

# “There’s no place like home....”: Domicile, Conflicts of Law, and Cross-Border Estates

## **TRUSTS, WILLS & ESTATES**

**DATE:** Wednesday 17<sup>th</sup> December 2025

**TIME:** 11:00 – 12:00

**LOCATION:** Online via Zoom



# Introduction

- This Webinar considers:
  - ❑ The importance of identifying the Deceased's domicile in cross-border succession cases;
  - ❑ Which law applies to the Deceased's succession where there are assets and Wills in different jurisdictions;
  - ❑ Administration of Cross-border Estates;
  - ❑ Cross-Border Estates and Inheritance Act Claims



# Introduction

- This Webinar includes:
- Helpful guidance in identifying the Deceased's domicile in cross-border succession cases;
- How to approach the interpretation of Wills where there is a conflict of laws;
- How to identify the law applicable to the Deceased's succession where there are assets and Wills in different jurisdictions;
- Practical guidance in administering cross-border Estates;
- Contentious matters: Cross-border Estates and Inheritance Act Claims.



# The Importance of... Determining Domicile I



- Domicile in England and Wales?
- Domicile in another jurisdiction?
- Important to establish where Deceased was domiciled to identify the law applicable to Deceased's succession and to administration of the Estate

# The Importance of... Determining Domicile II



- Domicile may have critical tax implications for the deceased's Estate
  - if the deceased is domiciled abroad the Estate may pass under a more favourable tax regime without payment of IHT
  - Rules designed to prevent wealth escaping the IHT net limit the transfers that may be made by an individual domiciled in a part of the United Kingdom to a spouse or civil partner whose domicile is outside any of the parts of the United Kingdom
  - Whereas the normal rule is for transfers of value between spouses or between civil partners to be exempt from inheritance tax, IHTA 1984 Section 18 provides a cumulative limit of the value of the nil-rate band from time to time (presently £325,000) of such transfers where the donor is U.K.-domiciled and the donee is not

# Domicile

- Domicile defines the legal relationship between the individual and that legal system which is invoked as his personal law: *Henderson v. Henderson* [1967] P 77 at 79, [1965] 1 All ER 179 at [180–181]
- A person is domiciled in that country in which they either have or are deemed by law to have their permanent home: *Winans v. A-G* [1904] AC 287 at 288, HL
- Guidance is provided by the Court of Appeal's judgments in *Cyganik v Agulian* [2006] EWCA Civ 129, [2006] WTLR 565 and *Barlow Clowes International (supra) and Holliday v Musa* [2010] EWCA Civ 335, [2010] 2 FLR 702



# The Meaning of 'Domicile'



- Domicile is separate from the concept of residence
- Predicated upon the intentions of the individual as well as other factors and circumstances
- Three different kinds of domicile are recognised in England and Wales:
  - Domicile of origin
  - Domicile of dependency
  - Domicile of choice

# Domicile of Origin

- Domicile of origin is received by operation of law at birth
- Determined by the domicile of the person upon whom child at birth is legally dependent
- Domicile of origin is retained until the acquisition of a domicile of choice (*Udny v. Udny* (1869) LR 1 Sc & Div 441, HL; *Bell v. Kennedy* (1868) LR 1 Sc & Div 307, HL)



# Domicile of Dependency

- Domicile of dependency
  - ❑ Child under 16 or person lacking capacity has domicile of dependency
  - ❑ Determined by the domicile of the person upon whom child at birth is legally dependent



# Domicile of Choice I

- Domicile of choice is acquired later by the individual actually moving to another country and *intending to remain there indefinitely*
- *Actual residence* must be proven (*Bell v. Kennedy* (1868) LR 1 Sc & Div 307)
- Test is *qualitative* rather than *quantitative* (*Bowie (or Ramsay) v. Liverpool Royal Infirmary* [1930] AC 588 at 595)
- Test whether intention to make home in new country until the end of their days or until something happens to change the individual's mind (*IRC v Bullock* [1976] 1 WLR 1178)



# Domicile of Choice II

- Residence alone may support the inference that a domicile has been acquired
- Among the circumstances which have been regarded as illuminating the question of intention are the following:
  - (1) the education, marriage or settlement in life of children
  - (2) the form and contents of Wills or other documents
  - (3) the degree of social integration
- All these factors take colour from their context, and none can be conclusive.



