacy of domicile as a connecting factor,³³ while the enigmatic term “residence” has permeated the internal functions of domicile.³⁴ On the other side of the ocean, European choice-of-law codifications have replaced nationality with “habitual residence” as a new connecting factor that also seems appealing to American conflicts scholars.³⁵ Naturally, these developments have also affected the Louisiana law of domicile.

This Article explores the coexistence and dissimilarities of the external and internal functions of domicile of natural persons³⁶ from both a comparative and Louisiana law perspective. The historical foundations of these connections are examined first (Part I). Next, the discussion focuses on the common-law concept of domicile, particularly its English foundations and American development (Part II), and on the civil law concepts of domicile (Part III) and habitual residence (Part IV). Finally, the main discussion turns to Louisiana’s law of domicile (Part V).

This comparison of civil and common law systems reveals that the Louisiana understanding of domicile resembles more closely the American common law model. This comparison also shows that the modern Louisiana private-law rules regulate domicile very effectively. Unfortunately, the same cannot be said with respect to Louisiana’s public-law rules, especially the rules concerning residential qualifications of candidates for public

INST. 1971).

32. See GRAMMATICAKI-ALEXIOU, *supra* note 2, at 25–26.

33. See RESTATEMENT (THIRD) OF CONFLICT OF LAWS, Reporter’s Memorandum, at xxv (AM. LAW. INST., Preliminary Draft No. 2, 2016).

34. See Reese & Greene, *supra* note 27, at 561.

35. See Cavers, *supra* note 9, at 475.

36. Although the concept of domicile is also pertinent to juridical persons, the discussion herein will concentrate primarily on natural persons. LA. CIV. CODE ANN. art. 38 (rev. 2008) (“The domicile of a natural person is the place of his habitual residence.”). A second sentence, providing for the domicile of juridical persons, was added in 2012. Act No. 713 § 2, 2012 La. Acts 2948. See also LA. CIV. CODE ANN. art. 38 (rev. 2012) (“The domicile of a natural person is the place of his habitual residence. *The domicile of a juridical person may be either the state of its formation or the state of its principal place of business, whichever is more pertinent to the particular issue, unless otherwise specifically provided by law.*”) (emphasis added).

office.

II. HISTORICAL FOUNDATIONS OF DOMICILE

Domicile originates from Ancient Greek³⁷ and Roman laws.³⁸ The Greco-Roman ancestor of external domicile was the person's origin at birth—*origo*.³⁹ In Roman times, every person was subject to the law of that person's origin.⁴⁰ *Origo* was a specific term of art, denoting the legal bond between a person and a city⁴¹ and resembling to some extent the modern concept of citizenship.⁴² *Origo* was established primarily by birth or adoption,⁴³ in which case the child obtained the father's *origo* at the time of birth.⁴⁴ A citizen (*cives*) of a particular city⁴⁵ could be

37. See MARIDAKIS, *supra* note 9, at 118–21 (discussing the concept of domicile in Ancient Greek law in the context of a speech delivered by Isocrates, in which the orator also relied on the law of the domicile of the testator at the time of the drafting of the testament to argue in favor of the validity of the testament).

38. SAVIGNY, *supra* note 3, § 350.

39. The notion of “origin” (*origo*) can be traced back to Greco-Roman times, although the concepts adopted in the ancient laws and customs of Greece and Rome do not correspond perfectly to the modern term of citizenship. Be that as it may, the identity of a person as a “citizen” of a Greek city-state or of the Roman Empire meant that the private laws of that person's homeland would apply to issues of personal status. See 1 GEORGIOS PETROPOULOS, HISTORIA KAI EISIGISEIS TOU ROMAIOU DIKAIΟΥ [HISTORY AND INSTITUTES OF ROMAN LAW] 436 (2d ed. reprinted 2008) (1963) (Greece); MARIDAKIS, *supra* note 9, at 249 n.21.

40. *Lex originis*. See GRAMMATICAKI-ALEXIOU, *supra* note 2, at 45–46; see also SAVIGNY, *supra* note 3, § 356.

41. Municipal citizenship determined the applicable law to persons residing in the Roman Empire. The civil law (*ius civile*) applied to Roman citizens (*cives romani*), whereas foreigners (*peregrini*) were governed by their own law. The more flexible “law of nations” (*ius gentium*) governed relations between Roman citizens and foreigners. See 1 GEORGIOS STREIT & PETROS VALLINDAS, IDIOTIKON DIETHNES DIKAION [PRIVATE INTERNATIONAL LAW] 61 (1937) (Greece); MARIDAKIS, *supra* note 9, at 123; SAVIGNY, *supra* note 3, § 356.

42. *Bürgerrecht* according to SAVIGNY, *supra* note 3, § 351, at 90; 1 MAX KASER, DAS RÖMISCHE PRIVATRECHT § 66 (2d ed. 1971). See also Phokion Franceskakis, *Les avatars du concept de domicile dans le droit international privé actuel*, 23–25 TRAVAUX DU COMITÉ FRANÇAIS DE DROIT INTERNATIONAL PRIVÉ 291, 304 (1962–1964) (referring to *origo* as the “nationality *avant la lettre*”).

43. Emancipation and election were also recognized methods for granting *origo*. DIG. 50.1 (Ulpian, Ad Edictum 2); CODE JUST. 10.39.7 (Diocletian & Maximian 290/293); SAVIGNY, *supra* note 3, § 351; MICHAEL WILLIAM JACOBS, A TREATISE ON THE LAW OF DOMICILE, NATIONAL, QUASI-NATIONAL, AND MUNICIPAL § 3 (1887); WILLIAM W. BUCKLAND, THE MAIN INSTITUTIONS OF ROMAN PRIVATE LAW § 17 (reprinted 1994) (1931).

44. The *origo* at birth was thus determined by the father's *origo* and not the place of birth. This system of acquisition of *origo* closely resembles the modern principle of acquisition of citizenship by the parents' bloodline (*ius sanguinis*). See

sued before the courts of that city,⁴⁶ was bound by the local laws, and paid local taxes.⁴⁷

The concept of internal domicile traces its roots to the Roman *domicilium*,⁴⁸ which was another type of bond between a person and a particular city.⁴⁹ A person residing in a city and having his principal residence there was said to be an *incola*, that is, a domiciliary of that city.⁵⁰ Mere residence in a place, however, no matter how long, did not constitute domicile if it lacked the requisite intent of indefinite settlement.⁵¹ The most prominent example of simple residence was the residence of students at educational institutions. According to an ordinance by Hadrian, such residence did not amount to domicile if it did not exceed ten years.⁵² *Domicilium* was lost when a person

GRAMMATICAKI-ALEXIOU, *supra* note 2, at 46 n.11. The other modern principle is acquisition of citizenship of the place of birth (*ius soli*). The *ius soli* principle prevails in the United States. See U.S. CONST. amend. XIV; Immigration and Nationality Act, 8 U.S.C. § 1401(c) (2018). The *ius sanguinis principle* also applies, however, in cases of children born abroad to a parent who is a U.S. citizen and who has also resided in the United States for a requisite period of time. Immigration and Nationality Act, 8 U.S.C. § 1401(c) (2018). See also KEVIN R. JOHNSON ET AL., UNDERSTANDING IMMIGRATION LAW 461–72 (2009).

45. Although uncommon, a person could establish *origo* in several cities, or a person could be “stateless,” having no *origo*. SAVIGNY, *supra* note 3, § 351, at 92.

46. A person could be sued before the courts of the city of origin (*forum originis*) or domicile (*forum domicilii*). This rule is the precursor to the longstanding maxim *actor sequitur forum rei* (the plaintiff must follow the forum of the thing in dispute). See CARL SALKOWSKI, INSTITUTES AND HISTORY OF ROMAN PRIVATE LAW 937–38 (E.E. Whitfield trans., reprt. 1994) (1886); 2 HENRY JOHN ROBY, ROMAN PRIVATE LAW 331–33 (Cambridge ed., reprt. 1975) (1902); LEOPOLD WENGER, INSTITUTES OF THE ROMAN LAW OF CIVIL PROCEDURE 39, 46 (Otis Harrison Fisk trans., reprt. 1986) (1940).

47. SAVIGNY, *supra* note 3, § 355; L.I. De Winter, *Nationality or Domicile? The Present State of Affairs*, in 128 RECUEIL DES COURS 349, 361 (1969).

48. The Roman term *domicilium* derives from the Latin word *domus*—meaning home or dwelling. *Shreveport Long Leaf Lumber Co. v. Wilson*, 38 F. Supp. 629, 631 (W.D. La. 1941).

49. See SAVIGNY, *supra* note 3, § 353; WILLIAM H. RATTIGAN, A TREATISE ON THE ROMAN LAW OF PERSONS 23 (reprt. 1994) (1873).

50. DIG. 50.16.239.2 (Pomponius, Enchiridion) (“An ‘*incola*’ is someone who has established his domicile in any region”); SAVIGNY, *supra* note 3, § 353; RATTIGAN, *supra* note 49, at 22; FERDINAND MACKELDEY, HANDBOOK OF ROMAN LAW 136 (Moses A. Dropsie trans., 1883); SHELDON AMOS, THE HISTORY AND PRINCIPLES OF THE CIVIL LAW OF ROME 117 (1883).

51. SAVIGNY, *supra* note 3, § 353, at 98; RATTIGAN, *supra* note 49, at 26.

52. SAVIGNY, *supra* note 3, § 353, at 98; DIG. 47.10.5 § 5 (Ulpian, Ad Edictum 56) (referring to the example of a student in Rome who has not acquired domicile during his studies); CODE JUST. 10.39.2 (Severus Alexander 222/235), 10.39.3 (Diocletian &

moved elsewhere and did not intend to return.⁵³

An *incola* was burdened with civic responsibilities similar to those of a *cives*.⁵⁴ Usually, a person's *origo* and *domicilium* were in the same city.⁵⁵ In the exceptional cases when a person established *domicilium* in a different city,⁵⁶ the person's status would continue to be governed by the law of the *origo*.⁵⁷

In the classical Roman law, *origo* determined the applicable law to personal status, whereas *domicilium* was developed as a concept of the civil law.⁵⁸ The same concept of *origo* resurfaced later, during the fifth and seventh centuries, when the scope of application of the medieval laws of the Frankish and Germanic tribes depended on a person's tribal origin.⁵⁹ The difference between these two concepts had become attenuated when the Roman law was rediscovered by the glossators in the eleventh century.⁶⁰ *Domicilium* became the predominant factor connecting a person with the state, whereas *origo* was demoted to a type of

Maximian 290/293). Cf. WEINTRAUB, *supra* note 2, § 2.8 (arguing that, in principle, a student will not acquire domicile of choice in the place where she is attending school); *but see* RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 2.07 cmt. g (AM. LAW. INST., Preliminary Draft No. 2, 2016) ("The task of ascertaining the domicile of college students who are over the age of majority has proved troublesome for courts.").

53. In other words, domicile was lost when there was no *animus revertendi* (intent to return). SAVIGNY, *supra* note 3, § 353, at 98.

54. SAVIGNY, *supra* note 3, § 355; De Winter, *supra* note 47, at 361–62; AMOS, *supra* note 50, at 117–18.

55. SAVIGNY, *supra* note 3, § 354, at 109. The prevailing view among Roman jurists was that a person conducting business equally in two places could acquire domicile in both places. DIG. 50.1.27 § 2 (Ulpian, Ad Edictum 2) (accepting the possibility of having two domiciles); *contra* DIG. 50.1.5 (Paul, Ad Edictum 45) (expressing Labeo's opinion that a person conducting business in two places has no domicile in either place). *See also* STORY, *supra* note 4, No. 45; WINDSCHEID, *supra* note 9, § 36.

56. Public officials, such as senators, obtained domicile in Rome and retained their domicile in the city of their origin. DIG. 50.1.23 (Hermogenian, Epitomae Iuris 1). Soldiers and other public servants obtained domicile in the place where they served, but could maintain their original domicile if they kept possessions there. *Id.*; *see also* SAVIGNY, *supra* note 3, § 353, at 99.

57. SAVIGNY, *supra* note 3, § 357, at 120.

58. GRAMMATICAKI-ALEXIOU, *supra* note 2, at 47.

59. *See* 1 FRIEDRICH CARL VON SAVIGNY, THE HISTORY OF THE ROMAN LAW DURING THE MIDDLE AGES 99–168 (E. Cathcart trans., A. Black 1829) (1815); STREIT & VALLINDAS, *supra* note 41, at 70–73; De Winter, *supra* note 47, at 362–63; HELMUT REIMITZ, HISTORY, FRANKISH IDENTITY, AND THE FRAMING OF WESTERN ETHNICITY, 550–850, at 233–244 (2015) (discussing the scope of application of the *lex salica* and the *lex ripuaria*).

60. SAVIGNY, *supra* note 3, § 358.

domicile by origin.⁶¹ A person would still acquire the father's *origo* at birth; however, *origo* now meant the father's *domicilium* at the time of birth.⁶² Through the works of the glossators⁶³ and the influence of canon law,⁶⁴ domicile dominated the scene in civil and common law systems until the nineteenth century,⁶⁵ when the concept of nationality emerged and influenced continental legal thought.⁶⁶

III. COMMON LAW OF DOMICILE

The concept of domicile appeared in the English common law in the seventeenth century through canon law.⁶⁷ At first,

61. This type of domicile was known as *domicilium originis*. STORY, *supra* note 4, No. 46. *Domicilium habitationis*, on the other hand, denoted domicile acquired by residence in a particular place with the intent to reside there indefinitely. See De Winter, *supra* note 47, at 363; SAVIGNY, *supra* note 3, § 359.

62. Cf. CODE JUST. 10.31.36 (Gratian, Valentinian, and Theodosius 383); DIG. 50.1.9 (Neratius, Membranarum 3); De Winter, *supra* note 47, at 363; SAVIGNY, *supra* note 3, § 359, at 130; MARTIN WOLFF, PRIVATE INTERNATIONAL LAW 108–10 (2d ed. 1950); ROBERT PHILLIMORE, THE LAW OF DOMICIL 24–25 (1847).

63. See Henri Batiffol, *Principes de droit international privé*, in 97 RECUEIL DES COURS 431, 499 (1959); René Cassin, *La nouvelle conception du domicile dans le règlement des conflits de lois*, in 34 RECUEIL DES COURS 655, 702 (1930) (discussing Baldus' scholarship on the law of persons and domicile).

64. The canon law preserved the Roman concept of *domicilium* during the Middle Ages, when the Roman law had been forgotten and feudalism reigned in Western Europe. See STREIT & VALLINDAS, *supra* note 41, at 74; 1 HENRI BATIFFOL & PAUL LAGARDE, DROIT INTERNATIONAL PRIVÉ 12–13 (1974); CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 17–21 (discussing the historical development of English private international law); ALBERT A. EHRENZWEIG, PRIVATE INTERNATIONAL LAW, GENERAL PART 49 (1967); see also 1983 CODE C.101 (preserving the Roman concept of *origo*); 1983 CODE C.100, 102 (retaining the Roman concept of *domicilium* and enunciating the concept of *quasi-domicilium* for temporary residents); JOHN BEAL ET AL., NEW COMMENTARY ON THE CODE OF CANON LAW 144–48 (2000). Similar provisions are found in the Codex Iuris Canonici 1917. See 2 CHAS. AUGUSTINE, A COMMENTARY ON THE NEW CODE OF CANON LAW 12–20 (6th ed. 1936); T. LINCOLN BOUSCAREN & ADAM C. ELLIS, CANON LAW: A TEXT AND COMMENTARY 79–82 (3d ed. 1957).

65. See, e.g., 1 LOUIS JOSSERAND, COURS DE DROIT CIVIL POSITIF FRANÇAIS No. 225 (3d ed. 1938); 1 HENRI MAZEAUD ET AL., LEÇONS DE DROIT CIVIL, VOL. 2, LES PERSONNES, LA PERSONNALITÉ No. 570 (Michel de Juglart ed., 5th ed. 1972); GEORGES R. DELAUME, AMERICAN-FRENCH PRIVATE INTERNATIONAL LAW 65 (1961) (discussing the importance of domicile as the determinative factor for the application of local customs in the pre-revolution French law (*Ancien Régime*)).

66. GRAMMATICAKI-ALEXIOU, *supra* note 2, at 50–51; De Winter, *supra* note 47, at 362–66.

67. GRAMMATICAKI-ALEXIOU, *supra* note 2, at 119; Ronald H. Graveson, *The Comparative Evolution of Principles of the Conflict of Laws in England and the USA*, in 99 RECUEIL DES COURS 25, 41 (1960); see also OLIVER STEPHEN ROUND, A

domicile did not play a key factor in English law because the common law of that time had not acknowledged the existence of choice-of-law problems.⁶⁸ Later, when the choice-of-law process appeared at common law, domicile became the predominant connecting factor.⁶⁹

Domicile is the premier connecting factor in Anglo-American systems.⁷⁰ Although the concepts used in these systems are mostly identical, there are also notable differences, particularly between the English and the American concepts of domicile.

A. ENGLISH MODEL

The prevalence of domicile in English law is attributed to the complex political and legal structure of Great Britain.⁷¹ With the expansion of colonization, reference to national citizenship was impracticable, especially pertaining to British citizens who had settled in the colonies.⁷² Furthermore, several territorial units had formed within Great Britain, which further complicated the reference to “British law” on the basis of national citizenship.⁷³

TREATISE ON THE ENGLISH LAW OF DOMICIL 7–14 (1861).

68. See GRAMMATICAKI-ALEXIOU, *supra* note 2, at 119; Alexander N. Sack, *Conflict of Laws in the History of English Law*, in SELECTED READINGS ON CONFLICT OF LAWS 1, 8 (Maurice S. Gulp ed., 1956) (explaining that adjudication of early cases bearing foreign elements were resolved on the basis of jurisdictional rules; if an English court had jurisdiction over the case, the court would apply English law as the law of the forum).

69. Graveson, *supra* note 67, at 41; Peter Nygh, *The Reception of Domicil into English Private International Law*, 1 TASMANIAN U. L. REV. 555 (1961).

70. See 2 ALBERT A. EHRENZWEIG & ERIK JAYME, PRIVATE INTERNATIONAL LAW, SPECIAL PART 94–100 (1973); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11 cmt. j (AM. LAW INST. 1971).

71. GRAMMATICAKI-ALEXIOU, *supra* note 2, at 26; see also CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 19 (“The growth of the British Empire inevitably led to increased links between British subjects owing obedience to a variety of laws, and consequently to an increase in the number of disputes that required . . . a reference to something more than the common law of England.”)

72. GRAMMATICAKI-ALEXIOU, *supra* note 2, at 26.

73. *Id.*; see also Cassin, *supra* note 63, at 695. Another factor that is said to have contributed to the prevalence of domicile in the Anglo-American conflicts system is the lasting effect of the *unilateralist* theories in England and the United States. See STREIT & VALLINDAS, *supra* note 41, at 107–09. These theories trace their origin to the glossator Bartolus (1313–1357) who postulated a method of resolving conflicts issues based on statutory interpretation of rules of forum law. According to this approach, “real statutes” (e.g., rules of property law) operate solely within the territory of the forum of the enacting state, whereas “personal statutes” (e.g., laws of personal status based on domicile) apply beyond the boundary of the enacting state. Bartolus’s theory was maintained by later glossators, who became known as

Traditionally, common law domicile is understood as one's "permanent home."⁷⁴ The Roman elements of residence—*corpus*—and intention of remaining or returning—*animus manendi et revertendi*—are present in the common-law concept of domicile,⁷⁵ albeit in the rigid form of a "legal fiction."⁷⁶ Common law domicile is a characteristically persistent relationship between a person and a place.⁷⁷

Three major principles underlie the English theory of domicile.⁷⁸ First, the principle of *necessity of domicile*.⁷⁹ The law designates a domicile to all persons at all times. Conversely, no person can be without a domicile at any given time.⁸⁰ Second, the principle of *unity of domicile*.⁸¹ Every person has one, and only

statutists. RABEL, *supra* note 10, at 109. Unilateralism dominated the conflicts scene until the nineteenth century when bilateralism was introduced by the German jurist Savigny. See SAVIGNY, *supra* note 3, § 360. Although bilateralism was adopted in Continental Europe, unilateralism continued to affect English conflicts theory into the twentieth century. CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 17–21, 36–37. Unilateralism resurfaced in the United States during the twentieth century in the guise of governmental interest analysis theory. See SYMEON C. SYMEONIDES, CHOICE OF LAW 47–52, 97–105 (2016); HAY, BORCHERS & SYMEONIDES, *supra* note 2, §§ 2.3, 2.6, 2.9.

74. *Whicker v. Hume* (1858) 7 H.L.C. 124, 160 (U.K.) (Per Lord Cranworth: "By domicile we mean home, the permanent home; and if you do not understand your permanent home I am afraid that no illustration drawn from foreign writers or foreign languages will very much help you to it."). See also DICEY, MORRIS & COLLINS, *supra* note 13, No. 6–004.

75. CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 148–61.

76. DICEY, MORRIS & COLLINS, *supra* note 13, No. 6–005, at 132 ("While the notion of permanent home can be explained largely in the light of commonsense principles, the same is certainly not true of domicile. Domicile is an 'idea of the law' which diverges from the notion of permanent home . . ."); CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 146 ("The English concept of domicil is bedeviled by rules; these are complex, often impossible to justify in policy terms, and lead to uncertainty of outcome.").

77. DICEY, MORRIS & COLLINS, *supra* note 13, No. 6–005 (explaining that domicile is relinquished only by a manifested intent of permanent abandonment; and that, conversely, a nomad will still be designated with a domicile—usually, the domicile of her origin—while the intent to take a permanent abode is unsettled).

78. The House of Lords enunciated these principles in *Udny v. Udny* (1869) 1 LRS & D. App. 441.

79. See R. H. GRAVESON, THE CONFLICT OF LAWS 79 (4th ed. 1960); CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 147.

80. Thus, a person is designated a domicile from the time of birth (*domicile of origin*), which if not changed, will persist until the time of death. Furthermore, the obligatory designation of domicile extends to persons without a dwelling or fixed residence. GRAVESON, *supra* note 79, at 79; CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 147.

81. See GRAVESON, *supra* note 79, at 79–80; CHESHIRE, NORTH & FAWCETT,

one, domicile. Because the law of domicile determines personal status, a single domicile of a person must prevail as the operative domicile.⁸² Traditional English doctrine takes a step further, acknowledging a unitary concept of domicile.⁸³ Third, domicile is determined in accordance with the law of the forum.⁸⁴ Thus, an English court will apply English law to determine whether a person is domiciled in England or abroad.⁸⁵ These principles, along with other specific rules on domicile,⁸⁶ mostly derive from Roman sources, although the English version is noticeably more rigid.⁸⁷ Variations of these principles are also found in civil law systems.⁸⁸ What clearly differentiates common law domicile, however, is the distinction between *domicile of origin*, *domicile of choice*, and *domicile of dependency*.⁸⁹

Domicile of origin is the domicile obtained by a person at birth. It usually derives from the domicile of a parent or it attaches to the place of birth.⁹⁰ In effect, domicile of origin often coincides with national citizenship⁹¹ and, even if it does not, it is

supra note 13, at 147.

82. See GRAVESON, *supra* note 79, at 79–80; CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 147.

83. CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 146 (“English law takes the view that the test which determines the place of a person’s domicil must remain constant no matter what the nature of the issue may be before the court.”). Cook referred to this English concept as the “single conception theory.” See WALTER W. COOK, *THE LOGICAL AND LEGAL BASES OF THE CONFLICT OF LAWS* 194–210 (1942).

84. See GRAVESON, *supra* note 79, at 80–81.

85. CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 148.

86. English courts have crafted a number of more specific principles governing the law of domicile. Two examples are: the presumption in favor of the continuance of an existing domicile, which places the burden of proof for change of domicile on the person alleging such change; and the fact that domicile connects a person with a single system of territorial law. See CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 147–48.

87. GRAMMATICAKI-ALEXIOU, *supra* note 2, at 129–30; MASMEJAN, *supra* note 14, at 41–42.

88. GRAMMATICAKI-ALEXIOU, *supra* note 2, at 129–30; MASMEJAN, *supra* note 14, at 41–42; ARTHUR K. KUHN, *COMPARATIVE COMMENTARIES ON PRIVATE INTERNATIONAL LAW* 63–75 (1937).

89. DICEY, MORRIS & COLLINS, *supra* note 13, Nos. 6R–025, 6R–033, 6R–078.

90. Domicile of origin embodies the allegiance of English natives to the Crown. 1 WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* Nos. 354–63 (Wilfrid Prest et al. eds., 2016) (1765). Usually, a child will receive the domicile of the parent/legal guardian. Foundlings take the domicile of the place where they were found. DICEY, MORRIS & COLLINS, *supra* note 13, No. 6R–025.

91. Domicile of origin was treated akin to nationality in *In re O’Keefe* [1940] Ch. 124 (U.K.) (also published in ARTHUR T. VON MEHREN & DONALD T. TRAUTMAN, *THE*

almost as persistent a factor as citizenship.⁹²

Domicile of origin can then be replaced with a new domicile. A person who has legal capacity to acquire domicile⁹³ may abandon the domicile of origin in favor of a new domicile of choice.⁹⁴ That same person may then abandon the domicile of

LAW OF MULTISTATE PROBLEMS 542–44 (1965)). The question before the English court was the determination of the applicable law to a succession. The decedent was born in India; she moved to Europe at the age of seven and lived in England, France, and Spain, until she ultimately resided in Italy until her death. Although the English conflicts rule provided that Italian law would govern as the law of the decedent's domicile, the court allowed *renvoi* in the case, thus referring to the Italian choice-of-law rules. According to these rules, the law of nationality would apply. However, the decedent's British nationality was meaningless, because it did not point to a specific territorial unit. The court then equated "nationality" with domicile of choice, thus applying Irish law—the law of the domicile of the decedent's father at the decedent's death, despite the fact that the decedent had never lived in Ireland. For further discussion and critique, see CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 64–65, 171; RABEL, *supra* note 10, at 142–43; JOHN D. FALCONBRIDGE, *ESSAYS ON THE CONFLICT OF LAWS* 222–23 (2d ed. 1954). For further discussion on the concept of *renvoi*, see SYMEONIDES, *supra* note 73, at 73–78; HAY, BORCHERS & SYMEONIDES, *supra* note 2, §§ 3.13–3.14; Angelo Davì, *Le renvoi en droit international privé contemporain*, in 352 RECUEIL DES COURS 1 (2010); O. Kahn-Freund, *General Problems of Private International Law*, in 143 RECUEIL DES COURS 139, 431–37 (1974). See also LA. CIV. CODE ANN. art. 3517 (2018); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 8 (AM. LAW INST. 1971).

92. Domicile of origin is the embodiment of the principle of necessity of domicile. See CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 162–64. The resemblance to the Roman concept of *origo* is striking. Historically, the English concept of domicile of origin has operated as a durable link connecting Englishmen with their motherland. See BLACKSTONE, *supra* note 90, Nos. 354–55. This link was at times so strong that it withstood clear cases of a contrary intention. For instance, an Englishman who resided in China for many years and who had disavowed his English domicile was still considered an English domiciliary in the eyes of the English court. *In re Tootal's Trust*, 23 Ch. D. 532 (1883) (U.K.) (finding a strong presumption against the change of domicile in cases of residence in a foreign county with different customs, religion, and language). See also BEALE, *supra* note 4, § 22.3. Although a modern English court would certainly decide otherwise, the fact still remains that the English concept of domicile of origin is likened to national citizenship. It is also true that national citizenship signifies origin and culture. See Jürgen Basedow, *Multiculturalism, Globalisation, and the Law of the Open Society*, in 62 REVUE HELLENIQUE DE DROIT INTERNATIONAL 715 (2009); Spyridon Vrellis, *La loi et la culture*, in 62 REVUE HELLENIQUE DE DROIT INTERNATIONAL 449 (2009).

93. Incompetents and unemancipated minors cannot effect a change in their domicile. CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 165–68. An interesting question is what law governs a person's capacity to acquire a new domicile. The most likely candidate seems to be the law of the existing operative domicile. See GRAVESON, *supra* note 79, at 81; HAY, BORCHERS & SYMEONIDES, *supra* note 2, § 4.45; Barbosa de Magalhaes, *La doctrine du domicile en droit international privé*, in 23 RECUEIL DES COURS 1, 132–34 (1928).

94. DICEY, MORRIS & COLLINS, *supra* note 13, No. 6R–033.

choice and establish another domicile of choice.⁹⁵ To effect such a change, a person must manifest intent to take a new abode and to abandon the old.⁹⁶ Nevertheless, a person moving to another jurisdiction,⁹⁷ even for a considerable period of time, but not intending to stay there permanently, does not relinquish a previous domicile.⁹⁸ Thus, if an employee domiciled in England is transferred to New Zealand for ten years, that person will still be considered domiciled in England if there is no intent of abandoning the English domicile.⁹⁹ Intent alone, however, does not suffice without the requisite element of residence. Therefore, a domiciliary of England, who decides to immigrate to New South Wales and sends her family there planning to join them later, will not acquire a New South Wales domicile until she actually arrives there.¹⁰⁰

Persons not able to effect a change of domicile on their own¹⁰¹ assume the domicile of their legal guardian or representative as a domicile of dependency.¹⁰² It follows that if the representative changes domicile, the represented person's domicile will also

95. DICEY, MORRIS & COLLINS, *supra* note 13, Nos. 6R-033, 6-076.

96. In this sense, domicile may be lost immediately when a person gives up residence in a place and the intent to continue to reside there. A new domicile of choice may be acquired immediately when the person enters the territorial unit within which she intends to reside permanently or indefinitely. *Id.* at Nos. 6-036, 6-075.

97. If that jurisdiction is a country with several territorial units having their own system of law, such as the United Kingdom or the United States, the change will be effected once the person finally settles in one territorial unit; mere entry into the country will not suffice. Thus, a person having his domicile of origin in Jamaica, who decides to immigrate to the United Kingdom, will not acquire a new domicile until she definitively settles in one of the territorial units of the United Kingdom—England and Wales, Scotland, or Northern Ireland. *Id.* at No. 6-010 (mentioning this example as illustration 4). Nevertheless, a “United Kingdom domicile” is sometimes relevant when specific statutes refer to such a term. *Id.* at Nos. 6-007, 6-015 (citing several English statutes referring to the broader term “United Kingdom domicile”).

98. *Id.* at No. 6-005.

99. DICEY, MORRIS & COLLINS, *supra* note 13, No. 6-010 (mentioning this example as illustration 1).

100. *Id.* (mentioning this example as illustration 2); *cf.* WEINTRAUB, *supra* note 2, § 2.3 (arguing that a person entering a state, lawfully or unlawfully, and intending to be domiciled there is considered that state's domiciliary although she has not yet taken abode in a specific town).

101. DICEY, MORRIS & COLLINS, *supra* note 13, No. 6-079; CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 165-68.

102. CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 165-68. *See also* DICEY, MORRIS & COLLINS, *supra* note 13, No. 6-083 (discussing the differences between domicile of choice and domicile of dependency).

change.

It is possible, however, that a previous domicile of choice may be abandoned without a corresponding intent to take a new domicile of choice. In such cases, the English courts have held that the domicile of origin revives.¹⁰³ Suppose, for example, that *D* had a domicile of origin in Florida and later acquired a domicile of choice in New York. Suppose further that *D* later decides to abandon New York and to settle in California. *D* leaves New York but dies before arriving in California. Under the English rules on domicile, *D*'s domicile of origin (Florida) will revive because *D* abandoned the domicile of choice (New York) without establishing a new domicile.¹⁰⁴ This peculiarity of a rigid and tenacious domicile of origin still remains in the modern conflicts system of the United Kingdom,¹⁰⁵ despite repeated proposals for reform.¹⁰⁶ Other major common law jurisdictions, including the United States, quickly abandoned this approach.¹⁰⁷ An American approach to *D*'s situation discussed above would hold that *D* maintained the domicile of choice (New York) until she acquired a new domicile.¹⁰⁸

B. AMERICAN MODEL

Although the common-law concept of domicile derives from English law, it is understood differently in the United States,

103. CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 163–64; DICEY, MORRIS & COLLINS, *supra* note 13, No. 6–076. It should follow that the domicile of origin can never be abandoned, if such abandonment is not accompanied by a designation of a new domicile. See GRAVESON, *supra* note 79, at 185.

104. DICEY, MORRIS & COLLINS, *supra* note 13, No. 6–077 (mentioning this example as illustration 3).

105. As Raape comments, “there is no man without a shadow and no Englishman without a domicile.” LEO RAAPE, *INTERNATIONALES PRIVATRECHT* 73 (5th ed. 1961).

106. CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 164; North, *supra* note 2, at 34–48; see also Peter E. McEleavy, *Regression and Reform in the Law of Domicile*, 56 *INT’L & COMP. L.Q.* 453 (2007) (noting the outdated English rules on domicile in a modern time when “individual mobility is taken for granted [and] migration has reached unprecedented levels”); GRAVESON, *supra* note 79, at 85, 94–95, 101–02 (discussing the reform proposals of the Private International Law Committee).

107. See generally Willis L. M. Reese, *Does Domicil Bear a Single Meaning?*, 55 *COLUM. L. REV.* 589 (1955).

108. DICEY, MORRIS & COLLINS, *supra* note 13, No. 6–077 (mentioning this example as illustration 3); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 19 (AM. LAW INST. 1971); RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 2.02 cmt. g (AM. LAW. INST., Preliminary Draft No. 2, 2016) (referring to this rule as the “continuation-of-domicile rule”).

particularly with regard to “interstate conflicts.”¹⁰⁹ State lines are oftentimes trivial, particularly in cases of persons residing near state borders who cross state lines in their daily transactions. Thus, a rigid concept of domicile, as understood in English law, would be ill-suited for resolving issues of personal status.¹¹⁰

For this reason, the American concept of domicile diverges from the English concept in three respects. First, American conflicts theory quickly departed from the English perception of one single, all-purpose “domicile” governing all matters of personal status,¹¹¹ in favor of a more flexible concept which could

109. See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 10 (AM. LAW INST. 1971) (distinguishing “interstate conflicts” between the laws of the states of the United States from “international conflicts” involving foreign laws). As a connecting factor, domicile is particularly useful in the United States, where the need arises for assimilation of the inflowing population. Application of the local law of the domicile, instead of a multiplicity of national laws, is a practical necessity. PAUL LEREBOURS-PIGEONNIÈRE & YVON LOUSSOUARN, DROIT INTERNATIONAL PRIVÉ 390 (9th ed. 1970); GRAMMATICAKI-ALEXIOU, *supra* note 2, at 26. In a federal nation, such as the United States, domicile is particularly attached to the state with which a person retains a persistent relationship. National citizenship still retains its importance in public law, although the principle of *jus soli* is usually applied for the acquisition of national citizenship at birth. See HAY, BORCHERS & SYMEONIDES, *supra* note 2, §§ 4.1–4.3.

110. See *Texas v. Florida*, 306 U.S. 398, 429 (1939) (“In the setting of modern circumstances, the inflexible doctrine of domicile—one man, one home—is in danger of becoming a social anachronism.”). Conflicts scholars have attributed this divergence of the American model of domicile to the different structure of American society, particularly with regard to the mobility of Americans. See FARNSWORTH, *supra* note 8, at 276–78; Graveson, *supra* note 67, at 49–55. For example, the validity of a marriage according to most American conflicts approaches, is governed by the place of the celebration of the marriage—*lex loci celebrationis*—to the extent that it does not offend the public policy of the forum state. See GRAMMATICAKI-ALEXIOU, *supra* note 2, at 26; Graveson, *supra* note 67, at 250; *cf.* LA. CIV. CODE ANN. art. 3520(A) (2018) (“A marriage that is valid in the state where contracted, or in the state where the parties were first domiciled, . . . shall be treated as a valid marriage unless to do so would violate a strong public policy of the state whose law is applicable to the particular issue under Article 3519.”).

111. Cook identified this notion as the “single conception theory.” COOK, *supra* note 83, at 194–210; *contra* BEALE, *supra* note 4, §§ 9.4, 9.7, at 98 (arguing in favor of a “single conception theory,” although accepting that, “[o]ne person has one and only one domicile, though the determination of domicile may be for one of several purposes”); see also RESTATEMENT (FIRST) OF CONFLICT OF LAWS § 11 (AM. LAW INST. 1934) (“Every person has at all times one domicil, and no person has more than one domicil at a time.”). A unitary concept of domicile originally appeared in the comments to § 11 of the First Restatement of the Conflict of Laws in 1934 but was subsequently amended in 1948. Compare RESTATEMENT (FIRST) OF CONFLICT OF LAWS § 11 cmt. a (AM. LAW INST. 1934), with RESTATEMENT (FIRST) OF CONFLICT OF LAWS § 11 cmt. a (AM. LAW INST. Supp. 1948) (restricting the unitary concept to one

vary in meaning according to its purpose or context.¹¹²

Second, the particularities of the English domicile of origin and the rigidity of requisite intent for domicile of choice did not find fertile ground in the United States.¹¹³ Thus, in *Succession of Steers*, a New York domiciliary who settled in Louisiana with his family for twelve years was considered to be domiciled in Louisiana, despite his proven intent to return eventually to New York.¹¹⁴ Under the English concept of domicile, the intent to return to New York, which was the domicile of origin, would be controlling.¹¹⁵ The Louisiana Supreme Court rejected the English approach for the following reasons:

[T]he domicile of birth, as recognized in England, has been given too much weight in estimating the value of the floating intention to return to the first domicile. The conditions which control the destinies of families in the two countries are materially different. In one it is a rule to keep families together. They grow up for generations on the same spot. Local traditions control them, and there are not entirely obliterated some influences of the feudal period. Here, the customs, the habits of the people, their ceaseless energies, their continuous change from locality to locality, the sudden and dense population of new places, the desertion and abandonment of old ones, all show that the people are migratory, and not much influenced by birth, locality, or the

state and accepting the possibility of different designations of domicile in different states). See generally Reese, *supra* note 107, at 590 (commenting on the meaning of § 11 of the First Conflicts Restatement); WEINTRAUB, *supra* note 2, § 2.16 (endorsing Cook's view of a diverse concept of domicile).

112. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11(2) (AM. LAW INST. 1971) ("Every person has a domicil at all times and, at least for the same purpose, no person has more than one domicil at a time."). See also COOK, *supra* note 83, at 196–97; Reese & Greene, *supra* note 27, at 563; Reese, *supra* note 107, at 589; ALBERT A. EHRENZWEIG, A TREATISE ON THE CONFLICT OF LAWS § 72 (1962); CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 146; Kahn-Freund, *supra* note 91, at 404–05.

113. BEALE, *supra* note 4, § 23.3, at 184–85 ("In America the British loyalty to one's place of birth is little felt. The immigrant who identifies himself with his new country, or the Easterner who goes west and identifies himself with his new part of the country, is a common figure. To refer such a man, while in the course of moving from one place in his new country to another, to a forgotten or half-forgotten domicil of origin would be absurdly unreal."); HAY, BORCHERS & SYMEONIDES, *supra* note 2, § 4.36; Graveson, *supra* note 67, at 45–48.

114. *Succession of Steers*, 18 So. 503, 504 (La. 1895); BEALE, *supra* note 4, § 14.1, at 130; FARNSWORTH, *supra* note 8, at 40–42.

115. See *supra* note 104 and accompanying text.

local history of families. Hence we conclude that it will require the same facts only to show a change of domicile from the domicile of birth that it would require to show a change from one selected domicile to another¹¹⁶

Pursuant to the American model, the domicile of origin does not revive when a person abandons a domicile. Instead, the previous domicile is presumed to continue until it is superseded by a new domicile.¹¹⁷ Thus, a more flexible notion of domicile became prevalent in American conflicts doctrine.¹¹⁸ The courts also followed this trend, which is particularly evident in the Second Restatement of Conflict of Laws.¹¹⁹

Third, the term “residence” became a preferable description of a geographic link connecting a person with a particular location, in terms of “state citizenship,”¹²⁰ as well as with respect

116. Succession of Steers, 18 So. 503, 504 (La. 1895).

117. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 19 (AM. LAW INST. 1971); RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 2.02 cmt. g (AM. LAW. INST., Preliminary Draft No. 2, 2016) (referring to this rule as the “continuation-of-domicile rule”); see also GRAVESON, *supra* note 79, at 85 (proposing adoption of the American rule of continuation-of-domicile by the English courts).

118. SYMEONIDES, *supra* note 73, at 86–87. Determination of domicile can also differ among the states. See Worcester Cty. Tr. Co. v. Riley, 302 U.S. 292, 299 (1937) (“Neither the Fourteenth Amendment nor the full faith and credit clause requires uniformity in the decisions of the courts of different states as to the place of domicile.”); Note, *Determination of Domicile For Inheritance Tax Purposes by an Original Action in the United States Supreme Court*, 46 YALE L.J. 1235, 1235 (1937) (observing that “each state may determine the location of domicile independently of another’s findings”). Nevertheless, constitutional guarantees of due process would preclude a state from manipulating the concept of domicile to overextend jurisdiction. Likewise, federal standards for domicile apply for issues of federal law, such as diversity jurisdiction. See HAY, BORCHERS & SYMEONIDES, *supra* note 2, § 4.9; MCDUGAL ET AL., *supra* note 20, § 16; RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 2.05 n.4 (AM. LAW. INST., Preliminary Draft No. 2, 2016).

119. See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11(1) (AM. LAW INST. 1971) (“Domicil is a place, usually a person’s home, to which the rules of Conflict of Laws sometimes accord determinative significance because of the person’s identification with that place.”).

120. See U.S. CONST. amend. XIV, § 1 (“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States *and of the state wherein they reside.*”) (emphasis added). In this context, residence means domicile. HAY, BORCHERS & SYMEONIDES, *supra* note 2, § 4.2. Thus, a reference by a foreign court to the national law of a U.S. citizen would most likely lead to the application of the law of domicile. HAY, BORCHERS & SYMEONIDES, *supra* note 2, §§ 4.11–4.12; RABEL, *supra* note 10, at 144–46; cf. CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 64–65, 171 (arguing that a choice-of-law reference to “British law” or “United Kingdom law” will most likely refer to domicile, even though there is no rule to allocate such domicile to one of the territorial units of the United

to issues of internal domicile.¹²¹ The term “residence” appears more frequently in state statutes.¹²² Although in the majority of instances “residence” is synonymous with domicile,¹²³ the unqualified and undefined use of this term can lead to confusion as to whether one is referring to something more or less than domicile.¹²⁴

Thus, in the absence of contrary legislative intent, residence is usually the equivalent of domicile¹²⁵ for purposes of jurisdiction,¹²⁶ voting and eligibility to hold office,¹²⁷ certain

Kingdom).

121. See JACK H. FRIEDENTHAL, MARY K. KANE & ARTHUR R. MILLER, CIVIL PROCEDURE 107 (5th ed. 2015) (explaining that personal jurisdiction based on domicile and residence was an idea of civil-law origin); MCDUGAL ET AL., *supra* note 20, §§ 17–18 (discussing the concept of residence and the constitutionality of durational requirements of residence imposed by state laws); see also WEINTRAUB, *supra* note 2, § 2.10; FARNSWORTH, *supra* note 8, at 278–82.

122. Reese & Greene, *supra* note 27, at 561 (“With few exceptions, the courts speak of ‘domicil’ while statutes refer to ‘residence’ instead.”).

123. *Id.* at 564, 569–74; KOSSUTH K. KENNAN, A TREATISE ON RESIDENCE AND DOMICILE 22–27 (1934); RESTATEMENT (FIRST) OF CONFLICT OF LAWS § 9 cmt. e (AM. LAW INST. 1934) (“The word ‘residence’ is often but not always used in the sense of domicil, and its meaning in a legal phrase must be determined in each case.”).

124. Reese & Greene, *supra* note 27, at 561; J.D. McClean, *The Meaning of Residence*, 11 INT’L & COMP. L.Q. 1153 (1962); 28 C.J.S. *Domicile* § 7 (2008) (“The terms ‘domicile’ and ‘residence,’ as used in statutes, are commonly, although not necessarily, construed as synonymous.”).

125. When residence is tantamount to domicile, an intent to reside (*animus residendi*) is required. See FARNSWORTH, *supra* note 8, at 4.

126. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11 cmt. k (AM. LAW INST. 1971); Reese & Greene, *supra* note 27, at 565–66. See, for example, the federal diversity-of-citizenship statute. 28 U.S.C. § 1332 (2018). Courts have consistently interpreted the term “citizenship” in that statute as synonymous with domicile. See, e.g., *Stine v. Moore*, 213 F.2d 446, 448 (5th Cir. 1954); *Heinen v. Northrop Grumman Corp.*, 671 F.3d 669, 670 (7th Cir. 2012); *Yeldell v. Tutt*, 913 F.2d 533, 537 (8th Cir. 1990); *Janzen v. Goos*, 302 F.2d 421, 424 (8th Cir. 1962); *Ellis v. Se. Constr. Co.*, 260 F.2d 280, 281 (8th Cir. 1958); RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 2.01 n.4 (AM. LAW. INST., Preliminary Draft No. 2, 2016). Scholars support this interpretation. 13E CHARLES A. WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3612 (3d ed. 2009). The determination of domicile for purposes of federal jurisdiction is a matter of federal common law. *Acridge v. Evangelical Lutheran Good Samaritan Soc’y*, 334 F.3d 444, 448 (5th Cir. 2003) (“[W]hile we may look to state law for guidance, the question of a person’s domicile is a matter of federal common law.”). Courts apply a test in determining domicile for purposes of diversity. *Coury v. Prot*, 85 F.3d 244, 251 (5th Cir. 1996) (“The factors may include the places where the litigant exercises civil and political rights, pays taxes, owns real and personal property, has driver’s and other licenses, maintains bank accounts, belongs to clubs and churches, has places of business or employment, and maintains a home for his family.”). Nevertheless, the traditional elements of residence and intent to remain indefinitely (or no present intent to go

exemptions from the claims of creditors, and liability for inheritance and certain personal property taxes.¹²⁸

Residence means something more than domicile when it refers to continuous physical presence in addition to domicile.¹²⁹ Such is the usual meaning of the term in statutes relating to jurisdiction in divorce cases,¹³⁰ homestead exemption laws,¹³¹ and naturalization and immigration laws.¹³² State statutes can also add other qualifications or qualities to a “residence.” For instance, a requisite period of time¹³³ or a bona fide nature¹³⁴ of

elsewhere) are required. *Gilbert v. David*, 235 U.S. 561, 569 (1915); FRIEDENTHAL ET AL., *supra* note 121, at 32–33; CHARLES A. WRIGHT & MARY K. KANE, LAW OF FEDERAL COURTS 148–50 (8th ed. 2017).

127. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11 cmt. k (AM. LAW INST. 1971); Reese & Greene, *supra* note 27, at 571–72; BEALE, *supra* note 4, § 10.5, at 112–13 (“[R]esidence in election statutes means domicil Residence as a qualification for holding office is for the same reasons to be interpreted as meaning domicil.”). *But see* RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 2.07 n.2 (AM. LAW. INST., Preliminary Draft No. 2, 2016) (“State election statutes generally refer to residence, not domicile.”). For Louisiana election law, see *infra* note 402 and accompanying text.

128. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11 cmt. k (AM. LAW INST. 1971); Reese & Greene, *supra* note 27, at 573. Concerning the difficult issue of multiple death taxation due to divergent findings of the decedent’s domicile, see HAY, BORCHERS & SYMEONIDES, *supra* note 2, §§ 4.4–4.6; FARNSWORTH, *supra* note 8, at 282–85.

129. Short absences from the place of residence do not interrupt continuous physical presence. Domicile, on the other hand, does not entail continuous presence in a place. A person can be absent for longer periods of time from her place of domicile without losing domicile. *See* BEALE, *supra* note 4, § 10.3.

130. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11 cmt. k (AM. LAW INST. 1971); Reese & Greene, *supra* note 27, at 565–66. For a critical analysis of this concept, see EHRENZWEIG, *supra* note 112, § 72. Concerning the problem of inconsistent findings of domicile with regard to divorce jurisdiction, see HAY, BORCHERS & SYMEONIDES, *supra* note 2, § 4.7.

131. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11 cmt. k (AM. LAW INST. 1971); Reese & Greene, *supra* note 27, at 567–68.

132. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11 cmt. k (AM. LAW INST. 1971); Reese & Greene, *supra* note 27, at 566; BEALE, *supra* note 4, § 10.11, at 121 (“In the naturalization act, which requires continuous residence for a certain period, this means domicil, and is therefore compatible with temporary absence even though protracted.”).

133. Domicile can be acquired immediately upon entry in a state. *See* RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 2.03 n.2 (AM. LAW. INST., Preliminary Draft No. 2, 2016) (“[N]o specific length of time is necessary in order to satisfy the physical presence requirement if one’s presence at a place verifies an existing intention to make the place one’s domicile.”). A time requirement for a certain residence would thus serve as an additional requirement. *See* Reese & Greene, *supra* note 27, at 568; *see also* RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 2.02 n.2(a)

residence may be required.

Finally, residence can mean something less than domicile when it is construed as staying in a particular place without the requisite intent of making that place a principal establishment.¹³⁵ This is the lay understanding of the term.¹³⁶ In this sense, a person can have several residences in different places.¹³⁷ This meaning of residence usually appears in statutes relating to income taxation,¹³⁸ school privileges,¹³⁹ and nonresident

(AM. LAW. INST., Preliminary Draft No. 2, 2016) (listing examples of state statutes imposing “durational residency requirements”).

134. Under the default rules on domicile, the motive behind the intent to reside is immaterial. *See* WRIGHT & KANE, *supra* note 126, at 149 (stating that, for purposes of establishing domicile for diversity jurisdiction, the motive behind the change of domicile is immaterial); HAY, BORCHERS & SYMEONIDES, *supra* note 2, § 4.24; RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 2.03 cmt. e (AM. LAW. INST., Preliminary Draft No. 2, 2016) (“[M]otive that a natural person has for moving to a place does not control whether the person has the intent to make the place the person’s home. Proof of motive may, however, assist a court in making a finding about true intent.”); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 18 cmt. f (AM. LAW INST. 1971) (listing common motives for changing domicile and their bearing on intent); *see also* CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 154 (citing *Mark v. Mark* [2006] 1 AC (HL) 98 (appeal taken from Eng.) (“The intention must be bona fide in the sense of being genuine and not pretended for some other purpose, such as getting a divorce to which one would not be entitled by the law of the true domicile.”)).

135. *See* RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 2.02 n.6 (AM. LAW. INST., Preliminary Draft No. 2, 2016) (discussing the difference between “domicile,” “habitual residence,” and “residence”). Nevertheless, some level of intent is still required for simple residence. Thus, a transient physical presence will usually not amount to residence. *See* Reese & Greene, *supra* note 27, at 575; BEALE, *supra* note 4, § 10.3, at 110.

136. *See* Reese & Greene, *supra* note 27, at 575; *Residence*, BLACK’S LAW DICTIONARY (10th ed. 2014) (“1. The act or fact of living in a given place for some time . . . 2. The place where one actually lives, as distinguished from a domicile . . . *Residence* usu. just means bodily presence as an inhabitant in a given place; *domicile* usu. requires bodily presence plus an intention to make the place one’s home. A person thus may have more than one residence at a time but only one domicile. Sometimes, though, the two terms are used synonymously. 3. A house or other fixed abode; a dwelling.”).

137. *See* LA. CIV. CODE ANN. art. 39 (2018) (“A natural person may reside in several places but may not have more than one domicile.”); *Manuel v. Am. Emp’r Ins. Co.*, 228 So. 2d 321, 322 (La. Ct. App. 3 Cir. 1969) (“While a person may have only one domicile (his permanent residence and principal establishment), he may as a matter of fact have more than one residence (his actual dwelling place, or where he actually lives).”).

138. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11 cmt. k (AM. LAW INST. 1971); Reese & Greene, *supra* note 27, at 575–76. Federal taxation is subject to special rules and definitions. *See supra* note 27.

139. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11 cmt. k (AM. LAW INST.

motorists.¹⁴⁰

Nevertheless, despite the above variations, the basic concept of domicile prevails in American law, both externally, as a connecting factor, and internally. Thus, the principles of necessity and unity of domicile apply.¹⁴¹ Furthermore, domicile is usually determined in accordance with the law of the forum.¹⁴²

IV. CIVIL LAW OF DOMICILE

From the late nineteenth century and until recently, national citizenship, rather than domicile, has served as the predominant connecting factor for issues of personal status¹⁴³ in most modern civil law jurisdictions.¹⁴⁴ At the time of the major European codifications, European scholars had been influenced

1971); Reese & Greene, *supra* note 27, at 578; KENNAN, *supra* note 123, at 22. Several states restrict school privileges to bona fide residents. *See, e.g.*, *Martinez v. Bynum*, 461 U.S. 321 (1983) (upholding Texas statute that restricted eligibility for tuition-free education to its bona fide residents); RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 2.03 cmt. e (AM. LAW. INST., Preliminary Draft No. 2, 2016) (“Motive has bearing on whether a person is simply trying to create the appearance of wanting to make a place the center of the person’s life for personal advantage, such as a favorable tax rate or reduced tuition for school.”); RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 2.07 n.7 (AM. LAW. INST., Preliminary Draft No. 2, 2016) (discussing domicile of college students and state statutes concerning in-state college tuition).

140. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11 cmt. k (AM. LAW INST. 1971); Reese & Greene, *supra* note 27, at 577–78.

141. *See* BEALE, *supra* note 4, §§ 11.1–11.2; RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 2.03 cmt. f (AM. LAW. INST., Preliminary Draft No. 2, 2016); GRAMMATICAKI-ALEXIOU, *supra* note 2, at 135–36.

142. *See* HAY, BORCHERS & SYMEONIDES, *supra* note 2, §§ 4.8–4.10.

143. GRAMMATICAKI-ALEXIOU, *supra* note 2, at 54–58; HAY, BORCHERS & SYMEONIDES, *supra* note 2, § 4.11.

144. Some civil law jurisdictions, particularly those in the Scandinavian countries, have retained domicile as the prevalent connecting factor for determining the personal law. *See* GRAMMATICAKI-ALEXIOU, *supra* note 2, at 146–47; RABEL, *supra* note 10, at 119; O.A. Borum & Karsten Meyer, *Droit international privé du Danemark*, in 6 RÉPERTOIRE DE DROIT INTERNATIONAL PRIVÉ 213, 214 (A. de Lapradelle & J.-P. Niboyet eds., 1930); ALLAN PHILIP, AMERICAN-DANISH PRIVATE INTERNATIONAL LAW 18 (1957); Allan Philip, *The Scandinavian Conventions of Private International Law*, in 96 RECUEIL DES COURS 241, 245–47 (1959). Domicile also retained its importance in the conflicts systems of Switzerland, Argentina, Paraguay, Uruguay, Nicaragua, and Brazil. Some jurisdictions adopted a mixed system, applying the national law to their own citizens and the law of the domicile to noncitizens. Examples include the Former Soviet Union, Mexico, Costa Rica, Ecuador, Honduras, Peru, Venezuela, Colombia, and Chile. *See* RABEL, *supra* note 10, at 119–29; De Winter, *supra* note 47, at 373–74; GRAMMATICAKI-ALEXIOU, *supra* note 2, at 56–58.

by Mancini's theory of nationality¹⁴⁵ as the prevalent juridical link connecting a person with a state.¹⁴⁶ This mindset infiltrated the civil codes of France¹⁴⁷ and Germany.¹⁴⁸ Subsequently, the civil codes that were modeled after these major codes followed suit.¹⁴⁹ The concept of domicile was reduced to internal

145. The term "nationality" has many legal connotations as well as historical and political overtones. For the purposes of this discussion, the term "nationality" is used as defined, rather successfully, by Maridakis as the "public law bond between an individual and a country or state, pursuant to which that individual belongs to the people of that country or state." MARIDAKIS, *supra* note 9, at 248. The term "people" is defined as the total number of individuals having the nationality of a country, wherever these individuals may be located. "Population," on the other hand, is defined as the total number of individuals (citizens or non-citizens) that are present within a country at a given time of a census. See ELLI KRISPI-NIKOLETOPOULOU, DIKAION ITHAGENEIAS [LAW OF NATIONALITY] 42–45 (1965) (Greece).

146. PASQUALE STANISLAO MANCINI, DELLA NAZIONALITÀ COME FONDAMENTO DEL DIRITTO DELLE GENTI (1851) (It.); 3 ANDRE WEISS, TRAITÉ THÉORIQUE ET PRATIQUE DE DROIT INTERNATIONAL PRIVÉ 72 (2d ed. 1912) (Fr.); Max Gutzwiller, *Le développement historique de droit international privé*, in 29 RECUEIL DES COURS 287, 365–70 (1929); De Winter, *supra* note 47, at 371–77; SPYRIDON VRELLIS, IDIOTIKON DIETHNES DIKAION [PRIVATE INTERNATIONAL LAW] 80–88 (3d ed. 2008) (Greece); Christoph Benicke, Auswirkungen des neuen Staatsangehörigkeitsrechts auf das deutsche IPR, 20 PRAXIS DES INTERNATIONALEN PRIVAT-UND VERFAHRENSRECHTS [IPRAX] 171 (2000).

147. See CODE CIVIL [C. CIV.] [CIVIL CODE] art. 3 ¶3 (Fr.) ("The laws relating to the status and capacity of persons govern French persons, although residing in a foreign country."). This provision first appeared in the Code Napoléon of 1804. Some scholars have considered this provision as the first conflicts rule endorsing the principle of nationality. The majority opinion, however, holds that this provision conveys a political statement in favor of the French civil law as a product of the French Revolution rather than a choice-of-law rule. See GRAMMATICAKI-ALEXIOU, *supra* note 2, at 52–54; SAVIGNY, *supra* note 3, § 359, at 129–30; RABEL, *supra* note 10, at 120–21; STORY, *supra* note 4, § 43; De Winter, *supra* note 47, at 367–71.

148. EINFÜHRUNGSGESETZ ZUM BÜRGERLICHEN GESETZBUCH [EGBGB] [INTRODUCTORY ACT TO THE CIVIL CODE] art. 7 (Ger.) ("The legal capacity and capacity to contract of a person are governed by the law of the country of which the person is a national."). See also GERHARD KEGEL & KLAUS SCHURIG, INTERNATIONALES PRIVATRECHT: EIN STUDIENBUCH 437–63, 543–66 (9th ed. 2004); JAN KROPHOLLER, INTERNATIONALES PRIVATRECHT 269–78, 321–24 (6th ed. 2006).