# Domicile of Choice III

- An intention to reside in a country for a fixed period of time, or until some clearly foreseen and reasonably anticipated event happens, will **not** be sufficient
- But if the proper conclusion from all the circumstances is that the individual intends to make their home in a country for an indefinite time, they will acquire a domicile of choice there notwithstanding a continuing emotional attachment to some other country or an intention to change their residence upon some vague or improbable contingency

(*Re: Fuld's Estate (No. 3)*, *Hartley v. Fuld* [1968] P 675 at 684–685; *Henderson v. Henderson* [1967] P 77 at 80–81, [1965] 1 All ER 179 at 181)



# Deemed Domicile



- For the purposes of inheritance tax after 6<sup>th</sup> April 2017, an individual is *'deemed' domiciled in the U.K. as soon as that individual has resided in the U.K. in 15 or more out of 20 consecutive tax years* preceding the relevant tax year and for at least one year of the four tax years ending with the relevant tax year: IHTA 1984, Section 267(1)(b)
- Subject to double taxation agreements with other jurisdictions, an individual domiciled in a part of the United Kingdom will retain that domicile for inheritance tax purposes for three years after losing that domicile status at general law (IHTA 1984, Section 267(1)(a))
- However, if an individual was born in the U.K., has a U.K. domicile of origin, and is resident in the U.K. for the relevant tax year, and was so resident for one of the preceding two tax years, they will be deemed domiciled in the UK: IHTA 1984, Section 267(1)(aa); Section 272
- However, it is open to non-U.K. domiciled spouses to elect to be treated as non-UK domiciled, and for the purposes of this election, which obviously requires the elector to be, or have been, U.K. domiciled, Section 267 is to be ignored: IHTA 1984, ss 267ZA and 267ZB.

# “There’s no place like home...”: Domicile

## Key Points to Note

- It is not easy to demonstrate that the domicile of origin has been lost to a domicile of choice
- Further, once a domicile of choice has been obtained, it will not automatically be lost where a person moves to a new jurisdiction without having decided to reside there permanently, although nor will it necessarily have been retained
- In any event, extensive evidence will need to be gathered in respect of the deceased’s life in order to determine domicile
- This includes evidence of work, relationships, family and financial affairs and also expressions of the deceased as to his intentions in respect of residence (although they will not carry significant weight)
- Guidance is provided by the Court of Appeal’s judgments in *Cyganik v Agulian* [2006] EWCA Civ 129, [2006] WTLR 565 and *Barlow Clowes International (supra)* and *Holliday v Musa* [2010] EWCA Civ 335, [2010] 2 FLR 702
- There is a view held by some that ‘habitual residence’ would be a better test, as opposed to domicile: Longmore LJ in *Cyganik v Agulian* at [58]: “*I find it rather surprising that the somewhat antiquated notion of domicile should govern the question whether the estate of a person, who was on any view habitually resident in England should make provision for his dependants.*”
- Consider deemed domicile
- Consider tax position



# Case Study on Domicile: Dorothy Gale

Domicile of  
Origin: Kansas

Domicile of  
Choice: Oz?



# Kansas... or...Oz?



# **“There’s No Place Like Home...”?**



## **Return to Domicile of Origin?**

# **“There’s No Place Like Home...”: or is there?**

- **Decision to remain in domicile of choice**



# Conflict of Laws I

- Under the principles of private international law, or conflict of laws in England and Wales the following applies:-
  - ❑ Where a case without a foreign element comes before the English Court that does not have any foreign element, the Court will apply English domestic law
  - ❑ If the case has a foreign element, such as the testator having made his or her last Will in a foreign country or having had a foreign domicile, a conflict of laws may arise for the Court
  - ❑ The Court will apply English conflict of laws rules:
    - (i) in deciding whether it has jurisdiction to hear the case; and
    - (ii) if having decided it has such jurisdiction, the choice of law to be made between the relevant laws

# Conflict of Laws II

- For the purposes of an English rule of the conflict of laws, the question where a person is *domiciled* is determined according to *English law*
- Seminal work on the conflict of laws in the U.K. is *Dicey, Morris, and Collins on The Conflict of Laws*, 16<sup>th</sup> Edition, ed. Lord Collins of Mapesbury *et al* (London: Sweet & Maxwell, 2022)

# Interpreting Wills and Conflict of Laws I

- Rule 171 of Dicey provides that:
  - *“A will is to be interpreted in accordance with the law intended by the testator. In the absence of indications to the contrary, this is presumed to be the law of his or her domicile at the time when the will is made.”*
    - Dicey, 16<sup>th</sup> Edition (2022), §28R-058
- There is, however, a presumption that the law of the testator’s domicile at the time of execution applies
- Therefore, in accordance with the laws of England and Wales a Will is to be interpreted in accordance with the law intended by the testator, which is presumed to be the law of his/her domicile at the time when the Will was made

# Interpreting Wills and Conflict of Laws II

- Choice of Law
  - Choice of Law Clauses in Wills in England and Wales: Testator can choose the law applicable to his or her succession
  - EU Succession Regulation
    - The U.K. did not opt-in to the EU Succession Regulation 650/2012 and is no longer a Member of the EU
    - Pursuant to Article 22 of the EU Succession Regulation a person is permitted to choose the law of the country of his/her nationality as the law applicable to his or her succession, irrespective of whether it is the law of a Member State, either at the time of making the choice or at the time of his or her death
    - Therefore, a national of a third country, such as the U.K., habitually resident in a Member State, such as France or Italy, may choose the law of his or her nationality to determine the regime applicable to assets and property located in Member States
    - In the absence of a choice the law of the State in which the Deceased had his or her habitual residence at the time of death applies to the whole succession under Article 21