149. See, e.g., ASTIKOS KODIKAS [A.K.] [CIVIL CODE] art. 5 (Greece) ("The legal capacity of a natural person is governed by the law of nationality."); VRELLIS, *supra* note 146, at 133–48. The law of nationality also extended to issues of family law (e.g., marriage and divorce) and successions law. Particularly with respect to successions law, the law of nationality governed the entire succession pursuant to the principle of unity, which still prevails, with some variations, in civil law systems. See Andrea Bonomi, *Successions internationales: conflits de lois et de juridictions*, in 350 RECUEIL DES COURS 71, 99–106 (2010). Conversely, the principle of scission applies in common law systems. According to this principle, the law of the decedent's domicile governs succession to movables whereas the law of the situs controls the succession

substantive law, bearing little significance in the designation of governing law to personal status.¹⁵⁰ In common law systems, on the other hand, the prevalence of domicile as a connecting factor informed, and continues to contribute to, the modern understanding of the term for internal purposes.¹⁵¹ Thus, during the twentieth century, civil law domicile remained predominantly internal, whereas common law domicile was mostly external.¹⁵²

The absence of an external domicile in most civil law systems

to immovables. *See* HAY, BORCHERS & SYMEONIDES, *supra* note 2, §§ 20.2–20.4; RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 236, 260 (AM. LAW INST. 1971) (referring to the whole law of the situs for immovables and the domicile for movables).

150. *See, e.g.*, DELAUME, *supra* note 65, at 65 (noting the limited use of domicile in French conflicts law at that time); ULRICH DROBNIG, AMERICAN-GERMAN PRIVATE INTERNATIONAL LAW 75 (2d ed. 1972) (observing the limited role of domicile in German conflicts law at that time). Thus, in the absence of nationality (*e.g.*, for stateless persons or refugees), a version of domicile or habitual residence operated as a fallback connecting factor. *See, e.g.*, ASTIKOS KODIKAS [A.K.] [CIVIL CODE] art. 30 (Greece) (“Unless the law provides otherwise, if a natural person has no nationality, the law of the person’s habitual residence shall apply in place of the law of nationality, and if the person has no habitual residence, the law of simple residence shall apply.”); *see also* VRELLIS, *supra* note 146, at 84–85; GRAMMATICAKI-ALEXIOU, *supra* note 2, at 86–96. Similar approaches are followed in the majority of civilian jurisdictions. *See* RABEL, *supra* note 10, at 131–34. A national citizen of the forum state will be treated as such regardless of whether this person also has a foreign nationality. If a person has multiple foreign nationalities the forum court will consider the “effective nationality,” which will usually coincide with the person’s domicile. *See* SCHWEIZERISCHES ZIVILGESETZBUCH [ZGB], CODE CIVIL [CC], CODICE CIVILE [CC] [CIVIL CODE] Dec. 10, 1907, SR 210, RS 210, art. 22 ¶2 (Switz.); ASTIKOS KODIKAS [A.K.] [CIVIL CODE] art. 31 (Greece); RABEL, *supra* note 10, at 129–31. The principle of “effective nationality” has also been accepted by the International Court of Justice. *Nottebohm Case (Liechtenstein v. Guatemala)*, Judgment, 1955 I.C.J. 1 (April 6). Nationality is determined by reference to the law of the granting state. ASTIKOS KODIKAS [A.K.] [CIVIL CODE] art. 29 (Greece); RABEL, *supra* note 10, at 146–50; *see also* LAURA VAN WAAS, NATIONALITY MATTERS: STATELESSNESS UNDER INTERNATIONAL LAW 49–91 (2008) (addressing the technical causes of statelessness in international law).

151. *See* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11 cmt. j (AM. LAW INST. 1971) (“In Anglo-American countries, domicil is the most important place to which a person is related for legal purposes.”); RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 2.01 cmt. b (AM. LAW INST., Preliminary Draft No. 2, 2016) (“The concept of a person’s central geographic link in this and succeeding sections is limited to conflict-of-laws issues. Nonetheless, the central geographic connection concept is useful and often necessary in other legal contexts. Given the shifting values and concerns animating different areas of law, courts and legislatures may choose to vary the central geographic link for persons used as principles of justice outside the conflict-of-laws context require.”).

152. *See* EHRENZWEIG, *supra* note 112, § 163; GRAMMATICAKI-ALEXIOU, *supra* note 2, at 119.

contributed to a more flexible internal domicile.¹⁵³ Domicile in civil law refers to a personal quality¹⁵⁴ of individual natural persons—the locality of a person.¹⁵⁵ Because domicile was generally not decisive of personal status, courts adopted a less rigorous test for determining domicile in civil law cases.¹⁵⁶ Notably, a definition of domicile is missing from most European civil codes and is left to civilian doctrine.¹⁵⁷ Internal domicile mainly appears in matters of public law, although special statutes routinely refer to the civil-law concept of domicile.¹⁵⁸

As a matter of localization of domicile, most major European

153. The civilian concept of domicile corresponds to the traditional Roman concept of *domicilium*. See GRAMMATICAKI-ALEXIOU, *supra* note 2, at 60, 137. The Roman concept of *origo* appears in several civil law systems in the form of municipal citizenship. National citizens of a country are also registered in the municipality of their residence. See Charalambos Fragistas, *Introduction to Articles 51–56*, No. 12, in 1 ERMINEIA TOU ASTIKOU KODIKOS, ARTHRA 34–60 [1 COMMENTARY TO THE CIVIL CODE, ARTICLES 34–60] (Alexandros Litzeropoulos et al. eds., 1952) (Greece).

154. See SAVIGNY, *supra* note 3, § 356. Other qualities of a person include a person's name, age, gender, religion, health, family status, and citizenship. See WINDSCHEID, *supra* note 9, §§ 51–56b; DIETER MEDICUS, ALLGEMEINER TEIL DES BGB Nos. 1057–62 (1982); JOSSERAND, *supra* note 65, Nos. 205, 223.

155. 1 GABRIEL MARTY & PIERRE RAYNAUD, DROIT CIVIL: LES PERSONNES No. 740 (3d ed. 1976); 1 ALEX WEILL & FRANÇOIS TERRÉ, DROIT CIVIL: LES PERSONNES, LA FAMILLE, LES INCAPACITÉS No. 63 (5th ed. 1983); 1 JEAN CARBONNIER, DROIT CIVIL: INTRODUCTION, LES PERSONNES, LA FAMILLE, L'ENFANT, LE COUPLE 455–56 (21st ed. reprt. 2017) (2000); 1 CHARLES DEMOLOMBE, COURS DE CODE NAPOLÉON No. 338 (1854).

156. Although domicile is a legal fiction, having an abstract meaning, courts and scholars in the civil law have taken a realistic approach in defining and determining domicile. See DEMOLOMBE, *supra* note 155, No. 347; 2 GABRIEL BAUDRY-LACANTINERIE & MAURICE HOUGUES-FOURCADE, TRAITÉ THÉORIQUE ET PRATIQUE DE DROIT CIVIL: DES PERSONNES No. 959 (3d ed. 1907); JOSSERAND, *supra* note 65, No. 236; WEILL & TERRÉ, *supra* note 155, No. 64.

157. GRAMMATICAKI-ALEXIOU, *supra* note 2, at 137. The French Civil Code, for example, determines *where* a person's domicile is but not *what* that domicile is. See 1 MARCEL PLANIOL & GEORGES RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS No. 137 (René Savatier ed., 2d ed. 1952); Magalhaes, *supra* note 93, at 35; Bruno Petit & Yann Favier, *Domicile: Notion, Fonction*, No. 5, in *JurisClasseur Civil*, Art. 102 à 111, Fascicule 10, Aug. 19, 2012 (May 2, 2018). *But see* SCHWEIZERISCHES ZIVILGESETZBUCH [ZGB], CODE CIVIL [CC], CODICE CIVILE [CC] [CIVIL CODE] Dec. 10, 1907, SR 210, RS 210, art. 23 ¶1 (Switz.) (“A person is said to be domiciled in the place where he resides with the intention of settling there.”).

158. See 2 FRANÇOIS LAURENT, PRINCIPES DE DROIT CIVIL FRANÇAIS No. 64 (2d ed. 1978) (observing that domicile primarily relates to issues of public law); Petit & Favier, *supra* note 157, Nos. 41–49. Historically, the definition and regulation of the Roman concept of *domicilium* appeared in the administrative law section of Justinian's Code. See, e.g., CODE JUST. 10.39.7 (Diocletian & Maximian 290/293).

civil codes point to the place¹⁵⁹ of a person's principal establishment¹⁶⁰ or habitual residence,¹⁶¹ without providing any further guidance.¹⁶² Definitions of the term "domicile" in civilian doctrine abound.¹⁶³ Scholars have defined domicile as a legal relationship between a person and a place;¹⁶⁴ a legal bond connecting a person with a jurisdiction;¹⁶⁵ the center of the legal life and interests of a person;¹⁶⁶ and a political bond between a person and the government.¹⁶⁷

159. More accurately, "the domicile is not *the place*, it is *at the place*," thus signifying the abstract notion of this concept that refers to a person's center of life rather than a place. RATTIGAN, *supra* note 49, at 23–24; *see also* Magalhaes, *supra* note 93, at 36; Petit & Favier, *supra* note 157, No. 5.

160. CODE CIVIL [C. CIV.] [CIVIL CODE] art. 102 (Fr.) ("The domicile of any Frenchman, as to the exercise of his civil rights, is at the place where he has his principal establishment."); ASTIKOS KODIKAS [A.K.] [CIVIL CODE] art. 51 (Greece) ("A person has his domicile in the place of his principal and permanent establishment."); Codice civile [C.c.] [Civil Code] art. 43 (It.) ("The domicile of a person is in the place where he has established the principal center of his business and interests. The residence is in the place where the person has his habitual abode."). *Cf.* Civil Code of Québec, S.Q. 1991, c 64, art. 75 (Can.) ("The domicile of a person, for the exercise of his civil rights, is at the place of his principal establishment.").

161. BÜRGERLICHES GESETZBUCH [BGB] [CIVIL CODE], § 7, ¶1 (Ger.) ("A person who abides regularly in a place establishes his domicile in that place."); Código Civil [C.C.] [Civil Code] art. 40 (Spain) ("The domicile of natural persons for the purposes of the exercise of civil rights and the performance of civil obligations shall be their place of habitual residence and, as the case may be, their domicile as determined by the Law of Civil Procedure.").

162. Historically, the term "principal establishment" derives from the old law of pre-revolution France, pursuant to which domicile determined the applicable law. "Habitual residence" is a more flexible term of German origin. *See* DROBNIG, *supra* note 150, at 76 (defining habitual residence in German law as "domicile without *animus manendi*"); 1 AMBROISE COLIN & HENRI CAPITANT, COURS ÉLÉMENTAIRE DE DROIT CIVIL FRANÇAIS No. 423 (Julliot de la Morandière ed., 8th ed. 1934) (comparing the German concept of "habitual residence" with the French concept of "principal establishment" which derives from the old French law); 2 CHARLES BEUDANT, COURS DE DROIT CIVIL FRANÇAIS No. 472 (Robert Beudant et al. eds., 2d ed. 1936) (arguing that "principal establishment," as derived from the old French law, is independent of a habitual residence); 1 MARCEL PLANIOL, TREATISE ON THE CIVIL LAW, PT. 1 No. 567 (La. St. L. Inst. trans., 12th ed. 1959, reprt. 2005) (1939) (endorsing Domat's and Pothier's definitions of domicile as the "principal place of dwelling"); LAURENT, *supra* note 158, No. 71 (commenting that "principal establishment" necessarily refers to a residence that is "principal residence").

163. *See* PLANIOL, *supra* note 162, No. 555.

164. AUBRY & RAU, *supra* note 20, No. 141.

165. *See* Franceskakis, *supra* note 42, at 292–93.

166. Cassin, *supra* note 63, at 691.

167. 1 GEORGES RIPERT & JEAN BOULANGER, TRAITÉ DE DROIT CIVIL No. 920 (1956); 1 J.-P. NIBOYET, TRAITÉ DE DROIT INTERNATIONAL PRIVÉ 552 (1938); J.-P. NIBOYET, COURS DE DROIT INTERNATIONAL PRIVÉ 205 (2d ed. 1949).

There is consensus, however, in civilian doctrine with respect to the elements of domicile: Residence in a specific place (*corpus*) with the requisite intent of making that place the principal place of establishment (*animus*).¹⁶⁸ A more detailed examination of these elements reveals a striking similarity with the elements of possession in the civil law of property.¹⁶⁹ Indeed, the function, correlation, and proof of the elements of domicile resemble the corresponding elements of possession. This similarity also appears in the Louisiana civil law. Thus, *corpus* and *animus* must exist simultaneously to establish domicile as well as possession.¹⁷⁰ A temporary interruption of *corpus* will not affect the continuation of domicile or possession as long as the *animus* is present.¹⁷¹ While proof of *corpus* poses no particular practical difficulties, proof of *animus* cannot always be direct; such proof will usually refer to acts of domicile or possession, as the case may be.¹⁷²

168. WEILL & TERRÉ, *supra* note 155, No. 68; De Winter, *supra* note 47, at 421–23.

169. *See* CARBONNIER, *supra* note 155, at 468; DEMOLOMBE, *supra* note 155, No. 351.

170. *Compare* CARBONNIER, *supra* note 155, at 460 (“[T]he establishment of domicile requires unification of *corpus* and *animus*, that is, of material acts and intention.”), and Petit & Favier, *supra* note 157, No. 7 (explaining that the objective element of *corpus* and the subjective element of *animus* must coexist for the establishment of domicile), with LA. CIV. CODE ANN. art. 3424 (2018) (“To acquire possession, one must intend to possess as owner and must take corporeal possession of the thing.”), and A.N. YIANNPOULOS, PROPERTY § 12:11, in 2 LOUISIANA CIVIL LAW TREATISE 694–97 (5th ed. 2015) (“In civilian terminology, possession is acquired upon the concurrence of its two constitutive elements, the corpus and the animus.”).

171. *See* LA. CIV. CODE ANN. art. 3431 (2018) (“Once acquired, possession is retained by the intent to possess as owner even if the possessor ceases to possess corporeally. This is civil possession.”); PLANIOL, *supra* note 162, No. 556; YIANNPOULOS, *supra* note 170, § 12:5 (explaining the concept of civil possession as the continuation of *animus*).

172. *See* WEILL & TERRÉ, *supra* note 155, No. 69; Succession of Steers, 18 So. 503, 504–05 (La. 1895) (“The nature of the residence may rebut the presumption of the animus manendi. The intention to make a place his permanent home may exist, but this is not sufficient to establish a domicile, unless the intention is accompanied by some act in furtherance of such intention.”); *see also* LA. CIV. CODE ANN. art. 45 (2018) (“Proof of one’s intent to establish or change domicile depends on the circumstances. A sworn declaration of intent recorded in the parishes from which and to which he intends to move may be considered as evidence of intent.”); CODE CIVIL [C. CIV.] [CIVIL CODE] art. 104 (Fr.) (“Proof of intention will be through an express declaration, made either at the municipality of the place which one has left or at that of the place where one has transferred his domicile.”); CODE CIVIL [C. CIV.] [CIVIL CODE] art. 105 (Fr.) (“In default of express declaration, proof of intention will depend on circumstances.”).

Nevertheless, these similarities cannot be carried too far. The voluntary establishment of domicile is a juridical act,¹⁷³ whereas possession remains a matter of fact.¹⁷⁴ Also, although possession can be acquired and exercised through another,¹⁷⁵ establishment of domicile through another is only permitted in cases of legal representation¹⁷⁶ of unemancipated minors,¹⁷⁷ interdicts,¹⁷⁸ and persons under continued or permanent tutorship.¹⁷⁹

Civilian categorizations of domicile are not as rigid as the common law divide between domicile of origin and domicile of choice,¹⁸⁰ although the civilian types of domicile generally

173. SAVIGNY, *supra* note 3, § 353, at 99; DIG. 50.1.20 (Paul, Quaestiones 24) (“Domicile is transferred by actual action, not by mere assertion . . .”); *see also* A.N. YIANNOPOULOS, *supra* note 1, at 447 (“A juridical act is ordinarily defined as a declaration of will by a private person directed to the creation of intended legal consequences.”). Contemporary German and Greek civilians posit that the act of establishing domicile is a quasi-juridical act. *See* GEORGIOS BALIS, GENIKAI ARCHAI TOU ASTIKOU DIKAIYOU [GENERAL PRINCIPLES OF CIVIL LAW] § 14 (8th ed. 1961) (Greece); HEINRICH LEHMANN, ALLGEMEINER TEIL DES BÜRGERLICHEN GESETZBUCHES 315–16 (1947); ANDREAS VON TUHR, DER ALLGEMEINER TEIL DES DEUTSCHEN BÜRGERLICHEN RECHTS § 28 (1910). Quasi-juridical acts are lawful volitional acts that result in legal consequences regardless of the intention of the maker. YIANNOPOULOS, *supra* note 1, at 447. According to the German/Greek view, a person’s residence with the intent of principal establishment will result in the acquisition of domicile, regardless of whether that person truly intended to change her domicile. This differing theoretical approach has little practical significance, because the rules governing juridical acts apply equally to quasi-juridical acts. *Id.*

174. *See, e.g.*, LA. CIV. CODE ANN. art. 3422 (2018) (“Possession is a matter of fact . . .”); YIANNOPOULOS, *supra* note 170, §§ 12:2, 12:8.

175. *See, e.g.*, LA. CIV. CODE ANN. art. 3428 (2018) (“One may acquire possession of a thing through another who takes it for him and in his name. The person taking possession must intend to do so for another.”); YIANNOPOULOS, *supra* note 170, § 12:11, at 695 (“[I]ncompetents may acquire possession by their own acts and intent or through their legal representatives.”).

176. The juridical act of establishing domicile is strictly personal and, therefore, not assignable or subject to representation by mandate or procuracy. *Cf.* LA. CIV. CODE ANN. art. 92 (2018) (“A marriage may not be contracted by procuracy.”); LA. CIV. CODE ANN. art. 1766 ¶1 (2018) (“An obligation is strictly personal when its performance can be enforced only by the obligee, or only against the obligor.”); *see also* LA. CIV. CODE ANN. arts. 2986–2989 (2018) (explaining the concepts of “representation by contract, such as mandate . . . or by unilateral juridical act of procuracy”).

177. *See* LA. CIV. CODE ANN. art. 41 (2018).

178. *See* LA. CIV. CODE ANN. art. 42 (2018).

179. *See* LA. CIV. CODE ANN. art. 43 (2018).

180. Some French scholars still refer to *domicile d’origine* and *domicile de choix*, but this distinction is more descriptive of the various types of domicile rather than separate categories of domicile. *See* CARBONNIER, *supra* note 155, at 469;

correspond with those at common law.¹⁸¹ In the civil law, there are two broad categories of domicile: voluntary domicile¹⁸² and domicile by operation of law.¹⁸³

Voluntary domicile largely corresponds with domicile of choice. It is defined as the volitional establishment of a new domicile and the corresponding abandonment of an old domicile.¹⁸⁴ Once a voluntary domicile is established, it continues until a new domicile, voluntary or legal, is established.¹⁸⁵ The voluntary establishment of domicile as a juridical act¹⁸⁶ necessarily entails three characteristics.

First, the person establishing voluntary domicile must have capacity to do so. The default rules on contractual capacity apply here.¹⁸⁷ Thus, a person capable of making juridical acts is also

GRAMMATICAKI-ALEXIOU, *supra* note 2, at 138–39.

181. *See* RABEL, *supra* note 10, at 153–54. The familiar abstract and laconic prose is noticed in most codifications of domicile, including the Louisiana codification. Definitions and further elaboration of concepts are left to jurisprudence and doctrine. Also, the few provisions on domicile must be read together to reach linear conclusions. *Cf.* LA. CIV. CODE ANN. art. 13 (2018) (“Laws on the same subject matter must be interpreted in reference to each other.”). For example, most civil codes, including Louisiana’s, do not explicitly state how a person acquires domicile at birth. Rather, it is deduced from the provisions on domicile of minors that a person acquires the domicile of a legal parent or guardian at birth. *See* RIPERT & BOULANGER, *supra* note 167, Nos. 922, 937–46; Franceskakis, *supra* note 42, at 304; GRAMMATICAKI-ALEXIOU, *supra* note 2, at 138.

182. *Domicile volontaire*. *See* BALIS, *supra* note 173, § 14, at 45; LEHMANN, *supra* note 173, at 315–16; VON TUHR, *supra* note 173, § 28; MARTY & RAYNAUD, *supra* note 155, No. 747; WEILL & TERRÉ, *supra* note 155, Nos. 68–69; CARBONNIER, *supra* note 155, at 459–62; RATTIGAN, *supra* note 49, at 24.

183. *Domicile légal*. *See* BALIS, *supra* note 173, § 14, at 46; LEHMANN, *supra* note 173, at 315–16; VON TUHR, *supra* note 173, § 28; MARTY & RAYNAUD, *supra* note 155, No. 745; WEILL & TERRÉ, *supra* note 155, Nos. 70–72; CARBONNIER, *supra* note 155, at 462–63.

184. CODE CIVIL [C. CIV.] [CIVIL CODE] art. 103 (Fr.) (“Change of domicile will come about through the fact of an actual habitation in another place, joined with the intention to fix one’s principal establishment.”).

185. LA. CIV. CODE ANN. art. 44 (2018) (“Domicile is maintained until acquisition of a new domicile.”); ASTIKOS KODIKAS [A.K.] [CIVIL CODE] art. 52 (Greece) (“The domicile shall be maintained until the acquisition of a new domicile.”); SCHWEIZERISCHES ZIVILGESETZBUCH [ZGB], CODE CIVIL [CC], CODICE CIVILE [CC] [CIVIL CODE] Dec. 10, 1907, SR 210, RS 210, art. 24 (Switz.) (“Every person retains his old domicile until he has actually acquired a new domicile.”); CODE CIVIL [C. CIV.] [CIVIL CODE] art. 106 (Fr.) (“The citizen called to a temporary or revocable public service will keep the domicile which he had previously, if he has not manifested a contrary intention.”).

186. *See supra* note 173 and accompanying text.

187. *See, e.g.*, LA. CIV. CODE ANN. arts. 28–29 (2018); LA. CIV. CODE ANN.

capable of establishing domicile.

Second, a person enjoys freedom in establishing voluntary domicile. The only limit imposed is by mandatory rules of law.¹⁸⁸ Thus, a person may decide freely to maintain or change domicile. Parties to a contract may stipulate a domicile for their contractual needs.¹⁸⁹ When contracting parties use the term “domicile” in their contract, the courts may interpret this term with reference to the popular meaning of domicile, rather than the technical term discussed herein.¹⁹⁰

Third, the act of establishment of domicile must be truthful.¹⁹¹ It must not prejudice the rights of third parties,

art. 1918 (2018) (providing that all persons have capacity to make juridical acts except unemancipated minors, interdicts, and persons deprived of reason at the time of the making of the juridical act); KARL LARENZ, ALLGEMEINER TEIL DES DEUTSCHEN BÜRGERLICHEN RECHTS 105–07 (5th ed. 1980).

188. See, e.g., LA. CIV. CODE ANN. art. 7 (2018); LA. CIV. CODE ANN. art. 1971 (2018) (providing that persons are free to make juridical acts, unless to do so would run contrary to rules of mandatory law). The right to establish domicile may be restricted by rules of mandatory law. SAVIGNY, *supra* note 3, § 353, at 99; DIG. 50.1.31 (Marcellus, Digesta 1) (“There is no barrier to anyone having his domicile where he wishes, *provided somewhere is not forbidden to him.*”) (emphasis added). *But see* HAY, BORCHERS & SYMEONIDES, *supra* note 2, § 4.25, at 314 (“Business necessity, family interests, and other considerations may weigh very heavily and often necessitate establishing oneself in a place when personal preference is to live elsewhere.”).

189. French legal doctrine recognizes this type of “selected domicile” (*domicile élu*). COLIN & CAPITANT, *supra* note 162, Nos. 428–29; JOSSERAND, *supra* note 65, No. 240; PLANIOL & RIPERT, *supra* note 157, Nos. 165–68; MARTY & RAYNAUD, *supra* note 155, No. 750; WEILL & TERRÉ, *supra* note 155, No. 71. *Cf.* Civil Code of Québec, S.Q. 1991, c 64, art. 83 (Can.) (“The parties to a juridical act may, in writing, elect domicile with a view to the execution of the act or the exercise of the rights arising from it. Election of domicile is not presumed.”); Codice civile [C.c.] [Civil Code] art. 47 (It.) (“One may elect a special domicile for certain acts or business transactions. This election shall be made expressly in writing.”). While the parties to a contract may stipulate a domicile, a person’s freedom to choose domicile may not be restricted. Thus, a condition on a contract stating that a person must be domiciled in a certain place is null. SAVIGNY, *supra* note 3, § 353, at 99; DIG. 35.1.71.2 (Papinian, Quaestiones 17) (“[T]here is no scope for an undertaking whereby the right of liberty [of choosing domicile] is infringed [by a condition].”); *cf.* LA. CIV. CODE ANN. art. 1769 (2018).

190. See LA. CIV. CODE ANN. art. 2047 (2018) (“The words of a contract must be given their generally prevailing meaning. Words of art and technical terms must be given their technical meaning when the contract involves a technical matter.”); *Smith v. Rocks*, 42,021 (La. App. 2 Cir. 5/16/07); 957 So. 2d 886 (interpreting the contractual term “resident” in an insurance contract). *Cf.* DICEY, MORRIS & COLLINS, *supra* note 13, No. 6–003.

191. A simulated act of establishment will have no effect. See LA. CIV. CODE

create an unjust advantage, or evade the law.¹⁹² A person may reside in a place other than her true domicile, thus creating the false impression that she is domiciled there. Innocent third persons may act in reliance of such an impression. For example, they may bring suit in the courts of the purported domicile only to discover later in the proceedings that they chose an improper venue.¹⁹³ Earlier French jurisprudence devised the notion of “apparent domicile” to protect third parties in good faith.¹⁹⁴ Variations of this theory of apparent domicile appear in other civilian jurisdictions.¹⁹⁵ Modern French doctrine has reaffirmed

ANN. arts. 2025–2028 (2018).

192. See MASMEJAN, *supra* note 14, at 49 (referring to this rule as the “principle of sincerity of domicile”); see also Magalhaes, *supra* note 93, at 134–37.

193. The standard hypothesis giving rise to classic French judgments is that of a person sharing her time, interests, and property between Paris and a rural locality. This plurality of establishments posed difficulty in determining the principal establishment. Faced with this difficulty, the French courts solved the problem by stating that “if one can only have one domicile, that the law fixes instead of the principal establishment, one may have in another place an apparent domicile.” Cour de cassation [Cass.] [supreme court for judicial matters] req., Aug. 4, 1896, S. 1900, 1, p.515.

194. CARBONNIER, *supra* note 155, at 470; MARTY & RAYNAUD, *supra* note 155, No. 756; WEILL & TERRÉ, *supra* note 155, No. 82. Pursuant to the theory of *domicile apparent*, innocent third parties may rely on acts or facts by a person leading them to believe that the person is domiciled in a particular place. This finding of malice or fraudulent intent is not necessary. It suffices that a person, through her acts or behavior, established the reasonable belief of a domicile. DEMOLOMBE, *supra* note 155, No. 347; PLANIOL & RIPERT, *supra* note 157, No. 164; JOSSERAND, *supra* note 65, No. 237; see also Petit & Favier, *supra* note 157, Nos. 33–36 (discussing the various opinions expressed by French scholars concerning the doctrinal foundation of this jurisprudential theory). Particularly when a person has misled others to believe that she is domiciled in a place, that person is estopped from invoking her actual domicile on the basis of the civilian maxim *non venire contra factum proprium* (no one is allowed to go against the consequences of one’s own act). For further discussion of this maxim, see SAÛL LITVINOFF, OBLIGATIONS § 88, in 6 LOUISIANA CIVIL LAW TREATISE 135 n.32 (1969).

195. Variations of this theory appear in Italy. See, e.g., Codice civile [C.c.] [Civil Code] art. 44 (It.) (“A change of residence cannot be asserted against third persons in good faith, unless it has been declared in the manner prescribed by law. When a person has his domicile and residence in the same place and transfers the residence elsewhere, with respect to third persons in good faith the domicile is also deemed to have been transferred, unless a different statement has been made in the declaration of transfer of the residence.”). Analogous provisions are found in Québec. Civil Code of Québec, S.Q. 1991, c 64, art. 78 (Can.) (“A person whose domicile cannot be determined with certainty is deemed to be domiciled at the place of his residence. A person who has no residence is deemed to be domiciled at the place where he lives or, if that is unknown, at the place of his last known domicile.”). Similar variations of this theory appeared in earlier Swiss and Greek legal doctrines. See ANDREAS BUCHER, PERSONNES PHYSIQUES ET PROTECTION DE LA PERSONNALITÉ No. 338 (5th

this theory, but contemporary French jurisprudence seems to have moved away from it.¹⁹⁶

Domicile by operation of law—also referred to as necessary domicile¹⁹⁷—is a domicile assigned to a person by law, usually because that individual is incapable of establishing voluntary domicile.¹⁹⁸ Such is the case of persons lacking capacity to make juridical acts. Thus, the common-law categories of domicile of origin and domicile of dependency are the pertinent comparison here.¹⁹⁹ However, this category is broader, as it encompasses

ed. 2009); Fragistas, *supra* note 153, No. 15. In Louisiana, comparable results can be achieved through application of the provisions on simulation to cases of fraudulent declaration of an in-existent domicile. See LA. CIV. CODE ANN. arts. 2025–2028 (2018). For other cases, see LA. CIV. CODE art. 38 ¶2 (1870) (“The principal establishment is that in which he makes his habitual residence; if he resides alternatively in several places, and nearly as much in one as in another, and has not declared his intention in the manner hereafter prescribed, any one of the said places where he resides may be considered as his principal establishment, at the option of the persons whose interests are thereby affected.”). The 2008 revision maintained a version of this rule. See LA. CIV. CODE ANN. art. 39 (rev. 2008) (“In the absence of habitual residence, any place of residence may be considered one’s domicile at the option of persons whose interests are affected.”); LA. CIV. CODE ANN. art. 39 cmt. (a) (rev. 2008) (“This Article is new. It is based on Article 38, second paragraph of the Louisiana Civil Code of 1870 and provisions of modern civil codes. Cf. Quebec Civil Code Art. 77 and 78; Greek Civil Code Art. 51; cf. Italian Civil Code Art. 44.”).

196. Modern French courts do not resort as often to theories of apparent or ostensible domicile. Following a more flexible approach, courts have determined that a person holding herself out as domiciled in a particular place is *actually* rather than ostensibly domiciled there. See Petit & Favier, *supra* note 157, No. 35. Furthermore, recent amendments to the French Code of Civil Procedure establishing special venues for several types of disputes have attenuated the need to resort to a theory of apparent domicile. See CARBONNIER, *supra* note 155, at 470. Nevertheless, modern French theory and jurisprudence agree that a fraudulent change of domicile, made with the purpose to evade the law or to impair rights of third parties, is without effect. CARBONNIER, *supra* note 155, at 470; see also Cour de cassation [Cass.] [supreme court for judicial matters] 1e civ., Mar. 19, 1991 D. 1991, 568, note Velardochio (Fr.); Cour de cassation [Cass.] [supreme court for judicial matters] 1e civ., June 30, 1992, D. 1993, 421, note Guiho; Cour d’appel [CA] [regional court of appeal] Paris, Oct. 6, 2000, D. 2001, 2080, obs. Lepage.

197. *Domicilium necessarium*. See BALIS, *supra* note 173, § 14; WINDSCHEID, *supra* note 9, § 36; RATTIGAN, *supra* note 49, at 24.

198. MARTY & RAYNAUD, *supra* note 155, No. 745.

199. See WEILL & TERRÉ, *supra* note 155, No. 71. The domicile of an unemancipated minor is that of the parent or legal guardian with whom the minor usually resides; the domicile of an interdict is that of the curator; and the domicile of persons under tutorship is that of the tutor. LA. CIV. CODE ANN. arts. 41–43 (2018); CODE CIVIL [C. CIV.] [CIVIL CODE] art. 108-2 (Fr.); Civil Code of Québec, S.Q. 1991, c 64, arts. 80, 81 (Can.); ASTIKOS KODIKAS [A.K.] [CIVIL CODE] art. 56 (Greece); Codice civile [C.c.] [Civil Code] art. 45 (It.); BÜRGERLICHES GESETZBUCH [BGB] [CIVIL CODE], §§ 8, 11 (Ger.); SCHWEIZERISCHES ZIVILGESETZBUCH [ZGB], CODE CIVIL [CC],

other cases in which a domicile is designated by law. For instance, several civilian systems acknowledge the existence of special domiciles designated to certain categories of persons, such as merchants²⁰⁰ and public servants.²⁰¹

Civil law systems also generally acknowledge the two fundamental principles of necessity²⁰² and unity²⁰³ of domicile.²⁰⁴ Every person is necessarily assigned a domicile, either

CODICE CIVILE [CC] [CIVIL CODE] Dec. 10, 1907, SR 210, RS 210, art. 25 (Switz.).

200. *See, e.g.*, ASTIKOS KODIKAS [A.K.] [CIVIL CODE] art. 51 (Greece) (“Insofar as transactions are concerned which arise from the exercise of a profession, the place where a person exercises his profession shall be considered as special domicile.”); Codice civile [C.c.] [Civil Code] art. 47 (It.) (“One may elect a special domicile for certain acts or business transactions. This election shall be made expressly in writing.”); *cf.* PLANIOL & RIPERT, *supra* note 157, No. 168 (arguing in favor of the designation of a special “commercial domicile” in French law); Petit & Favier, *supra* note 157, Nos. 27–28 (explaining that in modern French law, the concept of “special domicile” is limited to certain professions, such as attorneys and physicians).

201. *See, e.g.*, CODE CIVIL [C. CIV.] [CIVIL CODE] art. 107 (Fr.) (“The acceptance of civil service appointed for life involves immediate transfer of the domicile of the functionary to the place where he is to exercise his functions.”); ASTIKOS KODIKAS [A.K.] [CIVIL CODE] art. 51 (Greece) (“Those appointed for their lifetime in a public service shall have their domicile in the place where they serve.”); BÜRGERLICHES GESETZBUCH [BGB] [CIVIL CODE], § 9 (Ger.) (“(1) A soldier has his domicile where he is stationed . . . (2) These provisions do not apply to soldiers who are in military service through conscription, or who may not themselves establish an independent domicile.”); *cf.* LA. CIV. CODE art. 40.1 (1984, repealed 2008) (having inserted a special rule of domicile of military personnel stationed abroad for the purpose of status jurisdiction); Civil Code of Québec, S.Q. 1991, c 64, art. 79 (Can.) (“A person called to a temporary or revocable public office retains his domicile, unless he manifests a contrary intention.”); CODE CIVIL [C. CIV.] [CIVIL CODE] art. 106 (Fr.) (identical provision to Québec Civil Code article 79); LA. CIV. CODE ANN. art. 46 (2018) (“A person holding a temporary position away from his domicile retains his domicile unless he demonstrates a contrary intent.”); SCHWEIZERISCHES ZIVILGESETZBUCH [ZGB], CODE CIVIL [CC], CODICE CIVILE [CC] [CIVIL CODE] Dec. 10, 1907, SR 210, RS 210, art. 26 (Switz.) (“The mere fact that any person is resident in a place for educational purposes or has been sent to live in a school or college, home, hospital, asylum, reformatory or similar institution does not constitute his domicile there.”).

202. *Nécessité du domicile.* *See* PLANIOL & RIPERT, *supra* note 157, No. 139 bis; MARTY & RAYNAUD, *supra* note 155, No. 753.

203. *Unité du domicile.* *See* PLANIOL & RIPERT, *supra* note 157, No. 141; CARBONNIER, *supra* note 155, at 459; MARTY & RAYNAUD, *supra* note 155, No. 756.

204. The German Civil Code, admitting the possibility of two domiciles, seems to reject these principles. *See* RABEL, *supra* note 10, at 153. German doctrine, however, accepts a variation of these principles. *See* Jochem Schmitt, BGB § 7, Nos. 36–37, in 1 MÜNCHENER KOMMENTAR ZUM BÜRGERLICHEN GESETZBUCH (Kurt Rebmann et al. eds., 4th ed. 2001) (explaining that the existence of several domiciles is the exception to the rule of one domicile).

voluntarily or by operation of law.²⁰⁵ Although a person may have several residences,²⁰⁶ every person has one domicile,²⁰⁷ which is the principal or habitual residence.²⁰⁸ Modern civilian doctrine, however, appears more critical toward the strict application of these principles, thereby admitting the possibility of separate domiciles for separate purposes.²⁰⁹ This more malleable approach to domicile appears in the German

205. This includes persons without a dwelling or who do not wish to choose a particular place as their principal establishment. MAZEAUD ET AL., *supra* note 65, No. 573.

206. Residence is clearly distinguished from domicile. Domicile is a principal residence, accompanied by the element of intent and designated by law. This fixed character of domicile (*la fixité du domicile*) differentiates domicile from residence. MARTY & RAYNAUD, *supra* note 155, No. 755. Residence usually contains an element of intent, although such intent could also be ephemeral. Residence, however, retains its legal significance as a substitute to domicile when the actual domicile of a person is unknown. *See* MAZEAUD ET AL., *supra* note 65, No. 577; *cf.* LA. CIV. CODE ANN. art. 39 (2018) (“In the absence of habitual residence, any place of residence may be considered one’s domicile at the option of persons whose interests are affected.”). Residence is also an important factor in other areas of the law. *See* CARBONNIER, *supra* note 155, at 464–65. The term “home” in civil law usually refers to a dwelling, a physical address of a residence. Petit & Favier, *supra* note 157, No. 8. This term appears in several public law statutes, particularly with respect to the constitutionally protected human right of privacy. *See* European Convention on Human Rights art. 8 para. 1 (“Everyone has the right to respect for his private and family life, his home and his correspondence.”); *Gillow v. United Kingdom*, 109 Eur. Ct. H.R. (ser. A) at 14 (1989) (holding that the right to respect for one’s home is an aspect of the right to personal privacy guaranteed by Article 8 of the Convention); *Chapell v. United Kingdom*, 152 Eur. Ct. H.R. (ser. A) at 4 (1990); *Société Colas Est et al. v. France*, 2002 Eur. Ct. H.R. 418 (extending the protection of Article 8 of the Convention to juridical persons and professional premises); Marius Emberland, *Protection Against Unwarranted Searches and Seizures of Corporate Premises Under Article 8 of the European Convention on Human Rights: The Colas Est SA v. France Approach*, 25 MICH. J. INT’L L. 77 (2003). *See also* Case C-94/00, *Roquette Frères SA v. Directeur général de la concurrence, de la consommation et de la répression des fraudes*, 2002 E.C.R. I-9011 (extending the protection of commercial premises to E.U. law).

207. *See, e.g.*, LA. CIV. CODE ANN. art. 39 (2018) (“A natural person may reside in several places but may not have more than one domicile.”).

208. The term “principal establishment” in the French Civil Code expresses this principle of unity of domicile. CODE CIVIL [C. CIV.] [CIVIL CODE] art. 102 (Fr.) (“The domicile of any Frenchman, as to the exercise of his civil rights, is at the place where he has his *principal establishment*.”) (emphasis added); MAZEAUD ET AL., *supra* note 65, No. 573; *cf.* LA. CIV. CODE art. 38 (1870) (“The domicile of each citizen is in the parish wherein he has his principal establishment. The principal establishment is that in which he makes his habitual residence.”).

209. *See* DEMOLOMBE, *supra* note 155, No. 347; Petit & Favier, *supra* note 157, No. 20; MAZEAUD ET AL., *supra* note 65, No. 569; WEILL & TERRÉ, *supra* note 155, No. 77; GRAMMATICAKI-ALEXIOU, *supra* note 2, at 72–73.

codification.²¹⁰

The civil law rules on domicile are the default rules. These rules are also mandatory rules of law.²¹¹ Special legislation in civilian jurisdictions prescribes specific types of domicile for particular purposes. For instance, special provisions exist for purposes of jurisdiction and venue,²¹² itinerant persons,²¹³ election law,²¹⁴ and tax law.²¹⁵

210. See BÜRGERLICHES GESETZBUCH [BGB] [CIVIL CODE], § 7, para. 2 (Ger.) (“Domicile may exist simultaneously in several places.”); KUHN, *supra* note 88, at 73.

211. See Petit & Favier, *supra* note 157, No. 2 (stating that the provisions on domicile are rules of public order). Persons cannot derogate from these rules by juridical act. See LA. CIV. CODE ANN. art. 7 (2018). In most civilian systems, domicile is determined by the law of the forum. See DELAUME, *supra* note 65, at 76–77 (French law); DROBNIG, *supra* note 150, at 77 (German law); GRAMMATICAKI-ALEXIOU, *supra* note 2, at 170–76; see also Regulation 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [Brussels I bis], O.J. (L 351) 1–32 (EU), art. 62 para. 1 (“In order to determine whether a party [who is a natural person] is domiciled in the Member State whose courts are seised of a matter, the court shall apply its internal law.”); PETER STONE, EU PRIVATE INTERNATIONAL LAW 69–72 (2d ed. 2010) (discussing the identical rule in the preceding E.U. Regulation “Brussels I”); North, *supra* note 2, at 31–33 (discussing the older Brussels Convention of 1968 on jurisdiction). Nevertheless, the question of determining domicile is factual and is determined by the courts. See PLANIOL, *supra* note 162, No. 569.

212. Venue is usually determined by the domicile of the defendant, pursuant to the Roman rule *actio sequitur forum rei*. See CARBONNIER, *supra* note 155, at 457; SAVIGNY, *supra* note 3, § 355, at 112–14; see also THALIA KRUGER, CIVIL JURISDICTION RULES OF THE EU AND THEIR IMPACT ON THIRD STATES 64–65 (“For the purposes of [E.U. Regulation] Brussels I [on jurisdiction], ‘domicile’ is given the European civil law meaning.”); Regulation 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [Brussels I bis], O.J. (L 351) 1–32 (EU), art. 4 (establishing general jurisdiction in favor of the courts of the defendant’s domicile).

213. *Domicile d’attache*. See CARBONNIER, *supra* note 155, at 463; MARTY & RAYNAUD, *supra* note 155, No. 756.

214. *Domicile electoral, de fonctions, politique*. See MARTY & RAYNAUD, *supra* note 155, No. 756; CARBONNIER, *supra* note 155, at 463; Petit & Favier, *supra* note 157, No. 31 (explaining that electoral domicile is not in principle distinct from civil domicile).

215. *Domicile fiscal*. See MARTY & RAYNAUD, *supra* note 155, No. 756; Petit & Favier, *supra* note 157, No. 32. In most European countries, a person is considered a “tax-resident” for income tax purposes when she resides in a country for more than six months per year. Double tax treaties primarily address issues of dual residents. See European Commission, *Income Taxes Abroad*, EUROPA (May 2, 2018, 10:30AM), https://europa.eu/youreurope/citizens/work/taxes/income-taxes-abroad/index_en.htm. Cf. INTERNAL REVENUE SERVICE, *Tax Treaties* (May 2, 2018, 10:30AM), <https://www.irs.gov/individuals/international-taxpayers/tax-treaties>.

V. HABITUAL RESIDENCE AS A MODERN CONNECTING FACTOR

By the 1990s, the conditions favoring the prevalence of national citizenship²¹⁶ as a connecting factor had faded in Europe.²¹⁷ Advanced integration within the European Union, increased flows of migration, and modern trends of globalization created the need for an updated and flexible personal connecting factor.²¹⁸ In other words, the pendulum had swung back to the need for an external domicile.²¹⁹ As discussed above, internal

216. In the nineteenth century, nationality played an important role not only for the cultivation of a “national conscience” and “state identity,” but also for reasons of migration policy. As people were on the move across continents and oceans in search for a better life, some countries, such as the United States, became countries of influx of population, whereas other countries, such as Germany, France, and Greece, were countries of outflow of population. Choosing nationality as a connecting factor became an important policy decision for the latter countries of outflow for maintaining ties with fleeing immigrants. Thus, a Greek immigrant to the United States would not sever her legal ties with Greece, because Greek courts would continue to apply Greek law with respect to issues of personal status, family, and succession law. See RABEL, *supra* note 10, at 161–67; MARIDAKIS, *supra* note 9, at 264. The application of the national law was considered to be part of that immigrant’s heritage. That heritage would also be passed on to that person’s posterity. Hence, the system of *jus sanguinis* prevailed as to the acquisition of nationality in Continental Europe. See MARIDAKIS, *supra* note 9, at 251 n.30; PETROS VALLINDAS, DIKAION ITHAGENEIAS [LAW OF NATIONALITY] 50 (1943) (Greece).

217. See Cavers, *supra* note 9, at 476–77 (discussing the reasons for the decline of nationality as a connecting factor); RABEL, *supra* note 10, at 161–72; Andreas Bucher, *Staatsangehörigkeits- und Wohnungsprinzip: Eine rechtsvergleichende Übersicht*, in 28 SCHWEIZERISCHES JAHRBUCH FÜR INTERNATIONALS RECHT: ANNUAIRE SUISSE DE DROIT INTERNATIONAL 76, 131 (1972) (discussing the policy considerations favoring domicile or national citizenship as a connecting factor).

218. See Jürgen Basedow, *Das Internationale Privatrecht in den Zeiten der Globalisierung*, in FESTSCHRIFT FÜR HANS STOLL 405–16 (Gerhard Hohlock et al. eds., 2001).

219. See De Winter, *supra* note 47, at 400–18; VRELLIS, *supra* note 146, at 86–87; Peter Kindler, *Vom Staatsangehörigkeits- zum Domizilprinzip: das künftige internationale Erbrecht der Europäischen Union*, in 30 PRAXIS DES INTERNATIONALEN PRIVAT- UND VERFAHRENSRECHTS [IPRAX] 44 (2010) (discussing the switch to domicile in cases of succession law). By the end of the twentieth century, choice-of-law rules based on the nationality principle had become antiquated and created practical problems in the courts of countries such as Greece and Italy that had suddenly become countries of a massive influx of immigrants. Insistence upon the nationality principle meant that an Italian or a Greek judge had to take notice of and apply varying national laws to personal status. See ZOE PAPASIOPI-PASIA & VASILEIOS KOURTIS, DIKAIΟ KATASTASEOS ALLODAPON [LAW OF STATUS OF IMMIGRANTS] 5–16 (3d ed. 2007) (Greece) (discussing concepts and principles of legal treatment of foreign citizens in Greek and E.U. law).

domicile in civilian systems meant habitual residence.²²⁰ The Europeans externalized habitual residence, elevating this concept to a connecting factor for the designation of the applicable law.²²¹

Habitual residence as a connecting factor has gained popularity in international conventions²²² and has dominated the modern choice-of-law rules of the European Union,²²³ while also finding some support in Latin America.²²⁴ In the international setting, this connecting factor gained particular favor because of

220. See *supra* notes 155, 161 and accompanying text.

221. See CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 146 (“To a civil lawyer [domicile] means habitual residence, but at common law it is regarded as the equivalent of a person’s permanent home.”); DIETMAR BAETGE, DER GEWÖHNLICHE AUFENTHALT IM INTERNATIONALEN PRIVATRECHT 74–85 (1994) (discussing the modern concept of habitual residence as a connecting factor in European choice-of-law systems); see also KRUGER, *supra* note 212, at 64 (“In the civil law European countries, ‘domicile’ and ‘residence’ are in principle the same. They generally mean the place where a person has his or her main residence and (in some countries) is enrolled on public registers. In English and Irish law, ‘domicile’ has a different meaning, encompassing both a mental and a physical element.”).

222. See CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 172, 175–84; De Winter, *supra* note 47, at 348; HAY, BORCHERS & SYMEONIDES, *supra* note 2, § 4.14; WEINTRAUB, *supra* note 2, § 2.17. For a detailed history of this connecting factor, see GRAMMATICAKI-ALEXIOU, *supra* note 2, at 207–23; De Winter, *supra* note 47, at 423–29, 437–54.

223. See, e.g., Regulation 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations [Rome I] O.J. (L 177) 6–16 (EC); Regulation 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations [Rome II] O.J. (L 199) 40–49 (EC); Council Regulation 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation [Rome III] O.J. (L 343) 10–16 (EU); Regulation 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession [Brussels/Rome IV] O.J. (L 201) 107–134 (EU); Council Regulation 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations O.J. (L 7) 1–79 (EC) (spousal and child support). Habitual residence also appears in the law of the United Kingdom, through international conventions and applicable E.U. law. See Peter McEleavy, *La residence habituelle, un critère de rattachement en quête de son identité: Perspectives de common law*, in TRAVAUX DU COMITÉ FRANÇAIS DE DROIT INTERNATIONAL PRIVÉ 128 (2008–2010).

224. See Organization of American States, Inter-American Convention on Domicile of Natural Persons in Private International Law art. 2, May 8, 1979, O.A.S.T.S. No. 55, 1436 U.N.T.S. 41 (“The domicile of a natural person shall be determined by the following circumstances in the order indicated: 1. The location of his habitual residence; 2. The location of his principal place of business; 3. In the absence of the foregoing, the place of mere residence; 4. In the absence of mere residence, the place where the person is located.”).

the enactment of the Hague Convention of 1980 on the Civil Aspects of International Child Abduction.²²⁵ According to article 3(a) of this Convention:

The removal or the retention of a child is to be considered wrongful where (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law²²⁶ of the State in which *the child was habitually resident* immediately before the removal or retention.²²⁷

Although habitual residence appears frequently in European and international laws, what is noticeably missing in these laws is a *definition* of this term. Some scholars argue that a definition has been resisted so that courts will have flexibility in making determinations on a case-by-case basis.²²⁸ Descriptions of this concept, rather than definitions, appear in European Union law materials.²²⁹ Therefore, the courts determine the meaning of

225. Convention on the Civil Aspects of International Child Abduction (Hague Convention), Oct. 25, 1980, T.I.A.S. No. 11670, S. TREATY DOC. No. 99–11. Congress implemented this convention through the International Child Abduction Remedies Act (ICARA). 22 U.S.C. §§ 9001–9011 (Supp. 2016).

226. The term “law” refers to the whole law of the country of the child’s habitual residence, by application of the doctrine of *renvoi*. See Elisa Pérez-Vera, *Explanatory Report on the 1980 Hague Child Abduction Convention*, in 3 ACTS AND DOCUMENTS OF THE FOURTEENTH SESSION 426, 445 (Hague Conference of Private International Law ed., 1980). Cf. LA. CIV. CODE ANN. art. 3517 cmts. (a)–(c) (2018) (defining the concept of *renvoi* and explaining its application in the Louisiana conflicts codification).

227. Convention on the Civil Aspects of International Child Abduction (Hague Convention), Oct. 25, 1980, T.I.A.S. No. 11670, S. TREATY DOC. No. 99–11, art. 3(a) (emphasis added); see also PAUL R. BEAUMONT & PETER E. MCELEAVY, THE HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION 88 (1999) (discussing the concept of habitual residence in the context of the Hague Convention); JEREMY D. MORLEY, THE HAGUE ABDUCTION CONVENTION 84–86 (2d ed. 2016) (discussing the varying approaches followed by U.S. federal appellate courts in determining habitual residence—parental intention approach; child-centered approach; mixed approach). The Hague Conference on Private International Law makes frequent use of this connecting factor in its conventions, dating back to The Hague Convention of 1896 on Civil Procedure. See De Winter, *supra* note 47, at 423; Cavers, *supra* note 9, at 477–79.

228. See MASMEJAN, *supra* note 14, at 89–90; Cavers, *supra* note 9, at 484–87; HAY, BORCHERS & SYMEONIDES, *supra* note 2, § 4.14, at 300; De Winter, *supra* note 47, at 429–31.

229. The Council of Europe has provided the following non-binding definition (or description) of habitual residence:

7. The residence of a person is determined solely by factual criteria; it does not depend upon the legal entitlement to reside. 8. A person has a residence in a country governed by a particular system of law or in a place within such a

habitual residence.²³⁰

Scholars and courts seem to agree that the place of habitual residence is the “center of a person’s life.”²³¹ Thus, every person

country if he dwells there for a certain period of time. That stay need not necessarily be continuous. 9. In determining whether a residence is habitual, account is to be taken of the duration and the continuity of the residence as well as of other facts of a personal or professional nature which point to durable ties between a person and his residence. 10. The voluntary establishment of a residence and a person’s intention to maintain it are not conditions of the existence of a residence or a habitual residence, but a person’s intentions may be taken into account in determining whether he possesses a residence or the character of that residence. 11. A person’s residence or habitual residence does not depend upon that of another person.

STANDARDISATION OF THE LEGAL CONCEPTS OF “DOMICILE” AND OF “RESIDENCE”: RESOLUTION (72) 1 AND ANNEX ADOPTED BY THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE ON 18 JANUARY 1972 AND EXPLANATORY MEMORANDUM (Council of Europe ed., 1972). An express (though incomplete) definition is attempted in Regulation 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations [Rome I] O.J. (L 177) 6–16 (EC), art. 19 (“1. For the purposes of this Regulation, the habitual residence of companies and other bodies, corporate or unincorporated, shall be the place of central administration. The habitual residence of a natural person acting in the course of his business activity shall be his principal place of business. 2. Where the contract is concluded in the course of the operations of a branch, agency or any other establishment, or if, under the contract, performance is the responsibility of such a branch, agency or establishment, the place where the branch, agency or any other establishment is located shall be treated as the place of habitual residence. 3. For the purposes of determining the habitual residence, the relevant point in time shall be the time of the conclusion of the contract.”). An analogous definition appears in Regulation 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations [Rome II] O.J. (L 199) 40–49 (EC) art. 23.

230. See BEAUMONT & MCELEAVY, *supra* note 227, at 112 (reviewing comparative jurisprudence on the definition of habitual residence in the context of the Hague Child Abduction Convention). United States courts have interpreted the concept of habitual residence in the context of applying The Hague Child Abduction Convention. See *Friedrich v. Friedrich*, 983 F.2d 1396, 1401 (6th Cir. 1993); see generally, e.g., *Abbott v. Abbott*, 560 U.S. 1 (2010); *Chafin v. Chafin*, 568 U.S. 165 (2013); *Mozes v. Mozes*, 239 F.3d 1067 (9th Cir. 2001); *Feder v. Evans-Feder*, 63 F.3d 217 (3d Cir. 1995). Although such interpretations may seem useful for domestic purposes, interpretations of terms appearing in international treaties do not always conform with a domestic understanding of the same term. See RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 2.02 n.2(b) (AM. LAW. INST., Preliminary Draft No. 2, 2016).

231. See De Winter, *supra* note 47, at 431–34 (interpreting habitual residence to mean a person’s “social domicile”). Cf. RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 2.04(1) (AM. LAW. INST., Preliminary Draft No. 2, 2016) (“The habitual residence of a natural person serves as the center of that person’s life. A finding that a natural person has a habitual residence in a place rests on a person’s domestic, social, economic, professional, familial, and civic activities. A habitual residence finding does not require proof of intent to make the place the center of the person’s life.”).

can have only one operative habitual residence.²³² Determination of this place is made with reference primarily to objective factors, such as the duration of residence and the past and present domestic, social, economic, familial, professional, and civic activities of a person.²³³ Nevertheless, a subtle element of intent can also be traced, particularly when examining the nature of the activities of a person.²³⁴ On the basis of these factors, habitual residence may be formed through the passage of time and may be lost instantaneously when the individual abandons a place and moves elsewhere.²³⁵ Flexibility in the determination of this connecting factor also opens the door to legal uncertainty in more complex cases.²³⁶

232. See MASMEJAN, *supra* note 14, at 99–100 (discussing the application of the principles of unity and necessity to habitual residence); see also HAY, BORCHERS & SYMEONIDES, *supra* note 2, § 4.14, at 300; RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 2.04(d) (AM. LAW. INST., Preliminary Draft No. 2, 2016) (“For the purpose of a particular conflict-of-laws determination, no person has more than one habitual residence at one time.”).

233. See De Winter, *supra* note 47, at 430; CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 176.

234. See TIMM REIDINGER, HABITUAL RESIDENCE IN CONFLICT OF LAWS 16–17 (1968) (noting that, according to German conflicts theory, habitual residence is primarily an objective term but it also contains a subjective element); De Winter, *supra* note 47, at 430; HAY, BORCHERS & SYMEONIDES, *supra* note 2, § 4.14, at 300 (“[Habitual residence] connotes actual residence plus some continuity and persistence even though it does not connote the intended performance or emphasis on expressed intent often associated with domicile.”).

235. CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 178–80; HAY, BORCHERS & SYMEONIDES, *supra* note 2, § 4.14, at 301 (“[Habitual residence is determined] with perhaps less emphasis on the intention to remain and without the instantaneous change that can sometime characterize domicile in the strict sense.”). In rare cases, this disparity between immediate loss and lengthy acquisition of habitual residence may result in lack of a person’s habitual residence. Analogous application of the continuation-of-domicile rule to habitual residence would be an effective solution to this potential problem. See RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 2.04 cmt. c (AM. LAW. INST., Preliminary Draft No. 2, 2016).

236. The redactors of the recent E.U. Successions Regulation admitted that, in some instances, the designation of the habitual residence can be a complex endeavor. Regulation 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession [Brussels/Rome IV] O.J. (L 201) 107–134 (EU) recital 24 of the preamble (“In certain cases, determining the deceased’s habitual residence may prove complex. Such a case may arise, in particular, where the deceased for professional or economic reasons had gone to live abroad to work there, sometimes for a long time, but had maintained a close and stable connection with his State of origin. In such a case, the deceased could, depending on the circumstances of the case, be considered still to have his habitual residence in his State of origin in which the centre of interests of his family and his

It is obvious that habitual residence is closely related to domicile. It should also be clear, however, that habitual residence and domicile are not one and the same. Habitual residence was designed as a less persistent and more flexible connecting factor than domicile.²³⁷ Habitual residence focuses primarily on objective factors, whereas domicile relies heavily on intent.²³⁸ Proof of habitual residence is more fact-intensive,

social life was located. Other complex cases may arise where the deceased lived in several States alternately or travelled from one State to another without settling permanently in any of them. If the deceased was a national of one of those States or had all his main assets in one of those States, his nationality or the location of those assets could be a special factor in the overall assessment of all the factual circumstances.”); *see also* Felix Odersky, *Article 4*, in EU REGULATION ON SUCCESSION AND WILLS: COMMENTARY 68–69 (Ulf Bergquist et al. eds., 2015); Anatol Dutta, Verordnung (EU) Nr. 650/2012 des Europäischen Parlaments und des Rates vom 4. Juli 2012 über die Zuständigkeit, das anzuwendende Recht, die Anerkennung und Vollstreckung von Entscheidungen und die Annahme und Vollstreckung öffentlicher Urkunden in Erbsachen sowie zur Einführung eines Europäischen Nachlasszeugnisses [EuErbVO], in 10 MÜNCHENER KOMMENTAR ZUM BÜRGERLICHEN GESETZBUCH 1466–78 (Franz Jürgen Säcker et al. eds., 6th ed. 2015); Andrea Bonomi, *Article 4*, in LE DROIT EUROPÉEN DES SUCCESSIONS 191–98 (Andrea Bonomi & Patrick Wautelet eds., 2d ed. 2016); Alfonso-Luis Calvo Caravaca, *General Jurisdiction*, in THE EU SUCCESSION REGULATION: A COMMENTARY 129–33 (Alfonso-Luis Calvo Caravaca et al. eds., 2016); Bonomi, *supra* note 149, at 180–85; Haris P. Pamboukis, *Article 4*, in EU SUCCESSION REGULATION NO 650/2012: A COMMENTARY 110–20 (Haris P. Pamboukis ed., 2017); Haris P. Pamboukis, *Article 21*, in EU SUCCESSION REGULATION NO 650/2012: A COMMENTARY, *supra*, at 204–09.

237. *See* HAY, BORCHERS & SYMEONIDES, *supra* note 2, § 4.14, at 302 (“[H]abitual residence is quite a bit like domicile, with perhaps a bit more common sense stirred into the mix.”).

238. On the basis of this distinction, several scholars argue that habitual residence is a matter of fact, whereas domicile is determined with reference to forum law. *See, e.g.*, MASMEJAN, *supra* note 14, at 90–92; Cavers, *supra* note 9, at 487–88; Pérez-Vera, *supra* note 226, at 445 (“The notion of habitual residence, a well-established concept in the Hague Conference, . . . [is] a question of pure fact, differing in that respect from domicile.”). *Contra* BEAUMONT & MCELEAVY, *supra* note 227, at 93 (arguing that determination of habitual residence must be made with reference to the law of the forum and is subject to unrestricted appellate review); GRAMMATICAKI-ALEXIOU, *supra* note 2, at 155–56 (explaining that civilian scholars have mischaracterized habitual residence as a pure matter of fact, in their effort to disassociate this concept from the concept of internal domicile). Determination of habitual residence of a child under the Hague Child Abduction Convention involves legal issues, particular when the child is a newborn. *See, e.g.*, *Delvoye v. Lee*, 329 F.3d 330, 332–34 (3d Cir. 2003) (finding that the habitual residence of a neonate is determined primarily with reference to its parents’ common intent, if such exists); Stephen E. Schwartz, *The Myth of Habitual Residence: Why American Courts Should Adopt the Delvoye Standard for habitual Residence Under the Hague Convention on the Civil Aspects of International Child Abduction*, 10 CARDOZO WOMEN’S L.J. 691, 715–17 (2004) (proposing a uniform standard for habitual residence); Carshae DeAnn

focusing primarily on the past and present activities of a person.²³⁹ Proof of domicile, on the other hand, is a two-fold process, focusing equally on activities and intent.²⁴⁰ Although domicile and habitual residence often coincide, technically it is still possible for habitual residence and domicile—particularly domicile of origin—to be located in different places.²⁴¹

As habitual residence is on the rise in Europe, on this side of the Atlantic, variations of domicile that are more suited to modern transient lifestyles have appeared in at least two states.²⁴² The term habitual residence is found in several places in the Louisiana²⁴³ and Oregon²⁴⁴ codifications of the conflict of

Davis, *The Gitter Standard: Creating a Uniform Definition of Habitual Residence Under the Hague Convention on the Civil Aspects of International Child Abduction*, 7 CHI. J. INT'L L. 321, 329–32 (2006) (critiquing the courts' tendency to rely too heavily on parental intent when determining a child's habitual residence); Aude Fiorini, *Habitual Residence and the Newborn—A French Perspective*, 61 INT'L & COMP. L.Q. 530 (2012) (discussing the legal characterization of habitual residence of infants by French courts applying the Hague Child Abduction Convention). Therefore, habitual residence is a “mixed question of fact and law.” *Whiting v. Krassner*, 391 F.3d 540, 546 (3d Cir. 2004) (applying the Hague Child Abduction Convention); see also CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 180–81 (discussing “[t]he role of intentions when determining a factual concept”).

239. See RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 2.04 cmt. b (AM. LAW. INST., Preliminary Draft No. 2, 2016).

240. See *id.*

241. HAY, BORCHERS & SYMEONIDES, *supra* note 2, § 4.14, at 300–01.

242. See RESTATEMENT (THIRD) OF CONFLICT OF LAWS, Reporter's Memorandum, at xxv–xxvi (AM. LAW. INST., Preliminary Draft No. 2, 2016) (“[C]ase law throughout the United States often supported re-validating the black letter of the Restatement Second. That said, changes in modern lifestyles have challenged the ‘domicile’ concept, which dominated the Restatement Second. Modern examples of when uncertainty emerges include issues related to higher education students, the aging U.S. population, itinerant and international lifestyles, undocumented migrants, and the generally fast-paced nature of life in the 21st century. All these changes have strained the concept of domicile for analyzing conflict-of-laws issues.”). For a modern and critical approach to domicile, see generally ERIN A. O'HARA & LARRY E. RIBSTEIN, *THE LAW MARKET* 68 (2009) (attempting an economic analysis of personal jurisdiction and choice-of-law); DORA KOSTAKOPOULOU, *THE FUTURE GOVERNANCE OF CITIZENSHIP* 112–26 (2008) (presenting alternative meanings of domicile based on a premise of “a national citizenship”); AYELET SCACHAR, *THE BIRTHRIGHT LOTTERY: CITIZENSHIP AND GLOBAL INEQUALITY* 174–75 (2009) (discussing a *jus nexi* test for citizens residing abroad).

243. See LA. CIV. CODE ANN. art. 3537 (2018) (listing habitual residence as one of the connecting factors for determining the law applicable to conventional obligations); LA. CIV. CODE ANN. art. 3542 (2018) (listing habitual residence as one of the connecting factors for determining the law applicable to delictual and quasi-delictual obligations).

244. See OR. REV. STAT. § 15.360 (2018) (including habitual residence as one of

laws. Furthermore, the Oregon codification follows a more functional approach to domicile.²⁴⁵ Habitual residence also appears in the latest draft of the Third Restatement of the Conflict of Laws.²⁴⁶

VI. LOUISIANA LAW OF DOMICILE

A. EXTERNAL DOMICILE

In Louisiana, domicile is the premier connecting factor for determining what law applies to determine questions of personal status.²⁴⁷ By constitutional mandate, the concept of “state citizenship,” which refers to domicile, applies in Louisiana.²⁴⁸ Furthermore, much of the public law of Louisiana, which includes the use of the term “residence” for public law purposes, is

the connecting factors for designating the applicable law to contractual claims); OR. REV. STAT. § 15.445 (2018) (including habitual residence as one of the connecting factors for designating the applicable law to non-contractual claims); *see also* Symeon C. Symeonides, *Oregon’s Choice-of-Law Codification for Contract Conflicts: An Exegesis*, 44 WILLAMETTE L. REV. 205 (2007); Symeon C. Symeonides, *Oregon’s New Choice-of-Law Codification for Tort Conflicts: An Exegesis*, 88 OR. L. REV. 963 (2009); Symeon C. Symeonides, *Codifying Choice of Law for Tort Conflicts: The Oregon Experience in Comparative Perspective*, in 12 Y.B. PRIV. INT’L L. 201 (2010).

245. *See* OR. REV. STAT. § 15.420(1)(c) (2018) (“If a person’s intent to have a domicile in a given state would be legally effective but cannot be ascertained, the state in which the person resides is the person’s domicile, and if the person resides in more than one state, the residence state that has the most pertinent connection to the disputed issue is deemed to be the domicile with regard to that issue.”).

246. In the first preliminary draft, habitual residence appeared as the premier connecting factor. RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 2.01 (AM. LAW INST., Preliminary Draft No. 1, 2015). In the second draft, however, domicile retook first place as a person’s “central geographic link,” but habitual residence remained as a fallback connecting factor. RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 2.02(3) (AM. LAW INST., Preliminary Draft No. 2, 2016) (“When a natural person’s domicile cannot be ascertained, the natural person’s habitual residence generally provides the person’s central geographic link for the purpose of resolving conflict-of-laws matters.”); *see also* HAY, BORCHERS & SYMEONIDES, *supra* note 2, § 4.16, at 304 (“It is, however, doubtful that it is possible or feasible to attempt to abandon the concept of domicile [in American systems of choice-of-law].”).

247. *See* Symeon C. Symeonides, *The Conflicts Book of the Louisiana Civil Code: Civilian, American, or Original?*, 83 TUL. L. REV. 1041, 1073 (2009) (“[N]ationality has been universally rejected in the United States as a connecting factor in international conflicts. Louisiana is no exception.”).

248. *See* *Salvatierra v. Calderon*, 2001-1888, p. 6 (La. App. 1 Cir. 10/2/02); 836 So. 2d 149, 153 (“Under Louisiana law, a person becomes a citizen of this state when he becomes a resident of this state.”) (internal quotation marks and citation omitted); *Sturm v. Hutchinson*, 37 So. 2d 45, 48 (La. Ct. App. 1 Cir. 1948) (“[State] [c]itizenship may be acquired by residence, with the intention of remaining.”); *see also* HAY, BORCHERS & SYMEONIDES, *supra* note 2, § 4.2, at 286–87.

necessarily modeled after American common law.²⁴⁹ Thus, Louisiana follows the American model of domicile, as discussed above.²⁵⁰

The prevalence of domicile is apparent in the Louisiana codification of the conflict of laws,²⁵¹ particularly in matters of status,²⁵² marital property,²⁵³ and successions.²⁵⁴ Domicile is also one of the connecting factors to be considered for the designation of the applicable law to conventional²⁵⁵ and delictual²⁵⁶

249. See A.N. YIANNOPOULOS, *supra* note 1, at 63–64 (discussing the legal history of Louisiana from the Louisiana Purchase until attainment of statehood).

250. See *supra* notes 109–42 and accompanying text.

251. See LA. CIV. CODE ANN. arts. 3515–3549 (2018) (containing the Louisiana choice-of-law rules); see also Symeon C. Symeonides, *The Conflicts Book of the Louisiana Civil Code: Civilian, American, or Original?*, 83 TUL. L. REV. 1041, 1073 (2009) (“[N]ationality has been universally rejected in the United States as a connecting factor in international conflicts. Louisiana is no exception.”).

252. Domicile is referred to by name with respect to validity of marriage. LA. CIV. CODE ANN. art. 3520(A) (2018) (“A marriage that is valid in the state where contracted, or in the state where the parties were first domiciled, . . . shall be treated as a valid marriage unless to do so would violate a strong public policy of the state whose law is applicable to the particular issue under Article 3519.”). The connecting factor of domicile permeates the choice-of-law rules on status as it is the premier factor connoting a “relationship of [a] state . . . to a person whose status is at issue.” LA. CIV. CODE ANN. art. 3519 (2018).

253. See LA. CIV. CODE ANN. arts. 2329, 2334 (2018); LA. CIV. CODE ANN. art. 3523 (2018) (applying the law of the domicile of the acquiring spouse at the time of acquisition of movable marital property); LA. CIV. CODE ANN. arts. 3525–3527 (2018) (using domicile as one of the factors to determine the law applicable to immovable marital property); see also Dian Tooley-Knoblett, *A Step by Step Guide to Louisiana’s Choice of Law Provisions on Marital Property*, 52 LOY. L. REV. 759 (2006).

254. See LA. CIV. CODE ANN. art. 3532 (2018) (applying the law of the decedent’s domicile at the time of death to testate and intestate succession to movables); LA. CIV. CODE ANN. arts. 3528–3351 (2018) (using domicile as one of the connecting factors to determine formal validity of testamentary dispositions, testator’s capacity and vices of consent, and interpretation of testaments, respectively); LA. CIV. CODE ANN. art. 3530 (2018) (using domicile as one of the connecting factors to determine capacity of an heir or legatee); LA. CIV. CODE ANN. arts. 3533–3534 (2018) (using domicile as one of the connecting factors to determine the applicable law to forced heirship in successions to immovable); see also Symeon C. Symeonides, *Exploring the “Dismal Swamp”: Revising Louisiana’s Conflicts Law on Successions*, 47 LA. L. REV. 1029 (1987).

255. See LA. CIV. CODE ANN. arts. 3537–3539 (2018) (using domicile as one of the connecting factors for determining the applicable law to conventional obligations in general, formal validity of contracts, and contractual capacity, respectively); see also Symeon C. Symeonides, *Louisiana Conflicts Law: Two “Surprises,”* 54 LA. L. REV. 497, 522–28 (1994) (providing an overview of the new Louisiana choice-of-law rules for conventional obligations). For an overview of the Louisiana jurisprudence on the old choice-of-law rules concerning contracts, see Dana Patrick Karam, Note, *Conflict of Laws—Contracts*, 47 LA. L. REV. 1181 (1987); F. Michael Atkins, Comment,

obligations.

The redactors of the Louisiana conflicts codification, however, were also cognizant of the stringent nature of domicile and the harsh effects this connecting factor can sometimes produce.²⁵⁷ Two devices are employed in the Louisiana rules to mitigate such effects. First, “escape clauses” allow the judge, in exceptional circumstances, to ignore a specific conflicts rule and instead apply general conflicts principles if the application of the special rule would clearly produce unfair results.²⁵⁸ Thus, the application of the law of the parties’ common domicile to a tort, under the specific rule of article 3544 of the Louisiana Civil Code, can be disregarded by operation of the escape clause in article 3547 of the Louisiana Civil Code, which provides:

The law applicable under Articles 3543–3546 shall not apply if, from the totality of the circumstances of an exceptional case, it is clearly evident under the principles of Article 3542, that the policies of another state would be more seriously impaired if its law were not applied to the particular issue. In such event, the law of the other state shall apply.²⁵⁹

Article 3542 of the Louisiana Civil Code lists several connecting factors that can be taken into account for the designation of the general applicable law to delictual obligations.

Conflict of Laws: Contracts and Other Obligations, 35 LA. L. REV. 112 (1974).

256. See LA. CIV. CODE ANN. arts. 3542–3543, 3545–3546 (2018) (using domicile as one of the connecting factors for designating the governing law to delictual obligations in general, issues of conduct regulation, products liability, and punitive damages, respectively); LA. CIV. CODE ANN. art. 3544 cmt. (d) (2018) (applying the common domicile of the parties to delictual issues of loss distribution and financial protection and noting that, “[d]omicile has been chosen as the primary connecting factor for the purposes of this Article because domicile connotes a permanent, factual, consensual, and formal bond between a person and a given society”); LA. CIV. CODE ANN. art. 3548 (2018) (defining domicile of juridical persons for the purposes of their liability for delictual obligations); see also Symeon C. Symeonides, *Louisiana’s New Law of Choice of Law for Tort Conflicts: An Exegesis*, 66 TUL. L. REV. 677 (1992); Mathias W. Reimann, *Codifying Torts Conflicts: The 1999 German Legislation in Comparative Perspective*, 60 LA. L. REV. 1297 (2000).

257. See Symeonides, *supra* note 247, at 1073.

258. See Symeonides, *supra* note 247, at 1061–64. For the meaning and purpose of “escape clauses” in conflicts methodology, see generally Symeon C. Symeonides, *Exception Clauses in American Conflicts Law*, 42 AM. J. COMP. L. SUPP. 813 (1994).

259. LA. CIV. CODE ANN. art. 3547 (2018); see also Russell J. Weintraub, *The Contributions of Symeonides and Kozyris to Making Choice of Law Predictable and Just: An Appreciation and Critique*, 38 AM. J. COMP. L. 511, 517–18 (1990) (providing a critique of the escape clause in Louisiana Civil Code article 3547).

Among those factors are domicile and habitual residence.²⁶⁰ Therefore, on the exceptional occasion that domicile will produce unfair results for the determination of the applicable law to a delictual obligation, the judge may instead turn to habitual residence as a possible solution.²⁶¹ A similar mechanism also exists for conventional obligations.²⁶²

Second, domicile is determined according to the law of the forum.²⁶³ Therefore, a Louisiana judge will determine a party's domicile in accordance with Louisiana law—more particularly,

260. LA. CIV. CODE ANN. art. 3542 (2018) (“Except as otherwise provided in this Title, an issue of delictual or quasi-delictual obligations is governed by the law of the state whose policies would be most seriously impaired if its law were not applied to that issue. That state is determined by evaluating the strength and pertinence of the relevant policies of the involved states in the light of: (1) the pertinent contacts of each state to the parties and the events giving rise to the dispute, including the place of conduct and injury, *the domicile, habitual residence, or place of business of the parties*, and the state in which the relationship, if any, between the parties was centered; and (2) the policies referred to in Article 3515, as well as the policies of deterring wrongful conduct and of repairing the consequences of injurious acts.”) (emphasis added). It is noteworthy that these connecting factors are listed without any reference to time. This provides additional flexibility to the judge to assess whether the domicile or habitual residence at the time of the injury, litigation, or another event is more pertinent to the particular case at hand. *See* Symeonides, *supra* note 247, at 1076–77.

261. *See* LA. CIV. CODE ANN. art. 3544 cmt. (d) (2018) (“When the domiciliary bond is attenuated for whatever reason, both the person's expectations and the society's concerns may also be diminished accordingly. Thus, when a person is only nominally domiciled in one state, but habitually resides in another or has another substantial factual connection with another state that is pertinent to the particular issue, the interest of the latter state in protecting him may be stronger than that of the former state. Depending on the other factors in the case, such a case may be a good candidate for invoking the ‘escape clause’ of Article 3547 . . .”).

262. The special provisions of Louisiana Civil Code articles 3538 (formal validity), 3539 (capacity), and 3540 (party autonomy), apply to the extent that such application will not seriously impair the policies of the state whose law would be applied under the general law of article 3537. LA. CIV. CODE ANN. art. 3537 (2018) (“Except as otherwise provided in this Title, an issue of conventional obligations is governed by the law of the state whose policies would be most seriously impaired if its law were not applied to that issue. That state is determined by evaluating the strength and pertinence of the relevant policies of the involved states in the light of: (1) the pertinent contacts of each state to the parties and the transaction, including the place of negotiation, formation, and performance of the contract, the location of the object of the contract, and the *place of domicile, habitual residence, or business of the parties*; (2) the nature, type, and purpose of the contract; and (3) the policies referred to in Article 3515, as well as the policies of facilitating the orderly planning of transactions, of promoting multistate commercial intercourse, and of protecting one party from undue imposition by the other.”) (emphasis added).

263. LA CIV. CODE ANN. art. 3518 (2018).

articles 38 through 46 of the Louisiana Civil Code.²⁶⁴ In so doing, the judge will be applying familiar law, being aware of any particularities, but also availing herself of the flexibility that underlies the Louisiana concept of internal domicile.²⁶⁵

A likely candidate for consideration of the abovementioned principles is *Lonzo v. Lonzo*.²⁶⁶ The Lonzo family rented a U-Haul truck and started their one-way drive from their old home in Virginia to their new home in Louisiana.²⁶⁷ While en route, they were involved in a single-car accident in North Carolina caused by the negligence of Mr. Lonzo.²⁶⁸ Several months later, after the family had relocated to Louisiana, the wife and children brought suit against Mr. Lonzo and his insurer for injuries they sustained from the accident.²⁶⁹ Under Louisiana law, the plaintiffs would not recover due to Mr. Lonzo's interspousal and intrafamily immunity from suit,²⁷⁰ and also because the Louisiana direct action statute was inapplicable.²⁷¹ Recovery was possible, however, under Virginia or North Carolina law because these states did not have intrafamily immunity statutes.²⁷² For resolution of this conflicts problem, the court turned to article 3544(1) of the Louisiana Civil Code, which provides for application of the law of the parties' common domicile *at the time of the accident*.²⁷³ Noting that the trial court had not made a determination of the parties' domicile, the court remanded the case for such determination.²⁷⁴

264. LA CIV. CODE ANN. art. 3518 cmt. (b) (2018) ("This Article provides that the place where a person, natural or juridical, is domiciled is to be determined according to Louisiana law (see, e.g., La. Civ. Code arts. 38–46 (1870)), even in cases where that person is ultimately found to be domiciled in another state.").

265. See Symeonides, *supra* note 247, at 1073–74 ("[A]rticles 38–39 of the Civil Code . . . define domicile as equivalent to 'habitual residence' and provide that, in the absence of habitual residence, any place of residence may be considered one's domicile 'at the option of the persons whose interests are thereby affected.' Despite its oldness, this is a sound principle that can help address problems caused by the potential artificiality of the domicile concept in some cases.") (footnotes omitted).

266. See *Lonzo v. Lonzo*, 2017-0549 (La. App. 4 Cir. 11/15/17); 231 So. 3d 957.

267. See *id.* at pp. 1–2; 231 So. 3d at 960.

268. See *id.* at p. 1; 231 So. 3d at 960.

269. See *id.* at pp. 1–2; 231 So. 3d at 960.

270. See LA. STAT. ANN. §§ 9:291, 9:571(B)–(C) (2018).

271. See *Lonzo*, 2017-0549, pp. 3–4; 231 So. 3d at 960–61.

272. See *id.* at pp. 9–10; 231 So. 3d at 964.

273. See *id.* at p. 17; 231 So. 3d at 969.

274. See *id.* at p. 19; 231 So. 3d at 970.

Unless the trier of fact discovers additional operative facts on remand, this case constitutes a textbook example of the rigidity of the law of domicile.²⁷⁵ The Lonzos were clearly domiciled in Virginia before they started their trip. When they departed Virginia with the intent to relocate to Louisiana, they obviously intended to relinquish their Virginia domicile. They would establish their Louisiana domicile, however, only after they entered the state. They would also obtain their habitual residence in Louisiana once they were well-settled there. Until that time, while they were en route, they retained their Virginia domicile, at least technically, in accordance with applicable provisions.²⁷⁶ Whether this “technical domicile” is appropriate or ill-suited for addressing this particular conflicts situation will depend on the outcome of an inquiry based on Louisiana’s comparative impairment theory.²⁷⁷

The starting point, as the court in *Lonzo* correctly pointed out,²⁷⁸ is the application of the law of the parties’ common domicile.²⁷⁹ If the common domicile is found to be in Virginia, that law should apply unless the facts indicate that this is an exceptional case in which the policies of one of the other two

275. For more examples see RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 2.02 cmt. g (AM. LAW. INST., Preliminary Draft No. 2, 2016) (“The continuation-of-domicile rule might give way to another analytical option under certain circumstances when a natural person has physically abandoned one domicile and has not obtained a new one. Rather than rely on the rule in these circumstances, courts evaluating conflict-of-laws questions may properly choose to minimize the role of the person’s central geographic link in the person’s deliberations. This reflects the view that weak or ambiguous evidence about the geographic link does not merit controlling influence in conflict-of-laws determinations. Circumstances arise, however, when identification of a central geographic link is a key component of solving a legal problem or guaranteeing a natural person the protection of laws from at least one jurisdiction. In those instances, a court may choose to invoke the continuation-of-domicile rule, concluding that proof of change of domicile is insufficient.”).

276. See LA. CIV. CODE ANN. art. 44 (2018) (“Domicile is maintained until acquisition of a new domicile.”); cf. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 19 (AM. LAW INST. 1971) (“A domicil once established continues until it is superseded by a new domicil.”). The court in *Lonzo* also cited a relevant illustration in the Second Conflicts Restatement. See *Lonzo v. Lonzo*, 2017-0549, p. 19 n.20 (La. App. 4 Cir. 11/15/17); 231 So. 3d 957, 970 n.20 (citing RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 19, illus. 4 (AM. LAW INST. 1971) (“A, having a domicil in state X, decides to make his home in state Y. He leaves X and is on his way to Y but has not yet reached Y. His domicil is in X.”)).

277. See LA. CIV. CODE ANN. art. 3515 cmts. (b)–(c) (2018) (explaining the objective and process of the Louisiana conflicts methodology).

278. *Lonzo*, 2017-0549, p.17; 231 So. 3d at 968–69.

279. LA. CIV. CODE ANN. art. 3544(1) (2018).

states involved—Louisiana and North Carolina—would be more seriously impaired. If so, the law of that other state ought to apply. If not, Virginia law shall apply.²⁸⁰ One commentator has suggested that the determination of the common domicile, upon remand, “might not be the end of the inquiry.”²⁸¹ Be that as it may, this case illustrates the inherent flexibility in the Louisiana conflicts codification. The court is given “escape mechanisms” to apply the proper law and achieve a just result.²⁸²

B. INTERNAL DOMICILE

While domicile is a determinative factor in Louisiana conflicts law, definition and determination of this factor is left to internal law—more particularly, to the concept of domicile in the Louisiana Civil Code.²⁸³ Domicile first appeared in the Digest of 1808.²⁸⁴ The relevant provisions in the Digest closely resemble those found in the Code Napoléon.²⁸⁵ Following the civil law

280. LA. CIV. CODE ANN. art. 3547 (2018).

281. See Symeon C. Symeonides, *Choice of Law in American Courts in 2017: Thirty-First Annual Survey*, 66 AM. J. COMP. L. 1, 24–25 (2018) (citing *Lonzo v. Lonzo*, 231 So. 3d 957, 969 n.19) (“[I]n a signal that this determination [of the common domicile of the Lonzos] might not be the end of the inquiry, the court quoted statements from the codification’s drafter explaining the role of a post-accident change of domicile in potentially changing the otherwise applicable law.”). Nevertheless, a contrary indication can be inferred by other parts of the opinion in *Lonzo*. See *Lonzo*, 2017-0549, p. 17 n.19; 231 So. 3d at 969 n.19 (“The ‘escape hatch’ provision set forth in La. C.C. art. 3547, provides that ‘[t]he law applicable under Articles 3543–3546 shall not apply if, from the totality of the circumstances of an exceptional case, it is clearly evident under the principles of Article 3542, that the policies of another state would be more seriously impaired if its law were not applied to the particular issue.’ A party urging ‘exceptional circumstances’ under La. C.C. art. 3547 has the burden of proving such circumstances. La. Civ. Code art. 3547, cmt. Moreover, the comments to that article caution that ‘[t]his mechanism should be reserved for the truly exceptional cases.’ La. Civ. Code art. 3547, cmt. *There is no indication that this is an exceptional case.*”) (emphasis added).

282. Admittedly, the facts in *Lonzo* are less controversial because the common domicile (purportedly Virginia) provides for a higher standard of financial protection for the victims. It would be otherwise, however, if the applicable law would provide for a lesser standard of protection. See LA. CIV. CODE ANN. art. 3544 cmt. (e) (2018).

283. LA. CIV. CODE ANN. art. 3518 (2018). Domicile is also a very useful concept in the Louisiana law of civil procedure. See FRANK L. MARAIST, CIVIL PROCEDURE § 2.3, in LOUISIANA CIVIL LAW TREATISE 15 (2d ed. 2008) (stating that the Louisiana Civil Code concept of domicile is useful for purposes of Louisiana civil procedure).

284. LA. CIV. CODE p. 12, arts. 1–8 (1808).

285. CODE CIVIL [C. CIV.] [CIVIL CODE] arts. 102–111 (1804) (Fr.). The Louisiana provisions are also based on Roman and, arguably, Spanish sources. See A REPRINT OF MOREAU-LISLET’S COPY OF A DIGEST OF THE CIVIL LAWS NOW IN FORCE IN THE TERRITORY OF ORLEANS 12 (Marcelle Menard de la Vergne et al. eds., 1968, reprint).

model, the Louisiana provisions do not contain a definition of domicile, but rather a description of the location of a person's domicile.²⁸⁶

1. DESCRIPTION AND DEFINITION

“The domicil of each citizen²⁸⁷ is in the parish wherein is situated his principal establishment.”²⁸⁸ This description first appeared in the Digest of 1808.²⁸⁹ The same description was retained in the 1825 Civil Code, but a second paragraph, more detailed and explanatory, was added.²⁹⁰ This second paragraph equated principal establishment to “habitual residence” and provided for the protection of third parties from cases of uncertain designation of domicile. Although the sources for the revision are unknown,²⁹¹ this revised rule noticeably resembles

1971) (1808) (presenting Moreau-Lislet's notes that cite Roman and Spanish sources for domicile). *But see* Rodolfo Batiza, *The Louisiana Civil Code of 1808: Its Actual Sources and Present Relevance*, 46 TUL. L. REV. 4, 21 (1971) (arguing that the Louisiana provisions on domicile derived from French sources).

286. *Cf.* GÉRARD TRUDEL, *TRAITÉ DE DROIT CIVIL DU QUÉBEC* 231 (1942).

287. The term “citizen” here refers to state citizenship, not national citizenship. *Salvatierra v. Calderon*, 2001-188, p. 6 (La. App. 1 Cir. 10/2/02); 836 So. 2d 149, 153. State citizenship should not be confused with national citizenship. *State v. Fowler*, 6 So. 602 (1889). Québec follows a similar approach. *See* WALTER S. JOHNSON, *CONFLICT OF LAWS* 59–61 (2d ed. 1962) (explaining that Québec follows the Anglo-American model of domicile as a connecting factor). This is a significant point of divergence from the European civil codes on domicile.

288. LA. CIV. CODE p. 12, art. 1 (1808).

289. LA. CIV. CODE p. 12, art. 1 (1808). *Cf.* CODE CIVIL [C. CIV.] [CIVIL CODE] art. 102 (1804) (Fr.) (“The domicile of any Frenchman, as to the exercise of his civil rights, is at the place where he has his principal establishment.”).

290. LA. CIV. CODE art. 42 (1825) (“The domicil of each citizen is in the parish wherein his principal establishment is selected. *The principal establishment is that in which he makes his habitual residence; if he resides alternatively in several places and nearly as much in one as in another, and has not declared his intention in the manner hereafter prescribed, any one of the said places where he resides may be considered as his principal establishment, at the option of the persons whose interests are thereby affected.*”) (emphasis added).

291. The redactors offered the following explanation for this revision:

Questions of domicil have every where given rise to a good deal of difficulty. When a man has several establishments at each of which he sometimes resides, it appears difficult to assign him a domicil. The explanation which we propose to add to the first article of this title, will remedy, as much as possible, this inconvenience.

1 LOUISIANA LEGAL ARCHIVES: PROJET OF THE CIVIL CODE OF LOUISIANA OF 1825, at 5 (1937) (1823). The redactors also explain that these provisions were enacted to “remedy an abuse” which had been noticed “in favor of those, who would prefer to have no domicile at all, in order to avoid being sued or for other purposes.” *Id.* Courts applied this provision, especially for establishing venue against a defendant. *See*

the French theory of *domicile apparent*.²⁹² This revised rule was maintained in the 1870 Civil Code²⁹³ and it forms the basis for the modern rules found in articles 38²⁹⁴ and 39²⁹⁵ of the Louisiana Civil Code.

Current article 38 of the Louisiana Civil Code describes the domicile of a natural person as “the place of his habitual residence.”²⁹⁶ Two changes in the law are noted here. First, the term “parish” was correctly suppressed, thus making the concept of domicile applicable both internally and externally—in-state

generally Evans v. Payne, 30 La. Ann. 498 (1878); Taylor v. Bach, 17 La. Ann. 61 (1865); Brewer v. Cook, 11 La. Ann. 637 (1856); Judson v. Lathrop, 1 La. Ann. 78 (1846); Mosely v. Dabezies, 76 So. 705 (La. 1917); Commercial Bank of Natchez v. King, 3 Rob. 243 (La. 1842). *But see* LA. CODE CIV. PROC. ANN. art. 71 (2018) (“An action against an individual who has changed his domicile from one parish to another may be brought in either parish for a period of one year from the date of the change, unless he has filed a declaration of intention to change his domicile, in the manner provided by law.”); Wogan v. Folse, 100 So. 540 (1924) (noting a similar provision of article 162 of the Louisiana Code of Practice); Bloom v. Mundy, 150 So. 680 (La. Ct. App. 1933).

292. *See supra* notes 191–96 and accompanying text; *see also* Symeonides, *supra* note 247, at 1074 (“Despite its oldness, this is a sound principle that can help address problems caused by the potential artificiality of the domicile concept in some cases.”) (footnotes omitted); COOK, *supra* note 83, at 204–06 (citing with approval the provisions of articles 38 and 42 of the Louisiana Civil Code of 1870).

293. LA. CIV. CODE art. 38 (1870).

294. LA. CIV. CODE ANN. art. 38 cmt. (2018) (“This Article is new. It is based on Civil Code Article 38 (1870).”).

295. LA. CIV. CODE ANN. art. 39 cmt. (a) (2018) (“This Article is new. It is based on Article 38, second paragraph, of the Louisiana Civil Code of 1870 and provisions of modern civil codes. *Cf.* Quebec Civil Code Art. 77 and 78; Greek Civil Code Art. 51; *cf.* Italian Civil Code Art. 44.”). Current article 39 of the Louisiana Civil Code differentiates domicile from residence and carries forward the rule protecting third parties from cases of undetermined domicile. LA. CIV. CODE ANN. art. 39 (rev. 2008) (“A natural person may reside in several places but may not have more than one domicile. In the absence of habitual residence, any place of residence may be considered one’s domicile at the option of persons whose interests are affected.”).

296. LA. CIV. CODE ANN. art. 38 (rev. 2008) (“The domicile of a natural person is the place of his habitual residence.”). A second sentence, providing for the domicile of juridical persons, was added in 2012. Act No. 713 § 2, 2012 La. Acts 2948. *See* LA. CIV. CODE ANN. art. 38 (rev. 2012) (“The domicile of a natural person is the place of his habitual residence. *The domicile of a juridical person may be either the state of its formation or the state of its principal place of business, whichever is more pertinent to the particular issue, unless otherwise specifically provided by law.*”) (emphasis added). The need to designate an artificial domicile to juridical persons was also noted in the early civil law. *See* SAVIGNY, *supra* note 3, § 354, at 108. Modern choice-of-law approaches select either the place of incorporation or the principal place of business as the controlling connecting factor. *See* CHESHIRE, NORTH & FAWCETT, *supra* note 13, at 1306–07; RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11 cmt. 1 (AM. LAW INST. 1971).

and out-of-state.²⁹⁷ Second, the term “principal establishment” was replaced with “habitual residence.”²⁹⁸ This second point requires further commentary.

The text of revised article 38 may give the reader the false impression that “habitual residence” is the same term as the connecting factor of “habitual residence” employed in the conflicts provisions of the Louisiana Civil Code.²⁹⁹ This resemblance, however, is merely acoustic. Care must be taken not to confuse these two terms. “Habitual residence,” as used in article 38, connotes domicile, thus entailing the two elements of *corpus* and *animus* which are determined according to the law of the forum.³⁰⁰ “Habitual residence,” as a connecting factor, consists mostly of *corpus*; it is primarily factual in nature and it is a factor separate from domicile.³⁰¹

As noted, the revised articles of the Louisiana Civil Code do not furnish a definition of domicile. This task is left to jurisprudence and doctrine. Domicile can be defined doctrinally

297. LA. CIV. CODE ANN. art. 38 cmt. (2018).

298. The initial draft prepared by the Domicile Committee and presented to the Council of the Louisiana State Law Institute maintained the “principal establishment” precept and suppressed the term “habitual residence.” See Louisiana State Law Institute Domicile Committee, *Report prepared for the meeting of the Council on March 17, 2007*, Art. 1 cmt. c, p. 3 (A.N. Yiannopoulos, Reporter, 2007) (on file with author). Upon instructions from the Council, the term “habitual residence” was preferred. In a subsequent report of the Domicile Committee, Professor A.N. Yiannopoulos noted:

Article 38, first paragraph, of the Louisiana Civil Code of 1870 defined domicile as the place of one’s “principal establishment.” However, in the second paragraph of the same article “principal establishment” was defined as one’s “habitual residence.” Recommended Draft Article 1, in accordance with Council instructions, avoids duplicate definitions. *Indeed, in legal as well as common usage, domicile is generally understood in Louisiana as one’s habitual residence.*

Louisiana State Law Institute Domicile Committee, *Report prepared for the meeting of the Council on November 17, 2007*, Art. 1, Reporter’s note, p. 3 (A.N. Yiannopoulos, Reporter, 2007) (emphasis added) (on file with author); see also *Cole v. Lucas*, 2 La. Ann. 946 (1847) (“[T]he domicile of each citizen is in the parish in which he has his principal establishment, and which is that in which he makes his habitual residence . . .”).

299. See, e.g., LA. CIV. CODE ANN. arts. 3537, 3542 (2018) (using habitual residence as one of the connecting factors for designating the applicable law to conventional and delictual obligations, respectively).

300. LA. CIV. CODE ANN. art. 3518 (2018).

301. Domicile and habitual residence are listed as separate connecting factors in the conflicts provisions of the Louisiana Civil Code. See, e.g., LA. CIV. CODE ANN. arts. 3537, 3542 (2018) (listing domicile and habitual residence as two of the several factors taken into account for determining the general applicable law to conventional and delictual obligations, respectively).

as a legal relationship between a person and a place that can be established in two ways: (a) by operation of law—juridical fact;³⁰² or (b) voluntarily through residence (*corpus*) at a place with the requisite intent (*animus*) to remain there indefinitely—juridical act.³⁰³

The Louisiana jurisprudence is closer to the American model of domicile, which is perfectly consistent with the above definition.³⁰⁴ Louisiana courts have defined domicile as the legal relation between a person and a place and as the legal conception of “home.” It is the place where a person has a true, fixed, and permanent home or principal establishment, and to which, when absent, such person has the intention of returning.³⁰⁵

302. See LEHMANN, *supra* note 173.

303. This definition is consistent with the civil law approach to domicile. *Cf.* TRUDEL, *supra* note 286, at 231–34. For further discussion of the terms “juridical act” and “juridical fact,” see CODE CIVIL [C. CIV.] [CIVIL CODE] art. 1100-1 (2017) (Fr.) (defining *actes juridiques* as “manifestations of will that are intended to produce legal effects”) and CODE CIVIL [C. CIV.] [CIVIL CODE] art. 1100-2 (2017) (Fr.) (defining *faits juridiques* as “conduct or events to which the law attaches legal consequences”). See also 1 RENÉ DEMOGUE, TRAITÉ DES OBLIGATIONS EN GÉNÉRAL No. 11 (1923); 2 GABRIEL BAUDRY-LACANTINERIE & JULIEN BONNECASSE, TRAITÉ THÉORIQUE ET PRATIQUE DE DROIT CIVIL, SUPPLEMENT No. 248 (1925); 1 JACQUES FLOUR, JEAN-LUC AUBERT & ERIC SAVAUX, DROIT CIVIL, LES OBLIGATIONS, L’ACTE JURIDIQUE No. 60 (16th ed. 2014); 2 JEAN CARBONNIER, DROIT CIVIL, LES BIENS, LES OBLIGATIONS 1930–31 (22d ed. reprinted 2017) (2000). A more detailed and technical theory of juridical acts prevails in Germany and Greece. See LUDWIG ENNECCERUS & HANS CARL NIPPERDEY, ALLGEMEINER TEIL DES BÜRGERLICHEN RECHTS § 145 (15th ed. 1960); Jochem Schmitt §§ 104–115 & Christian Armbrüster §§ 116–124, in 1 MÜNCHENER KOMMENTAR ZUM BÜRGERLICHEN GESETZBUCH (Franz Jürgen Säcker et al. eds., 7th ed. 2015); BALIS, *supra* note 173, §§ 32–34; Marianos Karasis, Eisagogi sta Arthra 127–200 [Introduction to Articles 127–200], in 1B ASTIKOS KODIX, KAT’ ARTHRO ERMINEIA, GENIKES ARCHES [CIVIL CODE COMMENTARY, GENERAL PRINCIPLES] 1–28 (Apostolos Georgiades & Michael Stathopoulos eds., 2d ed. 2016) (Greece).

304. See Succession of Steers, 18 So. 503, 505 (La. 1895) (“[W]e think it more in keeping with our social conditions and political system to accept the rules of the common law, to fix the domicile of a person where he has his home and exercises his political rights. Such, in fact, is the concurrence of the decrees of the courts of this state.”).

305. Shreveport Long Leaf Lumber Co. v. Wilson, 38 F. Supp. 629, 631 (W.D. La. 1941); D’Angelo v. D’Angelo, 04-1233, pp. 3–4 (La. App. 5 Cir. 4/26/05); 901 So. 2d 607, 609. The concept of “habitual residence” refers to “home” in Louisiana law. Messer v. London, 438 So. 2d 546, 547 (La. 1983) (defining domicile as “a person’s principal domestic establishment, as contrasted to a business establishment”); see also Tanner v. King, 11 La. 175 (1837); Steers, 18 So. at 504. In contrast, the traditional civil law concept of domicile attaches almost equal importance to the place of business and of residence as fixing the place of domicile. See STORY, *supra* note 4, § 42.

The same jurisprudence also acknowledges three types of domicile, namely, *domicile of origin*, *domicile of choice*, and *domicile by operation of law*.

2. DOMICILE OF ORIGIN

Following the structure of other major civil codes, the Louisiana Civil Code does not directly provide for the acquisition of domicile at birth—domicile of origin. Instead, domicile of origin is treated as a subset of domicile by operation of law and is governed by the pertinent provisions.³⁰⁶ Thus, domicile of origin is a juridical fact, whereby the domicile of a newborn or adopted child³⁰⁷ is designated, usually with reference to the domicile of a legal parent³⁰⁸ or other legal guardian or representative.³⁰⁹ Every person is designated a domicile of origin by operation of law.³¹⁰ Thus, Louisiana law endorses the *principle of necessity of domicile*.

A child born of the marriage of the parents will take the parents' domicile, if the parents share a common domicile.³¹¹ Otherwise, the child will assume the domicile of the parent with whom the child resides.³¹² A child born out of wedlock will usually take the domicile of the mother, who by law is the child's natural tutrix, unless custody is determined differently by a court.³¹³ If there is no parent or relative to serve as legal tutor,

306. See LA. CIV. CODE ANN. arts. 41–43 (2018); TRUDEL, *supra* note 286, at 247.

307. The legal effects of a child adoption are generally the same as those of birth. The child severs legal ties with the former legal family and becomes a child of the adoptive family, thus obtaining the domicile of the adoptive parents or parent, as the case may be. See LA. CIV. CODE ANN. art. 199 (2018). One exception to this rule concerns cases of stepparent adoption. In such cases, the child does not sever legal ties with the legal parent who is married to the adoptive parent. LA. CHILD. CODE ANN. art. 1256 (2018); LA. STAT. ANN. § 9:461 (2018). Thus, the child retains the domicile of that legal parent. Adult adoption, on the other hand, does not affect the domicile of the adopted person, unless that person is placed under interdiction or continued tutorship. See LA. CIV. CODE ANN. arts. 42–43 (2018).

308. The term “legal parent” connotes a person to whom the child is filiated. See LA. CIV. CODE ANN. art. 178 (2018).

309. Cf. JOHNSON, *supra* note 287, at 94.

310. Texana Oil & Refining Co., 90 So. 522 (La. 1922); cf. JOHNSON, *supra* note 287, at 63.

311. LA. CIV. CODE ANN. art. 41 ¶1 (2018) (providing that an unemancipated minor assumes the domicile of her parents); see also LA. CIV. CODE ANN. arts. 40, 98 cmt. (f) (2018) (providing that spouses may have common or separate domicile and that there is no obligation of cohabitation of spouses under Louisiana law).

312. LA. CIV. CODE ANN. art. 41 ¶1 (2018).

313. LA. CIV. CODE ANN. arts. 41, 256 (2018); see also Succession of Stephens, 19

the court will appoint a dative tutor, whose domicile will be operative.³¹⁴

Domicile of origin will be maintained—and presumed—until a new domicile (of choice or by operation of law) is established, if it is ever established.³¹⁵ If the domicile of origin is replaced, the new domicile will persist until it is replaced.³¹⁶

3. DOMICILE OF CHOICE

A person having capacity to make juridical acts can decide to abandon a previous domicile and choose a new domicile.³¹⁷ Domicile of choice is a juridical act comprising two distinct elements:³¹⁸ residence at a place (*corpus*) and the requisite intent to habitually reside there or remain there permanently or at least indefinitely (*animus*).³¹⁹

La. Ann. 499 (1867); Nunez v. Acosta, 165 So. 716 (La. 1936); Vick v. Volz, 16 So. 568 (La. 1895); State v. Petit, 14 La. Ann. 565 (1859); Robins v. Weeks, 5 Mart. (n.s.) 379 (1827) (distinguishing between natural tutor and legal tutor with respect to domicile of a minor under tutorship).

314. LA. CIV. CODE ANN. arts. 41, 270 (2018); cf. JOHNSON, *supra* note 287, at 96.

315. See Blackwell v. Blackwell, 606 So. 2d 1355, 1358 (La. Ct. App. 2 Cir. 1992); Young v. Byrnes, 14 Teiss. 75 (La. Ct. App. 1917).

316. LaFleur v. Seaboard Fire & Marine Ins. Co., 296 So. 2d 860 (La. Ct. App. 3 Cir. 1974). The English doctrine of revival of the domicile of origin does not apply in Louisiana. See LA. CIV. CODE ANN. art. 44 (2018) (endorsing the continuation-of-domicile rule).

317. Hyman v. Schlenker, 10 So. 623 (La. 1892) (applying the same test for determination of domicile from this to another state and from one parish to another); cf. 28 C.J.S. *Domicile* § 20 (2008). A new domicile of choice will be established according to Louisiana law, either: (a) within the state—from parish to parish; (b) from another state to Louisiana; or (c) from Louisiana to another state when a Louisiana court is making the determination of domicile according to forum law. See LA. CIV. CODE ANN. art. 3518 (2018).

318. Courts oftentimes list *corpus* and *animus* as elements of domicile in general. It is more accurate and doctrinally sound, however, to designate these elements strictly to domicile of choice, because the presence of both these elements is necessary to effectuate a change in domicile. Also, it should be noted that domicile of choice is a *continuous juridical act*, because intent to reside must be continuous. If intent is interrupted, however, the domicile of choice will persist until a new domicile is established or designated by law. See LA. CIV. CODE ANN. art. 44 (2018) (“Domicile is maintained until acquisition of a new domicile. A natural person changes domicile when he moves his residence to another location with the intent to make that location his habitual residence.”).

319. See LaFleur, 296 So. 2d at 860; McClendon v. Bel, 2000-2011 (La. App. 1 Cir. 9/7/00); 797 So. 2d 700; Herpin v. Boudreaux, 98-306 (La. App. 3 Cir. 3/5/98); 709 So. 2d 269; Davis v. Glen Eagle Ship Mgmt. Corp., 97-0878 (La. App. 4 Cir. 8/27/97); 700 So. 2d 228.

The *corpus* must exist and must be real when a person acquires a domicile of choice.³²⁰ When *corpus* is accompanied by the requisite *animus*, domicile is established immediately.³²¹ Furthermore, absent any contrary provision of law, no durational requirements exist under the general law.³²² Ownership of a house or property at the place of domicile is not required.³²³ However, residence need not be continuous.³²⁴ Temporary absences normally do not result in loss of domicile, so long as the intent to retain the domicile exists.³²⁵ Conversely, a transient *presence* at a location will generally not suffice to establish domicile.³²⁶

320. Scaglione v. Juneau, 2010-1109 (La. App. 4 Cir. 8/4/10); 45 So. 3d 191; Alter v. Waddill, 20 La. Ann. 246 (1868). Intent alone will not suffice. See Waller v. Lea, 8 La. 213 (1835); Rosenberg & Sons v. Cordill, 6 Teiss. 224 (La. Ct. App. 1909); McHaney v. Cunningham, 4 F.2d 725 (W.D. La. 1925).

321. Cf. TRUDEL, *supra* note 286, at 238–39; 28 C.J.S. *Domicile* § 14 (2008) (“Apart from statutory regulation, no particular period of residence is required to establish domicile, and any residence, however short, will suffice when coupled with intent. Without intent, residence, however long continued, will not establish domicile.”).

322. See Sheets v. Sheets, 612 So. 2d 842 (La. Ct. App. 1 Cir. 1992) (holding that domicile was established even though the person had not spent the night in her new home); Succession of Dancie, 186 So. 14 (La. 1939); Gravillon v. Richard’s Ex’r, 13 La. 293 (1839); Rappeport v. Patten, 3 So. 2d 909 (La. Ct. App. 2 Cir. 1941). *Contra* Boone v. Savage, 14 La. 169 (1839); Rist v. Hagan, 8 Rob. 106 (La. 1844); State v. Judge of Court of Probates of New Orleans, 2 Rob. 449 (La. 1842) (holding that, pursuant to laws passed in 1816 and 1818, a residence requirement of one year is required for persons moving to Louisiana from another state); cf. LA. CIV. CODE ANN. art. 2329 (2018) (“During their first year after moving into and acquiring a domicile in this state, spouses may enter into a matrimonial agreement without court approval.”).

323. See Jackson v. Barron, 05-975 (La. App. 3 Cir. 2/1/06); 922 So. 2d 728 (holding that owner of mobile home established domicile where his “home” and belongings were located); Marks v. Germania Sav. Bank, 34 So. 725 (La. 1903) (finding that repeated stays at local hotels for years amounted to a manifested intent to establish domicile); Succession of Dancie, 186 So. 14 (La. 1939); Brewster v. Emlet, 122 So. 54 (La. 1929).

324. Succession of Lauricella, 571 So. 2d 885 (La. Ct. App. 1 Cir. 1990) (finding that decedent remained domiciled in first parish, although he resided for some time in second parish, but had manifested intent to retain his domicile in first parish).

325. Delacroix v. Meux, 28 La. Ann. 515 (1876); Hartley v. Hartley, 336 So. 2d 291 (La. Ct. App. 1 Cir. 1976); Gates v. Otis, 57 So. 371 (La. 1912); Tanner v. King, 11 La. 175 (1837); Tullos v. Lane, 12 So. 508 (La. 1893); Cole v. Lucas, 2 La. Ann. 946 (1847); *Gravillon*, 13 La. at 293; Young v. Byrnes, 14 Teiss. 75 (La. Ct. App. 1917); Brantley v. Smith, 6 La. App. 182 (1927). Cf. 28 C.J.S. *Domicile* § 19 (2008); JOHNSON, *supra* note 287, at 69–70.

326. Puissegur v. Puissegur, 220 So. 2d 547 (La. Ct. App. 4 Cir. 1969) (involving spouse who had moved overseas for his employment but intended to return to

While the element of *intent* is necessary to effectuate a change in domicile, it should be noted that the intent need not be directed toward changing domicile.³²⁷ Mere intent to reside somewhere indefinitely suffices.³²⁸ Thus, a person may *intend* to settle somewhere, even though that person would *prefer* to live elsewhere.³²⁹ Intent must be based on facts and not merely on a person's declaration or wishes.³³⁰ Actualities of life that necessitate taking an abode at a certain place may also suffice to substantiate intent to reside at a particular location.³³¹ Thus, usual statutory requirements of "bona fide residence" refer to the element of intent.³³² Moreover, the motive behind intent is generally irrelevant,³³³ unless there is fraudulent intent to impair

Louisiana where he also kept his home address); *Erwin v. Butler*, 5 La. 330 (1833) (involving master of a vessel who was in transit; domicile not established); *Scurria v. Griggs*, 40,327 (La. App. 2 Cir. 12/21/05); 917 So. 2d 1215 (involving spouse who moved to another parish temporarily while other spouse was stationed overseas; domicile not established); *cf.* LA. CIV. CODE ANN. art. 46 (2018) (providing that voluntary absence from the state for a period of two years results in forfeiture of domicile); *Interdiction of Dumas*, 32 La. Ann. 679 (1880); *Person v. Person*, 135 So. 225 (La. 1931); *Kinder v. Scharff*, 51 So. 654 (La. 1910). *But see* LA. STAT. ANN. § 1.54 (2018) ("Residence once acquired shall not be forfeited by absence on business of the state or of the United States. Voluntary absence from the state of two years, or the acquisition of residence elsewhere, shall forfeit a residence within this state."); *Moreau v. Moreau*, 457 So. 2d 1285 (La. Ct. App. 3 Cir. 1984).

327. As noted *supra* note 173, domicile of choice remains a juridical act, even though the person may not have directly intended to change her domicile.

328. Naturally, intent to change domicile necessarily entails concurrent intent to abandon the previous domicile. *See Caldas v. Caldas*, 224 So. 2d 831 (La. Ct. App. 4 Cir. 1969) (finding that a person manifesting intent to establish a new domicile simultaneously displays intent to abandon the old domicile); *Burgan v. Burgan*, 22 So. 2d 649 (La. 1945); *Succession of Webre*, 136 So. 67 (La. 1931); *Williams v. North Carolina*, 317 U.S. 287 (1942); 28 C.J.S. *Domicile* § 15 (2008).

329. *Successions of Rhea*, 78 So. 2d 838, 842 (La. 1955) (finding that a "floating intention" to return to a previous residence at some indefinite future date does not establish intent to retain previous domicile); *Webre*, 136 So. at 68; *Succession of Steers*, 18 So. 503, 505 (La. 1895).

330. *Davis v. Glen Eagle Ship Mgmt. Corp.*, 97-0878 (La. App. 4 Cir. 8/27/97); 700 So. 2d 228; *Laborde v. La. Ins. Guar. Ass'n*, 95-1112 (La. App. 3 Cir. 3/6/96); 670 So. 2d 614; *Sheets v. Sheets*, 612 So. 2d 842 (La. Ct. App. 1 Cir. 1992); *Stewart v. Stewart*, 2003-1270 (La. App. 4 Cir. 10/1/03); 859 So. 2d 703; *see also Herpin v. Boudreaux*, 98-306 (La. App. 3 Cir. 3/5/98); 709 So. 2d 269 (candidate for public office not found domiciled in the district where he had a secondary residence intended as a camp).

331. *See Estopinal v. Michel*, 46 So. 907 (La. 1908).

332. *McFatter v. Beauregard Par. Sch. Bd.*, 30 So. 2d 197 (La. 1947); *Caufield v. Cravens*, 70 So. 226 (La. 1915); *Schulman v. Miller & Co.* 10 Tiess. 137 (La. Ct. App. 1913); *cf.* JOHNSON, *supra* note 287, at 71.

333. For instance, a change in domicile for the purposes of qualifying for public

the rights of third parties or to evade the law.³³⁴ On the other hand, if a person is compelled to stay at a location, without having a genuine intent to settle there, usually that person will not be considered a domiciliary of that place.³³⁵ Examples include typical students,³³⁶ members of the armed services,³³⁷ seafarers,³³⁸ federal and state officeholders,³³⁹ persons displaced by accident or natural disaster,³⁴⁰ persons hospitalized away from

office requires change in actual residence coupled with intent to set up a new principal establishment or home. The motive behind this change is irrelevant. *Pattan v. Fields*, 95-1936 (La. App. 1 Cir. 9/26/95); 669 So. 2d 1233; *see also* *Brewster v. Emllet*, 122 So. 54 (La. 1929); *Frazier v. Allen*, 363 So. 2d 542 (La. Ct. App. 2 Cir. 1978); *Succession of Barnes*, 490 So. 2d 630 (La. Ct. App. 2 Cir. 1986); 28 C.J.S. *Domicile* § 17 (2008).

334. *See* *Jewell v. Dudley L. Moore Ins. Co.*, 95-2453 (La. App. 1 Cir. 6/28/96); 676 So. 2d 223; *Arkoma Ass'n v. Carden*, 572 So. 2d 292 (La. Ct. App. 4 Cir. 1990); *Yerkes v. Broom*, 10 La. Ann. 94 (1855); *Barrow v. Barrow*, 106 So. 705 (La. 1926); *Watson v. Simpson*, 13 La. Ann. 337 (1858); *Cole v. Lucas*, 2 La. Ann. 946 (1847).

335. *See* LA. CIV. CODE ANN. art. 46 (2018) (“A person holding a temporary position away from his domicile retains his domicile unless he demonstrates a contrary intent.”); *cf.* *JOHNSON*, *supra* note 287, at 77–80.

336. *See* 28 C.J.S. *Domicile* § 36 (2008) (“An adult student does not acquire a domicile at the educational institution where he or she resides, unless he or she intends to remain there indefinitely and not to resume his or her former home.”).

337. *Cf.* LA. CIV. CODE art. 44 (1870); LA. CIV. CODE art. 46 (1825); LA. CIV. CODE p. 12, art. 5 (1808); CODE CIVIL [C. CIV.] [CIVIL CODE] art. 106 (1804) (Fr.); TRUDEL, *supra* note 286, at 242–45. *See also* *Fresolone v. O’Beirne*, 146 So. 2d 41 (La. Ct. App. 4 Cir. 1962); *Walcup v. Honish*, 210 La. 843 (1946); *Spring v. Spring*, 210 La. 576 (1946); *Zinko v. Zinko*, 15 So. 2d 859 (La. 1943); Wendy P. Daknis, *Home Sweet Home: A Practical Approach to Domicile*, 177 MIL. L. REV. 49 (2003) (providing practical advice on domicile to service members); 28 C.J.S. *Domicile* § 34 (2008) (“The domicile of a member of the armed services generally remains unchanged when he or she is stationed at a particular place, but a new domicile may be acquired if fact and intent concur.”); LA. CIV. CODE ANN. art. 40.1 (1984, repealed 2008) (having inserted a special rule of domicile of military personnel stationed abroad for the purpose of status jurisdiction). *But see* LA. STAT. ANN. § 1:54 (2018) (“Residence once acquired shall not be forfeited by absence on business of the state or of the United States. Voluntary absence from the state of two years, or the acquisition of residence elsewhere, shall forfeit a residence within this state.”); *Moreau v. Moreau*, 457 So. 2d 1285 (La. Ct. App. 3 Cir. 1984).

338. *See* 28 C.J.S. *Domicile* § 38 (2008) (“A sailor’s domicile may be deemed to be the one the sailor had when he or she adopted his or her career, or the place where he or she has property or business interests and stays when not at sea, or, if married, the place where his or her family lives.”).

339. *See* LA. CIV. CODE ANN. art. 46 (2018); *Walden v. Canfield*, 2 Rob. 466 (La. 1842) (finding that a Louisiana domiciliary who took office as U.S. Senator and was then a member of the President’s Cabinet did not relinquish his Louisiana domicile while absent); *Messer v. London*, 438 So. 2d 546 (La. 1983) (holding that a state officeholder who was frequently absent from the parish on business had not lost domicile).

340. *See* *Wilson v. Shea*, 565 So. 2d 1105 (La. Ct. App. 4 Cir. 1990) (candidate for

home,³⁴¹ and incarcerated persons.³⁴²

Domicile is an issue of fact to be determined on a case-by-case basis.³⁴³ Several legal presumptions exist to assist in this determination. First, a previous domicile—either of origin or of choice—will be maintained until a new domicile is acquired.³⁴⁴ In other words, Louisiana law endorses the *continuation-of-domicile rule*.³⁴⁵ This rule creates a legal presumption in favor of the continuation of the old domicile.³⁴⁶ The party claiming change of domicile has the burden of overcoming this presumption “by positive and satisfactory proof of establishment of a domicile as a matter of fact with the intention of remaining in the new place and of abandoning the former domicile.”³⁴⁷

Second, when proving change of domicile, actual domicile

public office whose home was destroyed by fire and was displaced retained his domicile); *see also* LA. STAT. ANN. §§ 18:101(F), 18:451.3 (2018) (concerning the domicile of voters displaced from their place of residence by a gubernatorially declared state of emergency); *Ogden v. Gray*, 2012-1314 (La. App. 4 Cir. 9/11/12); 99 So. 3d 1088 (finding that candidate’s seven-year absence due to Hurricane Katrina had not resulted in loss of domicile); *Brantley v. Smith*, 6 La. App. 182 (1927); *Folger v. Slaughter*, 19 La. Ann. 323 (1867) (finding that temporary displacement from place of domicile does not result in loss thereof).

341. *Succession of Bolds*, 42,459 (La. App. 2 Cir. 12/5/07); 972 So. 2d 1174 (involving decedent who did not lose his domicile even though his health required him to stay in multiple nursing homes in other parishes).

342. *See* 28 C.J.S. *Domicile* § 33 (2008) (“A person’s domicile is generally not changed by involuntary confinement in a prison.”); *id.* at § 32 (“According to some authorities, inmates of institutions other than prisons can show that they have become domiciled within institutional confines even though they have been compelled to become institutionalized.”); *id.* at § 39 (“A fugitive from justice may acquire a new domicile, even though his or her purpose is to avoid arrest. An absconding debtor may acquire a new domicile if he or she intends to remain in the new location.”).

343. *See, e.g.*, *Pattan v. Fields*, 95-1936, p. 8 (La. App. 1 Cir. 9/26/95); 669 So. 2d 1233, 1238; *Jackson v. Barron*, 05-975 (La. App. 3 Cir. 2/1/06); 922 So. 2d 728; *Darnell v. Alcorn*, 99-2405 (La. App. 4 Cir. 9/24/99); 757 So. 2d 716; *Davis v. Glen Eagle Ship Mgmt. Corp.*, 97-0878 (La. App. 4 Cir. 8/27/97); 700 So. 2d 228; *Burke v. Ma. Bonding & Ins. Co.*, 19 So. 2d 647 (La. Ct. App. 1 Cir. 1944).

344. LA. CIV. CODE ANN. art. 44 (2018); *cf.* LA. CIV. CODE art. 41 (1870); LA. CIV. CODE art. 43 (1825); LA. CIV. CODE p. 12, art. 2 (1808); CODE CIVIL [C. CIV.] [CIVIL CODE] art. 103 (1804) (Fr.).

345. *See* RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 2.02 cmt. g (AM. LAW. INST., Preliminary Draft No. 2, 2016); 28 C.J.S. *Domicile* § 41 (2008).

346. Stated differently, there is a presumption against the change of domicile. *See Steinhardt v. Batt*, 2000-0328 (La. App. 4 Cir. 2/11/00); 753 So. 2d 928.

347. *Russell v. Goldsby*, 2000-2595, pp. 4–5 (La. 9/22/00); 780 So. 2d 1048, 1051; *see also* *Blackwell v. Blackwell*, 606 So. 2d 1355, 1358 (La. Ct. App. 2 Cir. 1992); *Muse v. Rogers*, 95-1565 (La. App. 3 Cir. 4/3/96); 672 So. 2d 1059.

trumps declared domicile.³⁴⁸ Proof of intent to change domicile depends on the circumstances; a sworn declaration of intent may constitute such proof.³⁴⁹ Such circumstances that would display an establishment of domicile include where a person sleeps, takes her meals, has established a household, surrounds herself with friends and family,³⁵⁰ exercises her right to vote,³⁵¹ and generally

348. Actual residence and intent will displace any contrary declaration. Thus, even if a person formally declared a domicile, if it is established that she actually resided elsewhere having the requisite intent to remain there, the actual domicile will prevail. Succession of McElwee, 276 So. 2d 391 (La. Ct. App. 2 Cir. 1973); Succession of Lombardo, 17 So. 2d 303 (La. 1944); *Watson v. Simpson*, 13 La. Ann. 337 (1858); *see also Landiak v. Richmond*, 2005-0758 (La. 3/24/05); 899 So. 2d 535 (disqualifying candidate for public office who declared domicile in the relevant district, although it was established that his actual domicile was outside the district). Moreover, whenever a person has acquired a residence elsewhere and actually resides there, this will be presumed to be his domicile. Succession of Rhea, 227 La. 214, 227; 78 So. 2d 838, 842 (1955); *Salvatierra v. Calderon*, 2001-1888, p. 9 (La. App. 1 Cir. 10/2/02); 836 So. 2d 149, 156. Furthermore, actual residence at a particular location constitutes prima facie evidence of domicile. *See Treadwell v. Treadwell*, 41,130 (La. App. 2 Cir. 6/28/06); 935 So. 2d 740; *Kastel v. Comm'r of Internal Revenue*, 136 F.2d 530, 533 (5th Cir. 1943); *In re Kennedy*, 357 So. 2d 905 (La. Ct. App. 2 Cir. 1978); *Alter v. Waddill*, 20 La. Ann. 246 (1868). Nevertheless, in the absence of any contrary evidence, a person's genuine and bona fide assertion that she is domiciled in Louisiana should suffice to establish such domicile. *Shelton v. Tiffin*, 47 U.S. 163 (1848).

349. LA. CIV. CODE ANN. art. 45 (2018); *Becker v. Dean*, 2003-2493 (La. 9/18/03); 854 So. 2d 864; *Russell v. Goldsby*, 2000-2595, p. 5 (La. 9/22/00); 780 So. 2d 1048, 1051; *Messer v. London*, 438 So. 2d 546, 547 (La. 1983); *Herpin v. Boudreaux*, 98-306 (La. App. 3 Cir. 3/5/98); 709 So. 2d 269; *King v. King*, 173 So. 2d 882 (La. Ct. App. 4 Cir. 1965); *Bloom v. Mindy*, 150 So. 680 (La. Ct. App. 1933); *Leonard's Tutor v. Mandeville*, 9 Mart. (o.s.) 489 (La. 1821); *Naccari v. Naccari*, 611 So. 2d 667 (La. Ct. App. 4 Cir. 1992). *Cf.* LA. CIV. CODE arts. 42-43 (1870); LA. CIV. CODE arts. 44-45 (1825); LA. CIV. CODE p. 12, arts. 3-4 (1808); CODE CIVIL [C. CIV.] [CIVIL CODE] arts. 104, 405 (1804) (Fr.); TRUDEL, *supra* note 286, at 240-41; JOHNSON, *supra* note 287, at 68-75; 28 C.J.S. *Domicile* § 54 (2008) ("Domicile or intention as to domicile is determined by actual facts, conduct, and circumstances.").

350. Although spouses may have common or separate domiciles, the domicile of one spouse can constitute strong evidence in favor of the same domicile of the other spouse. *See Messer*, 438 So. 2d at 546; *McClendon v. Bel*, 2000-2011 (La. App. 1 Cir. 9/7/00); 797 So. 2d 700; *see also* LA. CIV. CODE ANN. arts. 40, 98 (2018); 28 C.J.S. *Domicile* § 43 (2008) ("Moving one's family is an important element in a change of domicile. It may or may not be decisive, according to the circumstances.").

351. Registering to vote is one of many factors to be taken into consideration. Courts sometimes find that a person is domiciled in a location other than the district where the person had registered to vote. *See, e.g.,* Succession of Rouquette, 118 So. 319 (La. 1926); *Mandeville v. Huston*, 15 La. Ann. 281 (1860); *Gelpi v. Ben Dev. Co.*, 327 So. 2d 485 (La. Ct. App. 4 Cir. 1976); Succession of Franklin, 7 La. Ann. 395 (1852); Succession of Steers, 18 So. 503, 506 (La. 1895); 28 C.J.S. *Domicile* § 56 (2008).

has her habitual residence.³⁵² The place of domicile need not be the same as the place of employment.³⁵³

Third, when a presumption of domicile is established by special statute, that special provision will displace the general provisions found in the Civil Code.³⁵⁴ Conversely, when there is

352. *Davis v. Glen Eagle Ship Mgmt. Corp.*, 97-0878 (La. App. 4 Cir. 8/27/97); 700 So. 2d 228; *Sheets v. Sheets*, 612 So. 2d 842 (La. Ct. App. 1 Cir. 1992); *Succession of Bolds*, 42,459 (La. App. 2 Cir. 12/5/07); 972 So. 2d 1174; *Gremillion v. Gremillion*, 39,588 & 39,589 (La. App. 2 Cir. 4/6/05); 900 So. 2d 262; *Lacroix v. Lacroix*, 32,293 (La. App. 2 Cir. 9/22/99); 742 So. 2d 1036; *Jackson v. Barron*, 05-975 (La. App. 3 Cir. 2/1/06); 922 So. 2d 728; *Landiak v. Richmond*, 2005-0758 (La. 3/24/05); 899 So. 2d 535; *City of New Orleans v. Sheppard*, 10 La. Ann. 268 (1855); *Yerkes v. Broom*, 10 La. Ann. 94 (1855); *Shreveport Long Leaf Lumber Co. v. Wilson*, 38 F. Supp. 629 (W.D. La. 1941); *Heirs of Dohan v. Murdock*, 4 So. 338 (La. 1888); *Hill v. Spangenberg*, 4 La. Ann. 553 (1849); *Marks v. Germania Sav. Bank*, 34 So. 659 (La. 1903); *Mason v. Mason*, 399 So. 2d 1272 (La. Ct. App. 4 Cir. 1981). *See also* RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 2.03 cmt. d (AM. LAW. INST., Preliminary Draft No. 2, 2016) (“A person’s intentions are determined by a holistic evaluation of objective facts, conduct, and personal statements. Formal or informal declarations of intent must be considered, but are not conclusive because they can be self-serving, and even fraudulent. For that reason, a finding of intent to make a place the center of one’s life is best based on objective indicia such as place of employment, nonremunerative activities, driver’s license, vehicle registration, bank accounts, payment of taxes required only of domiciliaries, location of personal and real property, voting practices, duration of presence in a place, location of family, membership in religious institutions and other organizations, and permanence of a person’s housing situation. The intent requirement focuses on a natural person’s intent to make a place the center of the person’s life, not the intent to make a place the person’s domicile. A person’s domicile is in the place where the person holds the closest relationship, not the place where the person wishes to be domiciled. A person’s intent to be domiciled in a place, however, does not defeat a finding of domicile and can be relevant to determining where the person’s life center is located.”).

353. *Russell v. Goldsby*, 2000-2595, p. 7 (La. 9/22/00); 780 So. 2d 1048, 1052 (“Courts must be cognizant of the realities of modern life, in which the demands of a career and other factors often require people to spend a large amount of time at different locations.”); *Laborde v. La. Ins. Guar. Ass’n*, 95-1122 (La. App. 3 Cir. 3/6/96); 670 So. 2d 614. *But see* *Mobley v. Namie*, 337 So. 2d 306 (La. Ct. App. 2 Cir. 1976) (holding that defendant whose principal place of business was in a parish where he stayed four to five nights a week, had a telephone listed, and received correspondence was considered domiciled in the parish for venue purposes); *Bd. of Health of La. v. Southworth*, 28 La. Ann. 243 (1876) (holding that a physician moving to another parish to obtain his residency effectively established his domicile at the place of employment).

354. *See, e.g.*, LA. CODE CIV. PROC. ANN. art. 10(B) (2018) (“[I]f a spouse has established and maintained a residence in a parish of this state for a period of six months, there shall be a rebuttable presumption that he has a domicile in this state in the parish of such residence.”); *Salvatierra v. Calderon*, 2001-1888, pp. 8–9 (La. App. 1 Cir. 10/2/02); 836 So. 2d 149, 155; *see also* LA. CODE CIV. PROC. ANN. art. 71 (2018) (“An action against an individual who has changed his domicile from one

no special presumption or requirement imposed by law, the right to establish domicile should not be abridged by law³⁵⁵ or by juridical act.³⁵⁶

4. DOMICILE BY OPERATION OF LAW

Persons incapable of making juridical acts³⁵⁷ cannot acquire a domicile of choice.³⁵⁸ For these persons, the law designates a domicile that is usually derivative of a domicile of a legal guardian or representative. This type of domicile is termed domicile by operation of law and is a juridical fact.³⁵⁹

The domicile of unemancipated minors³⁶⁰ is the most frequent example of this type of domicile.³⁶¹ An unemancipated minor child of married parents is placed under the parental authority of both parents and cannot leave the family home without the consent of both parents.³⁶² The child will take the

parish to another may be brought in either parish for a period of one year from the date of the change, unless he has filed a declaration of intention to change his domicile, in the manner provided by law.”); *Bloom v. Mundy*, 150 So. 680 (La. Ct. App. 1933).

355. See *Burgan v. Burgan*, 22 So. 2d 649 (La. 1945); *Zinko v. Zinko*, 15 So. 2d 859 (La. 1943); *Tanner v. King*, 11 La. 175 (1837); *Hennen v. Hennen*, 12 La. 190 (1838). Thus, nonimmigrant status of a noncitizen does not preclude establishment of domicile in Louisiana. *Salvatierra v. Calderon*, 2001-1888, pp. 6-7 (La. App. 1 Cir. 10/2/02); 836 So. 2d 149, 154. Furthermore, “domicile in a state for purposes of obtaining a divorce does not depend on the nature of the visa upon which the alien entered the country, the alien’s status under the United States’ immigration laws, nor the alien’s expressed intent to return to his country as stated on his application for a visa.” *Salvatierra*, 2001-1888, p. 11; 836 So. 2d at 156.

356. Thus, a condition on a contract restricting the right of a person to choose domicile is null. LA. CIV. CODE ANN. art. 1769 (2018). Nevertheless, the parties can stipulate a “domicile” for their own contractual needs. LA. CIV. CODE ANN. art. 1971 (2018); cf. TRUDEL, *supra* note 286, at 255-68; JOHNSON, *supra* note 287, at 66-67.

357. LA. CIV. CODE ANN. art. 29 (2018); LA. CIV. CODE ANN. art. 1918 (2018) (unemancipated minors, interdicts, and persons deprived of reason have no contractual capacity).

358. *Succession of Robert*, 2 Rob. 427 (La. 1842).

359. Cf. TRUDEL, *supra* note 286, at 241-52.

360. LA. CIV. CODE ANN. arts. 365-371 (2018) (providing for the kinds of emancipation of minors).

361. See *Taylor v. Doskey*, 1 La. App. 399 (La. Ct. App. 1925) (finding a strong presumption of a child’s legal residence with her parents); cf. JOHNSON, *supra* note 287, at 96-98; 28 C.J.S. *Domicile* § 22 (2008) (“An infant, being without legal capacity, cannot fix or change his or her domicile unless he or she is emancipated.”).

362. LA. CIV. CODE ANN. arts. 221, 227 (2018). A minor who leaves home, even for extended periods of time, still retains parental domicile. *Succession of Robert*, 2 Rob. 427 (La. 1842); *Tucker v. State Farm Fire & Cas. Ins. Co.*, 599 So. 2d 447 (La.

parents' common domicile when the parents share the same domicile.³⁶³ If the parents do not have a common domicile, the child takes the domicile of the parent with whom the child usually resides.³⁶⁴ If the parents delegate parental authority or custody to a tutor,³⁶⁵ the child will assume the tutor's domicile.³⁶⁶

An unemancipated minor child of unwed or divorced parents takes the domicile of the tutor, who has custody.³⁶⁷ This tutor will usually be the domiciliary parent,³⁶⁸ but it can also be a non-parent.³⁶⁹ Likewise, persons under continued tutorship assume the domicile of their tutor.³⁷⁰

Furthermore, a person under full interdiction lacks capacity

Ct. App. 2 Cir. 1992) (holding that a temporary stay in a relative's home does not negate a minor's residency with her parent). With parental consent, a minor can acquire residence in another location for an apprenticeship or employment. *Oglesby v. Turner*, 54 So. 400 (La. 1911). A minor can also establish separate domicile through limited emancipation by authentic act, wherein the right to establish independent domicile is stipulated. LA. CIV. CODE ANN. art. 368 (2018).

363. LA. CIV. CODE ANN. art. 41 ¶1 (2018); *cf.* LA. CIV. CODE art. 39 (1870); LA. CIV. CODE art. 48 (1825); LA. CIV. CODE p. 12, art. 7 (1808); CODE CIVIL [C. CIV.] [CIVIL CODE] art. 108 (1804) (Fr.); Civil Code of Québec, S.Q. 1991, c 64, art. 80 (Can.).

364. LA. CIV. CODE ANN. art. 41 ¶1 (2018); *see also* LA. CIV. CODE ANN. art. 40 (2018) (providing that spouses may have common or separate domiciles); *cf.* CODE CIVIL [C. CIV.] [CIVIL CODE] art. 108-1 (2017) (Fr.); Civil Code of Québec, S.Q. 1991, c 64, art. 82 (Can.). Older provisions subjecting the domicile of a married woman to that of her husband were found unconstitutional in Louisiana and have been repealed. *See Craig v. Craig*, 365 So. 2d 1298 (La. 1978); *Welsh v. Welsh*, 322 So. 2d 352 (La. Ct. App. 4 Cir. 1975). *See also* LA. CIV. CODE ANN. art. 98 cmt. (f) (2018) (explaining that there is no obligation of cohabitation of spouses under Louisiana law). Moreover, when exclusive parental authority is assigned to one parent, that parent's domicile will be controlling. *See* LA. CIV. CODE ANN. art. 232 (2018).

365. *See* LA. CIV. CODE ANN. arts. 222–234 (2018); LA. CHILD. CODE ANN. art. 682 (2018).

366. LA. CIV. CODE ANN. art. 41 ¶2 (2018); *cf.* LA. CIV. CODE art. 39 (1870); LA. CIV. CODE art. 48 (1825); LA. CIV. CODE p. 12, art. 7 (1808); CODE CIVIL [C. CIV.] [CIVIL CODE] art. 108 (1804) (Fr.); Civil Code of Québec, S.Q. 1991, c 64, art. 80 (Can.).

367. LA. CIV. CODE ANN. art. 246 (2018); LA. CIV. CODE ANN. art. 221 cmt. (c) (2018); LA. CIV. CODE ANN. art. 235 cmt. (b) (2018).

368. LA. CIV. CODE ANN. art. 132 (2018).

369. LA. CIV. CODE ANN. art. 133 (2018). Parents may designate the child's domicile by agreement. *In re Tutorship of Cardenas*, 2009-2020 (La. App. 1 Cir. 6/11/10); 38 So. 3d 1284. Designation of domicile of a child must serve the best interest of the child. Thus, a child will not be domiciled with an abusing parent. *Lyons v. Andrew*, 12 La. Ann. 685 (1856).

370. LA. CIV. CODE ANN. art. 43 (2018).

to make juridical acts.³⁷¹ This person's domicile is that of his curator as of the time of the judgment for interdiction.³⁷² Conversely, a person placed under limited interdiction retains capacity as delineated by the judgment of interdiction.³⁷³ If that person's capacity to establish domicile is unaffected by the judgment, then she will retain her previous domicile and she may also establish another domicile of choice.³⁷⁴

In all of the above cases, domicile of the person is dependent upon the domicile of the legal representative. As a default rule, the legal representative may freely change domicile, thus effecting a change in the represented person's domicile. The extent of the representative's powers and authority is determined by the rules governing the representative's appointment.³⁷⁵

371. LA. CIV. CODE ANN. art. 395 (2018); *see also* Meyer v. Gulotta, 98-2469 (La. App. 1 Cir. 12/28/99); 747 So. 2d 738.

372. LA. CIV. CODE ANN. art. 42 (2018); *see also* Meyer v. Gulotta, 98-2469 (La. App. 1 Cir. 12/28/99); 747 So. 2d 738; Vick v. Volz, 16 So. 568 (La. 1895). *Cf.* LA. CIV. CODE art. 39 (1870); LA. CIV. CODE art. 48 (1825); LA. CIV. CODE p. 12, art. 7 (1808); CODE CIVIL [C. CIV.] [CIVIL CODE] art. 108 (1804) (Fr.); Civil Code of Québec, S.Q. 1991, c 64, art. 81 (Can.). If the interdicted person had established a domicile of choice prior to interdiction, that choice is valid with regard to the time it was made. LA. CIV. CODE ANN. art. 394 (2018) (providing that pre-interdiction juridical acts are valid). Nonetheless, that domicile of choice is now superseded by the curator's domicile as the new domicile by operation of law.

373. LA. CIV. CODE ANN. art. 395 (2018).

374. LA. CIV. CODE ANN. art. 42 (2018).

375. For example, special rules apply with regard to a relocation of a child's residence by one spouse. LA. STAT. ANN. § 9:355.1–:355.19 (2018). Special rules of jurisdiction and venue apply with regard to interstate custody and visitation cases. LA. STAT. ANN. § 13:1801 (2018) (adopting the Uniform Child Custody Jurisdiction and Enforcement Act—UCCJEA); *cf.* LA. CODE CIV. PROC. ANN. art. 74.2 (2018). A separate tutor appointed solely for the administration of the minor's property is a non-custodian tutor, whose domicile is not operative. *See* LA. CODE CIV. PROC. ANN. art. 4069 (2018); *cf.* Harman v. McCawley, 9 La. 567 (1836) (holding that the probate court can appoint a tutor to administer the estate inherited by a minor who was domiciled overseas, because the estate was in Louisiana). A custodian legal tutor who relocates out-of-state without leaving an agent to represent her is removed from office. LA. CODE CIV. PROC. ANN. art. 4234 (2018); *see also* Robins v. Weeks, 5 Mart. (n.s.) 379 (La. 1827) (holding that a natural tutor may freely change domicile to another state, resulting in a change of the child's domicile; however, upon expiration of tutorship due to a legal tutor's relocation out-of-state, the minor retains domicile of origin); Succession of Cass, 7 So. 617 (La. 1890) (holding that natural tutor may acquire a new domicile, thus changing the domicile of a child under tutorship). Likewise, a curator appointed to represent an interdicted person may not relocate out-of-state without court approval. LA. CODE CIV. PROC. ANN. art. 4566(F) (2018); *see also* Interdiction of Rodrigue, 2005-0061 (La. App. 1 Cir. 11/4/05); 927 So. 2d 421 (allowing relocation of interdict to Texas with her spouse over the objection of undercuratrix daughter, finding that relocation would serve best interests of

Finally, persons deprived of reason are also incapable of making juridical acts³⁷⁶ and thus cannot establish or maintain a domicile of choice.³⁷⁷ When deprivation of reason is a temporary condition,³⁷⁸ it will not practically result in any effect to domicile. If such deprivation is more serious and lengthy in time, then grounds exist for the person's interdiction.³⁷⁹ If the person is interdicted, the domicile of the curator will be operative by law.³⁸⁰ Practical problems may arise, however, if the person deprived of reason for a longer time is not interdicted. Although this person's previous domicile will persist,³⁸¹ it is questionable whether such domicile remains pertinent, especially if the person has moved elsewhere and is unable to establish a new domicile.³⁸²

5. RESIDENCE

Following the American model of domicile, the Louisiana

interdict).

376. LA. CIV. CODE ANN. art. 1918 (2018).

377. As discussed *supra* notes 344–46 and accompanying text, even when a domicile of choice is not maintained, this domicile will persist until a new domicile is established or designated by law. *See* LA. CIV. CODE ANN. art. 44 (2018).

378. *See* LA. CIV. CODE ANN. art. 1918 cmt. (b) (2018) (listing instances of temporary mental incapacity, such as intoxication).

379. *See* LA. CIV. CODE ANN. art. 389 cmt. (d) (2018) (stating that deprivation of reason can constitute grounds for interdiction, regardless of the existence of periodic lucid intervals).

380. LA. CIV. CODE ANN. art. 42 (2018).

381. LA. CIV. CODE ANN. art. 44 (2018).

382. The possible inequities of this situation are also discussed by the drafters of the Third Conflicts Restatement. *See* RESTATEMENT (THIRD) OF CONFLICT OF LAWS §§ 2.02 cmt. g, 2.07 cmt. d (AM. LAW. INST., Preliminary Draft No. 2, 2016) (discussing the suitability of domicile as a connecting factor in cases of noninterdicted mentally impaired persons). Louisiana choice-of-law rules also provide some flexibility to address such inequities. *See, e.g.*, LA. CIV. CODE ANN. arts. 3537, 3542 (2018) (listing several connecting factors for determining the general applicable law to contractual and delictual obligations, respectively). Moreover, Louisiana civil law rules also provide equitable rules for the protection of third parties who transact with a noninterdicted person. *See* LA. CIV. CODE ANN. arts. 1925–1926 (2018); *see also* *Vance v. Ellerbe*, 90 So. 735 (La. 1922) (finding that defendant noninterdicted person deprived of reason was properly sued in the courts of his old domicile, because defendant lacked the capacity to establish domicile elsewhere). Careful examination of the facts, coupled with the existing flexibility of the law, may reveal at least a limited intent sufficient to establish suitable domicile. *See* *Succession of Caprito*, 468 So. 2d 561 (La. 1985) (finding that, where an interdict has sufficient mentality to do so, she can acquire a domicile of choice); *see also* *Verret v. Bonvillain*, 33 La. Ann. 1304 (1881) (finding that an old and infirm person who had moved to another parish had actually established a new domicile, despite his infirmity).

legislature makes frequent—and sometimes inconsistent—use of the term “residence.”³⁸³ In the Louisiana Civil Code, “residence” is assigned its usual meaning of something less than domicile. In other statutes, usually of public law, “residence” signifies domicile or something more than domicile.

a. Louisiana Civil Code—Less than Domicile

Under the Louisiana Civil Code, a person can have many residences, but only one domicile.³⁸⁴ This rule expresses the *principle of unity of domicile*, although the Louisiana choice-of-law rules correctly subscribe to the American view of “one domicile per purpose.”³⁸⁵ Moreover, this rule illustrates the difference between residence and domicile.

Domicile and residence are not synonymous.³⁸⁶ At any given time, a person can have only one domicile,³⁸⁷ but she may reside in several places.³⁸⁸ Yet, the two terms are also related. Of the many residences that a person may have, domicile is *the* residence that is coupled with the intent to remain habitually situated.³⁸⁹ Residence, therefore, serves as the *corpus*—one of the elements for the establishment of domicile³⁹⁰—while intent is the factor that differentiates mere residence from domicile.³⁹¹ At any

383. See generally BEALE, *supra* note 4, § 10.3.

384. LA. CIV. CODE ANN. art. 39 (2018).

385. See LA. CIV. CODE ANN. arts. 39, 3518 (2018); cf. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11(2) (AM. LAW INST. 1971) (“Every person has a domicil at all times and, at least for the same purpose, no person has more than one domicil at a time.”).

386. Landiak v. Richmond, 2005-0758 (La. 3/24/05); 899 So. 2d 535; Davis v. Glen Eagle Ship Mgmt. Corp., 97-0878 (La. App. 4 Cir. 8/27/97); 700 So. 2d 228; Gauthier v. Benson, 95-1730, 95-2470 (La. App. 4 Cir. 1/11/96); 667 So. 2d 1181; Wilson v. Butler, 513 So. 2d 304 (La. Ct. App. 1 Cir. 1987).

387. Thus, accepting public office in one location where establishment of domicile is required necessarily means that a person cannot be domiciled in another location. Watson v. Bonduramt 30 La. Ann. 1 (1878); Villere v. Butman, 23 La. Ann. 515 (1871).

388. Dominique v. Favorite, 2003-1894 (La. App. 1 Cir. 9/8/03); 854 So. 2d 452; Martin v. Willis, 584 So. 2d 1192 (La. Ct. App. 2 Cir. 1991); Hornung v. Mills, 7 So. 2d 665 (La. Ct. App. 1942); State *ex rel.* Egan v. Steele, 33 La. Ann. 910 (1881).

389. Gowins v. Gowins, 466 So. 2d 32 (La. 1985) (explaining that domicile includes residence, but it also includes the added element of intent to make a residence one’s principal establishment).

390. Lorio v. Gladney, 97 So. 16 (La. 1923).

391. McClendon v. Bel, 2000-2011, pp. 6–7 (La. App. 1 Cir. 9/7/00); 797 So. 2d 700, 704; Autin v. Terrebonne, 612 So. 2d 107, 108 (La. Ct. App. 1 Cir. 1992); LeBlanc v. Loughridge, 95 So. 419 (La. 1923); 28 C.J.S. *Domicile* § 6 (2008) (“The

given time, however, a person can reside in a place other than the domicile.³⁹² In other words, although residence is required for the establishment of domicile of choice, continuous residence is not required for maintaining domicile as long as the intent is present.³⁹³ Domicile is a legal concept, whereas residence is usually a matter of fact.³⁹⁴

Courts have wisely avoided attempting a more precise definition of residence. Instead, they have accurately described residence as a person's "dwelling place, however temporary, and regardless of whether he intends it to be his permanent home."³⁹⁵

Therefore, residence, as it is used in the Louisiana Civil Code, means something less than domicile. The same terms, however, are sometimes designated a different meaning in the Revised Statutes. For this reason, a more careful reading of these statutes is warranted. For example, a "resident for tax purposes" is defined as a person domiciled or residing for an aggregate of at least six months in Louisiana.³⁹⁶ A "nonresident" motorist is a person who is domiciled in another state and who holds a driver's license from that state.³⁹⁷ Likewise, a "nonresident" vehicle owner is a person who is domiciled in another state and who owns

crucial distinction between the concept of domicile and that of residence is the intent to return to or remain in a place.").

392. Nevertheless, if a habitual residence cannot be determined, any residence can be considered as a person's domicile. LA. CIV. CODE ANN. art. 39 (2018).

393. *Dofflemeyer v. Gilley*, 360 So. 2d 909, 912 (La. Ct. App. 3 Cir. 1978).

394. *See* TRUDEL, *supra* note 286, at 232; JOHNSON, *supra* note 287, at 63–66.

395. *Gauthier v. Benson*, 95-1730, 95-2470, pp. 4–5 (La. App. 4 Cir. 1/11/96); 667 So. 2d 1181, 1183 (Also noting that "[r]esidence is not a specific legal term The term is nebulous and has no precise meaning."); *see also* *Dofflemeyer v. Gilley*, 360 So. 2d 909, 912 (La. Ct. App. 3 Cir. 1978); *Vehrs v. Jefferson Ins. Co.*, 168 So. 2d 873, 877–78 (La. Ct. App. 3 Cir. 1992). A simple transient presence, however, does not qualify as residence. *See* *Erwin v. Butler*, 5 La. 330 (1833) (finding that the master of a vessel who was in transit through New Orleans had not established domicile); 28 C.J.S. *Domicile* § 5 (2008).

396. LA. STAT. ANN. § 47:31 (2018); *see also* La. Att'y. Gen. Op. No. 1936–38, p. 1068 (1937).

397. A non-domiciliary motorist who is present in Louisiana for a period exceeding ninety days must obtain a Louisiana driver's license. LA. STAT. ANN. § 32:404 (2018); *see also* *Fiorillo v. Columbia Ins. Co.*, No. 08-1717, 2009 WL 1067032 (E.D. La. Apr. 21, 2009). The same statute contains exceptions for students at Louisiana schools who are domiciled in another state, members of the armed forces, and professional drivers. LA. STAT. ANN. § 32:404 (2018). Motorists who establish domicile in Louisiana must apply within thirty days to transfer their out-of-state driver's license. LA. STAT. ANN. § 32:409.1(D) (2018).

a vehicle that is registered in that state.³⁹⁸ Finally, “citizens of Louisiana” who are “bona fide residents” of the state may register to vote.³⁹⁹ It is clear from the language of the provision that the term “citizen of Louisiana” is defined as Louisiana domiciliary. It is not so clear what the term “bona fide residents” means.⁴⁰⁰ The courts have defined this term as residence according to article 39 of the Louisiana Civil Code.⁴⁰¹ These are examples in which “residence” usually refers to something less than domicile for certain purposes.

b. Candidates for Public Office—More than Domicile?

The Louisiana Constitution and several special statutes impose durational residency requirements for the qualification of candidates for public office in the state.⁴⁰² Generally, these requirements combine elements of “residence” and “domicile” in the particular political subdivision of the state for a period of time

398. A non-domiciliary vehicle owner establishing residence in Louisiana must register the vehicle in the parish of her residence. LA. STAT. ANN. § 47:501(B) (2018).

399. LA. STAT. ANN. § 18:101(A) (2018).

400. See LA. STAT. ANN. § 18:101(B) (2018) (“For purposes of the laws governing voter registration and voting, ‘resident’ means a citizen who resides in this state and in the parish, municipality, if any, and precinct in which he offers to register and vote, with an intention to reside there indefinitely. If a citizen resides at more than one place in the state with an intention to reside there indefinitely, he may register and vote only at one of the places at which he resides.”).

401. See *Miller v. Poimboeuf*, 514 So. 2d 484, 487 (La. Ct. App. 3 Cir. 1987) (“[A] Louisiana citizen may legally maintain as many residences as he wishes and as his means will allow. . . . [H]e could not legally register and qualify as an elector in more than one precinct, but the choice was his.”); *Stavis v. Engler*, 202 So. 2d 672 (La. Ct. App. 4 Cir. 1976); *Soileau v. Bd. of Supervisors, St. Martin Par.*, 361 So. 2d 319 (La. Ct. App. 3 Cir. 1978); *Staton v. Hutchinson*, 370 So. 2d 106, 108–109 (La. Ct. App. 1 Cir. 1978); Robert Stockstill, Comment, *Voting and Election Law in the Louisiana Constitution*, 46 LA. L. REV. 1253, 1260 (1986) (“An elector is qualified solely by being a resident of the state. Unlike previously, there are no time requirements to qualify as a resident. ‘Residence’ has been liberally interpreted to mean where an individual lives, sleeps, and eats.”) (footnotes omitted). Interestingly, the same statute provides that a U.S. citizen who was domiciled in Louisiana and now resides abroad can register to vote in Louisiana. LA. STAT. ANN. § 18:101(E) (2018).

402. See generally LA. STAT. ANN. § 18:451 (2018) (“A person who meets the qualifications for the office he seeks may become a candidate and be voted on in a primary or general election if he qualifies as a candidate in the election. Except as otherwise provided by law, a candidate shall possess the qualifications for the office he seeks at the time he qualifies for that office. In the event that the qualifications for an office include a residency or domicile requirement, a candidate shall meet the established length of residency or domicile as of the date of qualifying, notwithstanding any other provision of law to the contrary.”).

prior to the election.⁴⁰³ These terms of art, however, are not used consistently for all types of elections in the relevant legislation.⁴⁰⁴ These inconsistencies can confuse the candidates and the courts that resolve challenges to the qualification of candidates. Moreover, to the extent that the differing terms also convey a different standard of qualification, the noted inconsistencies may also result in inequities. Harmonization of the residency requirements, with reference to a common concept of domicile, would effectively mitigate these inequities. A reference to some examples will help illustrate this point:

i. Candidates for the state legislature must have “resided” in the state for two years prior to the election and they must have been “actually domiciled” in the legislative district in which they wish to stand for the election.⁴⁰⁵ Courts have provided consistent definitions of these terms. “Residence” has been defined in accordance with the Louisiana Civil Code understanding of residence.⁴⁰⁶ The residence must be “bona fide,” that is, not

403. For a compiled list of qualifications of candidates, see Secretary of State of Louisiana, *Qualifications of Candidates* (May 2, 2018, 5:00 PM), <https://www.sos.la.gov/ElectionsAndVoting/PublishedDocuments/QualificationsOfCandidates.pdf>.

404. See generally Justin Louis Rand, *Carpetbagger Battle Cry: Scrutinizing Durational Residency Requirements for State and Local Offices*, 13 RUTGERS J.L. & PUB. POL’Y 242 (2016) (arguing that most durational residency requirements in state laws should fail); Gavin J. Dow, *Mr. Emanuel Returns From Washington: Durational Residence Requirements and Election Litigation*, 90 WASH. U. L. REV. 1515 (2013) (critiquing state and national rules on durational residency requirements); Eugene D. Mazo, *Residence and Democracy: Durational Residency Requirements From the Framers to the Present*, 43 FLA. ST. U. L. REV. 611 (2017) (examining the U.S. history of durational residency requirements).

405. LA. CONST. ANN. art. III, § 4(A) (2006) (“An elector who at the time of qualification as a candidate has attained the age of eighteen years, resided in the state for the preceding two years, and been actually domiciled for the preceding year in the legislative district from which he seeks election is eligible for membership in the legislature.”); see also *Mix v. Blanchard*, 318 So. 2d 125, 129 (La. Ct. App. 4 Cir. 1975) (“It is apparent the delegates intended to limit candidacy for political office to citizens who actually live in the district they aspire to represent. The newly drafted constitutional article was designed to eliminate a system under which candidates would establish a ‘political domicile’ from which to seek office even though they chose to live and maintain their families in another area, and were not truly representative of the district from which they sought election.”). The same qualifications apply to candidates for the office of sheriff, tax assessor, clerk of court, and police jury members. LA. STAT. ANN. §§ 18:451.2, 33:1225 (2018).

406. *Reeves v. Johnson*, 36,837 (La. App. 2 Cir. 9/11/02); 824 So. 2d 1277 (holding that “residence” has the ordinary meaning of “living” somewhere); *Suarez v. Barney*, 2005-0671 (La. App. 4 Cir. 5/9/05); 903 So. 2d 555 (holding that a candidate must be registered to vote in the legislative district he sought to represent at the time he filed her candidacy papers). A candidate can maintain two residences. Daley

pretended or fraudulent.⁴⁰⁷ The residence need not be continuous, but excessive absences will interrupt it.⁴⁰⁸ The more rigorous requirement, however, is “actual domicile.”⁴⁰⁹ Courts have defined this term as “real rather than fictitious domicile,”⁴¹⁰ which in essence means domicile plus actual residence—something more than domicile.⁴¹¹ While domicile need not be accompanied by continued residence, “actual domicile” connotes a more active residence. The candidate should be a habitual resident and physically present in the district, having there her

v. Morial, 205 So. 2d 213 (La. Ct. App. 4 Cir. 1967).

407. *McIntire v. Carpenter*, 202 So. 2d 297 (La. Ct. App. 4 Cir. 1967). Thus, the exact motives of a candidate for establishing residence in the district he sought to represent are immaterial except insofar as they might show that residence was not bona fide. *Daley*, 205 So. 2d at 213; *see also* *Slocum v. DeWitt*, 374 So. 2d 755, 758 (La. Ct. App. 3 Cir. 1979) (“The fact that the domicile is established for political purposes does not in and of itself prevent it from being bona fide if there exists a sufficient quantity and quality relationship with the place.”); *CHESHIRE, NORTH & FAWCETT*, *supra* note 13, at 154 (citing *Mark v. Mark* [2006] 1 AC (HL) 98 (appeal taken from Eng.) (“The intention must be bona fide in the sense of being genuine and not pretended for some other purpose, such as getting a divorce to which one would not be entitled by the law of the true domicile.”)).

408. *Reeves v. Johnson*, 36,837, pp. 18–19 (La. App. 2 Cir. 9/11/02); 824 So. 2d 1277, 1287 (“[T]he word ‘resided’ cannot mean that a person must have occupied a place of abode every moment during the period of time necessary to become a qualified candidate However, we conclude that at the very least one must retain minimal indicia of living at an abode in order to legitimately say that one is residing there.”). *But see* *Stavis v. Engler*, 202 So. 2d 672, 677 (La. Ct. App. 4 Cir. 1967) (“One does not, however, lose his status, as an actual, bona fide, resident of a place, either because he finds it necessary to establish his family elsewhere, or because, in the absence of his family, he does not maintain a domestic establishment at such place. The question is one largely of intention, and the intention of a person, in that respect, is determined by his expressions thereof, at times not suspicious, and his testimony, when called on, considered in connection with his conduct and the circumstances of his life.”); *Tomlinson v. Frazier*, 407 So. 2d 1385, 1387 (La. Ct. App. 4 Cir. 1982).

409. *See Charbonnet v. Hayes*, 318 So. 2d 917, 919 (La. Ct. App. 4 Cir. 1975) (noting that in the previous constitutional provision, the requirement was that a candidate be “actually resident” and stating that “[t]he substitution of the word ‘domiciled’ for ‘resident’ effects a considerable change in the requirements of candidacy”); *cf.* LA. CONST. art. III, § 9 (1921).

410. *Becker v. Dean*, 2003-2493 (La. 9/18/03); 854 So. 2d 864; *Russell v. Goldsby*, 2000-2595 (La. 9/22/00); 780 So. 2d 1048; *Messer v. London*, 438 So. 2d 546 (La. 1983); *Darnell v. Alcorn*, 99-2405 (La. App. 4 Cir. 9/24/99); 757 So. 2d 716; *Pattan v. Fields*, 95-1936 (La. App. 1 Cir. 9/26/95); 669 So. 2d 1233.

411. *See Charbonnet*, 318 So. 2d at 919–20 (“[T]he constitution [by using the term ‘actual domicile’] requires adherence to the factual concept of habitual residence and principal establishment, and, where a person resides alternately in several places, he is only qualified for election purposes in that place where he maintains bona fide living quarters in which he actually lives a substantial part of the time.”).

principal and physical establishment.⁴¹² The element of intent is determinative of the principal residence.⁴¹³ Such intent will be manifested through acts of actual residence.⁴¹⁴

ii. Those wishing to qualify for election to the position of state judge must have been “domiciled” in the respective district,⁴¹⁵ circuit, or parish for one year prior to the election.⁴¹⁶ The term “domicile” is understood in its ordinary meaning,⁴¹⁷ as

412. Maintaining multiple residences, therefore, is still possible, as long as the principal residence is located at the place of domicile. *Herpin v. Boudreaux*, 98-306 (La. App. 3 Cir. 3/5/98); 709 So. 2d 269; *Mix v. Blanchard*, 318 So. 2d 125 (La. Ct. App. 4 Cir. 1975).

413. *See Steinhardt v. Batt*, 2000-0328, p. 3 (La. App. 4 Cir. 2/11/00); 753 So. 2d 928, 930 (finding that change of domicile for purposes of qualifying for public office entails actual residence accompanied by intent to make the new residence the principal residence); *Mix v. Alexander*, 318 So. 2d 130 (La. Ct. App. 4 Cir. 1975).

414. *See, e.g., Arnold v. Hughes*, 621 So. 2d 1139 (La. Ct. App. 1 Cir. 1993) (involving candidate who, though resided temporarily outside the district, had attended school, practiced law, purchased house, and began living in district prior to the election).

415. *See Snyder v. Perilloux*, 16-448, p. 6 (La. App. 5 Cir. 8/5/16); 198 So. 3d 237, 241 (“[The term] ‘district’ as used [in] La. Const. art. V, § 24, refers to one of the forty-one judicial districts across the state.”).

416. LA. CONST. ANN. art. V, § 24 (2011) (“A judge of the supreme court, a court of appeal, district court, family court, parish court, or court having solely juvenile jurisdiction shall have been domiciled in the respective district, circuit, or parish for one year preceding election and shall have been admitted to the practice of law in the state for at least the number of years specified as follows . . .”). Similar requirements exist for city council candidates. *See, e.g., Home Rule Charter of the City of New Orleans*, § 3-104(1) (2018) (“[C]andidates for district councilmember shall have been domiciled in the districts from which elected for at least two years immediately preceding their election.”); *Ogden v. Gray*, 2012-1314, p. 5 (La. App. 4 Cir. 9/11/12); 99 So. 3d 1088, 1092. Candidates for statewide positions, such as governor or attorney general, must be “citizens of the United States and of this state” for five years preceding the election. LA. CONST. ANN. art. IV, § 2 (2006). State citizenship means domicile. *See HAY, BORCHERS & SYMEONIDES, supra* note 2, § 4.2.

417. *See Williams v. Ragland*, 567 So. 2d 63, 68 (La. 1990); *Ellie v. Karst*, 594 So. 2d 929, 932 (La. Ct. App. 4 Cir. 1992) (“The qualifications set forth for judicial candidates in Article 5, Section 24 [of the Louisiana Constitution] are exclusive and neither the courts or the legislature can add additional requirements.”); *Lee Hargrave, The Judiciary Article of the Louisiana Constitution of 1974*, 37 LA. L. REV. 765, 818–19 (1977). Furthermore, courts interpret laws governing the conduct of elections liberally “so as to promote rather than defeat candidacy.” *Dixon v. Hughes*, 587 So. 2d 679, 680 (La. 1991); *Slocum v. DeWitt*, 374 So. 2d 755, 758 (La. Ct. App. 3 Cir. 1979). Constitutional provisions are interpreted using the same canons of interpretation that are applicable to statutes. *Snowton v. Sewerage & Water Bd.*, 2008-399, p. 5 (La. 3/17/09); 6 So. 3d 164, 168; *Snyder v. Perilloux*, 16-448, p. 3 (La. App. 5 Cir. 8/5/16); 198 So. 3d 237, 240. Thus, the language of the statute is applied as read if it is clear and unambiguous and does not lead to absurd results. LA. CIV. CODE ANN. art. 9 (2018). Words of a law are given their generally prevailing meaning

prescribed in articles 38 and 39 of the Louisiana Civil Code.⁴¹⁸ A candidate who establishes domicile in the relevant political subdivision⁴¹⁹ is presumed to retain such domicile, notwithstanding temporary absences.⁴²⁰ On occasion, these absences may be prolonged if the requisite intent to maintain domicile is shown. In one case, a candidate for reelection in the office of district judge in Orleans Parish had to relocate with his family to Jefferson Parish after his house was destroyed in a fire.⁴²¹ The candidate kept an apartment in Orleans Parish; most of the time, however, he resided with his family in Jefferson Parish, especially during the period of qualification for the election.⁴²² The court upheld the candidate's qualification, finding that he had retained his domicile in Orleans Parish.⁴²³

In another case, a candidate for city council⁴²⁴ was displaced from her home as a result of Hurricane Katrina and remained outside the city for a period of seven years, far exceeding the one-year statutory period for gubernatorially declared emergencies.⁴²⁵ The court held that the candidate had not relinquished her

and terms of art are given their technical meaning. LA. CIV. CODE ANN. art. 10 (2018); *see also* Duckworth v. La. Farm Bureau Mut. Ins. Co., 2011-2835, p. 12 (La. 11/2/12); 125 So. 3d 1057, 1064; First Nat'l Bank v. DDS Const. LLC, 2011-1418 (La. 1/24/12); 91 So. 3d 944; Oubre v. La. Citizens Fair Plan, 2011-0097, pp. 11-12 (La. 12/16/11); 79 So. 3d 987, 997.

418. *See* Scaglione v. Juneau, 2010-1109, pp. 3-4 (La. App. 4 Cir. 8/4/10); 45 So. 3d 191, 194; Matassa v. Jasmine, 2010-1298 (La. App. 1 Cir. 7/22/10); 42 So. 3d 1157; McNamara v. Coney, 566 So. 2d 648 (La. Ct. App. 4 Cir. 1990).

419. Change in domicile for the purposes of qualifying for office of judge requires the usual elements of actual residence and intent to make this residence the habitual residence or home. Villane v. Azar, 566 So. 2d 645 (La. Ct. App. 4 Cir. 1990).

420. *See* LA. CIV. CODE ANN. art. 44 (2018); Arnold v. Hughes, 621 So. 2d 1139 (La. Ct. App. 1 Cir. 1993) (upholding candidate's qualification despite the fact that the candidate had rented an apartment and resided temporarily in another parish); Brown v. Democratic Comm., Court of Appeal, Fourth Circuit, Third Dist., 238 So. 2d 48 (La. Ct. App. 4 Cir. 1970).

421. Wilson v. Shea, 565 So. 2d 1105, 1106 (La. Ct. App. 4 Cir. 1990).

422. *Id.*

423. *Id.* More specifically, the court relied on the strong presumption of continued domicile for persons who already hold public office. *See* Oakey v. Eastin, 4 La. 69 (1832); Pattan v. Fields, 95-1936 (La. App. 1 Cir. 9/26/95); 669 So. 2d 1233.

424. Similar residence requirements exist for city council candidates. *See supra* note 416.

425. Ogden v. Gray, 2012-1314, p. 14 (La. App. 4 Cir. 9/11/12); 99 So. 3d 1088, 1097; *see also* LA. STAT. ANN. §§ 18:101(F), 18:451.3 (2018) (concerning the domicile of voters and candidates for office who are displaced from their place of residence by a gubernatorially declared state of emergency).

domicile.⁴²⁶ These findings are perfectly justifiable under the rules pertaining to domicile that apply to candidates for the bench and city council, respectively. If these same candidates were running for state legislature, however, it would be less clear whether their residential status would pass muster with an “actual domicile” inquiry.

iii. Mayoral candidates shall have been “domiciled” and have “actually resided” for at least the immediately preceding year in the respective municipality.⁴²⁷ When scrutinizing these qualifications, courts refer to the Louisiana Civil Code concept of “domicile.”⁴²⁸ Following the jurisprudence on the interpretation of the term “actual domicile,” the Louisiana Supreme Court construed “actual residence,” as used here, to mean “real rather than fictitious domicile.”⁴²⁹

iv. Candidates for the office of district attorney must have “resided” in the respective judicial district for at least two years prior to the election.⁴³⁰ Courts have interpreted the term “residence” here to mean “actual residence.”⁴³¹

426. *Ogden v. Gray*, 2012-1314, pp. 14–15 (La. App. 4 Cir. 9/11/12); 99 So. 3d 1088, 1097.

427. LA. STAT. ANN. § 33:384 (2018) (“The mayor shall be an elector of the municipality who at the time of qualification as a candidate for the office of mayor shall have been domiciled and actually resided for at least the immediately preceding year in the municipality.”).

428. *See Thebeau v. Smith*, 49,665, p. 8 (La. App. 2 Cir. 9/8/14); 148 So. 3d 233, 238–39; *State v. Taylor*, 45,102, pp. 5–6 (La. App. 2 Cir. 12/21/09); 27 So. 3d 1079, 1082; *Conner v. Allen*, 2004-182, p. 1 (La. App. 3 Cir. 2/13/04); 872 So. 2d 1091, 1092.

429. *Russell v. Goldsby*, 2000-2595, p. 6 (La. 9/22/00); 780 So. 2d 1048, 1052 (quoting *Messer v. London*, 438 So. 2d 546, 547 (La. 1983)).

430. *See* LA. CONST. ANN. art. V, § 26 (2011); LA. STAT. ANN. § 16:1(A) (2018) (“[A candidate for district attorney] shall have been admitted to the practice of law in the state for at least five years prior to his election and shall have resided in the judicial district for the two years preceding the election.”).

431. *See* *Reeves v. Johnson*, 36,837, p. 4 (La. App. 2 Cir. 9/11/02); 824 So. 2d 1277, 1280 (“Because the word ‘resided,’ like the words ‘actually domiciled’ are of constitutional origin, we conclude that the same delegates who wanted to limit candidacy for the legislature to citizens who actually lived and were domiciled in the district, also desired to limit candidacy for district attorney to citizens who have actually lived in the district for the two years preceding election.”); *Russell*, 2000-2595, p. 6; 780 So. 2d at 1052 (defining “actual residence” as “real rather than fictitious” residence for the purpose of qualification of a mayoral candidate); *Johnson v. Crum*, 02-930, p. 5 (La. App. 5 Cir. 9/10/02); 829 So. 2d 447, 449–50 (holding that “the law as set forth in [*Russell v. Goldsby*] is applicable to the present matter [of qualification of a candidate for district attorney]”); *Williford v. Grady*, 96-1040, p. 5 (La. App. 3 Cir. 8/5/96); 688 So. 2d 1072, 1074 (finding that temporary absences do not result in loss of residency).

Courts become involved in this inquiry when an elector brings an action objecting to a candidacy for public office on the grounds of nonfulfillment of residency requirements.⁴³² When entertaining such actions, the court should first determine the precise residential requirements and their actual meaning with reference to the terms of art discussed above. Once these requirements have been *defined*, the next step is to *determine* whether they have been met. Courts have crafted several jurisprudential principles to aid in this determination.⁴³³

First, the plaintiff objecting to the candidacy bears the burden of proving that the candidate did not fulfill the residency requirements. One of the most salient purposes of election law is to provide the electorate the widest possible choice of candidates. Therefore, the presumption is that the candidate is qualified and the plaintiff objecting to the candidacy must prove disqualification.⁴³⁴

Second, any doubt surrounding the qualifications of the candidate should be resolved in favor of the candidate. When determining whether the plaintiff has satisfied the requisite burden of proof, the court must liberally construe the applicable election laws.⁴³⁵

Third, the actual determination of the plaintiff's assertions concerning the candidate's qualifications is fact-intensive. Evidence that is commonly considered by courts includes: (a) testimony of the candidate and formal statements of domicile; and (b) documentary evidence of residence in fact, such as voter registration, homestead exemptions, vehicle registration records, driver's license address, statements in notarial acts, utility bills, memberships in social and religious groups, and evidence that most of the person's property is housed at that location. The determination of domicile and residence is qualitative rather than quantitative.⁴³⁶ Appellate courts should give great deference to a

432. LA. STAT. ANN. § 18:1401 (2018).

433. See *Landiak v. Richmond*, 2005-0758 (La. 3/24/05); 899 So. 2d 535; *Ogden v. Gray*, 2012-1314 (La. App. 4 Cir. 9/11/12); 99 So. 3d 1088.

434. See *Landiak*, 2005-0758, pp. 6–7; 899 So. 2d at 541; *Becker v. Dean*, 2003-2493, p. 7 (La. 9/18/03); 854 So. 2d 864, 869; *Russell*, 2000-2595, p. 5; 780 So. 2d at 1051; *Pattan v. Fields*, 95-2375 (La. App. 1 Cir. 9/28/95); 661 So. 2d 1320.

435. See *Becker*, 2003-2493, p. 7; 854 So. 2d at 869; *Russell*, 2000-2595, p. 4; 780 So. 2d at 1051 (noting that the object is “to promote rather than defeat candidacy”).

436. *Landiak*, 2005-0758, pp. 10–11; 899 So. 2d at 543–44; cf. 28 C.J.S. *Domicile* § 52 (2008).

trier of fact's findings based on the evidence.⁴³⁷ These factual findings are subject to the manifest error standard of review.⁴³⁸

VII. CONCLUSION

When examining the function and usefulness of domicile, one should always keep in mind that domicile is nothing more than an expression of an idea—the idea of home. Naturally, home is understood differently today than it was fifty years ago, and it will most certainly be understood differently fifty years from now. The same can be said about other key concepts in the law, such as good faith, equity, and freedom of contract. Whereas domicile has its specific elements and conceptions, the underlying principle of assigning a “legal home” to every individual is one of the general principles of law that is flexible enough to withstand the test of time.

This Article claims that the Louisiana codifications of the law of domicile and of the conflict of laws are based on this sound principle. These codifications can serve as a model not only for other jurisdictions, but also for the Louisiana legislature, in case it may consider using the concepts of domicile and residence more consistently in the public laws of the state.

Commenting on the ongoing revision of the Louisiana Civil Code, Professor Yiannopoulos remarked, “The tale continues to unfold. The Louisiana Civil Code reflects the contemporary realities of life in the United States and particularly in the state of Louisiana, with its antinomies and fascinating but competing legal traditions.”⁴³⁹ Our departed teacher and friend was a true citizen of the world, but his home was his “beloved Louisiana,” as he would say with his stentorian voice. And now, his memory resides in our hearts.

Ἀνδρῶν γὰρ ἐπιφανῶν πᾶσα γῆ τάφος.⁴⁴⁰

437. *Rosell v. ESCO*, 549 So. 2d 840, 845 (La. 1989); *Stobart v. State, Dep't of Transp. & Dev.*, 617 So. 2d 880, 882 (La. 1993).

438. *Landiak v. Richmond*, 2005-0758, p.19 (La. 3/24/05); 899 So. 2d 535, 548–49; *Steinhardt v. Batt*, 2000-0328, p. 2 (La. App. 4 Cir. 2/11/00); 753 So. 2d 928, 930.

439. YIANNOPOULOS, *supra* note 1, at 79.

440. THUCYDIDES, *HISTORY OF THE PELOPONNESIAN WAR*, 2.43.3 (El. Venizelos ed., reprinted 2011) (1940) (c. 431 B.C.E.) (from Pericles' Funeral Oration: “For heroes have the whole earth as their tomb.”). The text continues as follows: “For not only are they commemorated by columns and inscriptions in their own country, but in foreign lands there dwells also an unwritten memorial of them, graven not on stone but in the hearts of men.” *Id.*