# The Law Applicable to Succession I

- Upon her return from Oz in 1939 Dorothy executes a Will in Kansas, her domicile of origin, where she remains domiciled ('the Kansas Will')
- The Kansas Will does not contain a clause specifying the laws applicable to Dorothy's Estate, or whether the Will is intended to apply to her worldwide assets, or only to her assets in Kansas
- It would seem, therefore, that Dorothy's intention was for the Kansas Will to apply to her worldwide assets and that she wished for Kansas law to apply to her succession as the law of her domicile



# The Law Applicable to Succession II

- However, if Dorothy wishes to leave her Estate to the Scarecrow, the Tin Man, and the Lion, she could include a clause in the Kansas Will specifying that the laws of Oz are to apply to the succession of her Estate



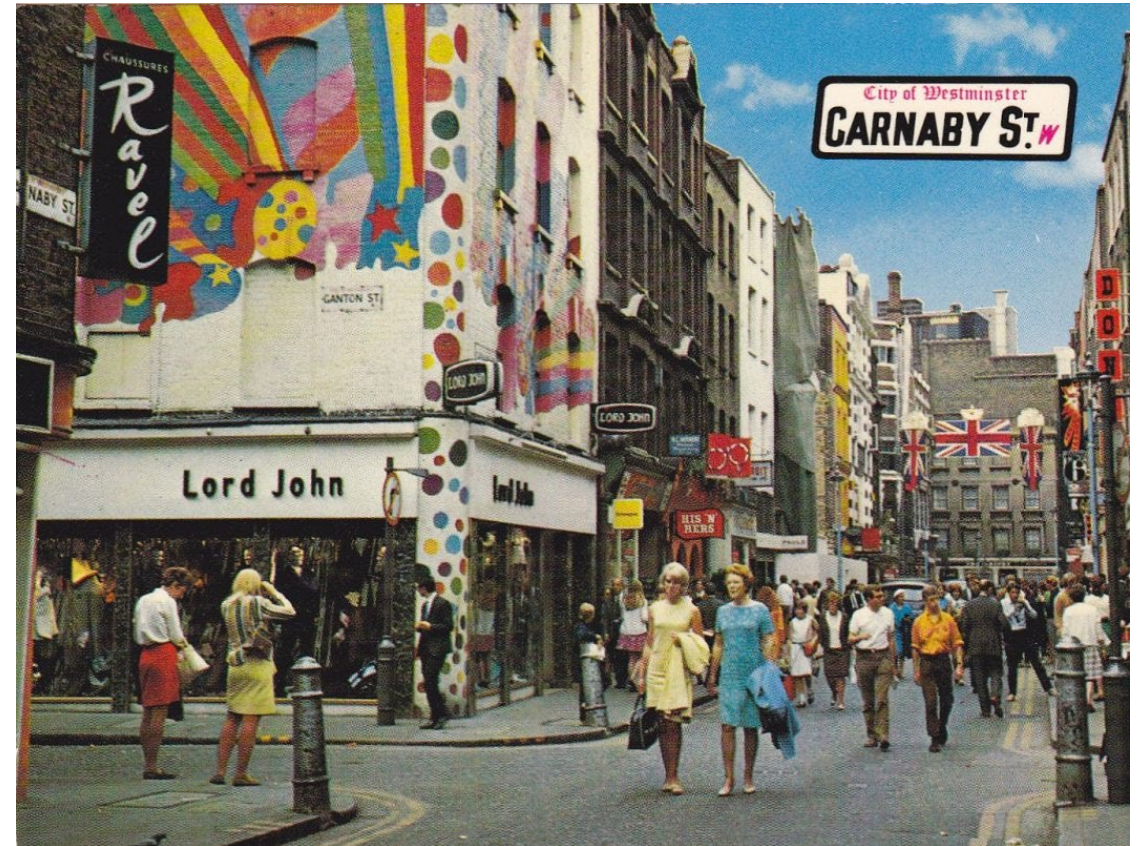
# The Law Applicable to Succession III

- Some years later Dorothy moves to Italy from Kansas to establish a shoe factory engaging Italian craftsmen to make ruby slippers
- Dorothy remains in Italy and marries an Italian national. She dies domiciled there, leaving an Italian Will ('the Italian Will'), having retained her family home and farm in Kansas
- The Italian Will does not contain a clause specifying the laws applicable to Dorothy's Estate, or whether the Will is intended to apply to her worldwide assets
- It would seem, therefore, that Dorothy's intention was for the Italian Will to apply to her worldwide assets and that she wished for Italian law to apply to her succession
- Which law applies?
- Under Article 21 of the EU Succession Regulation, Italian law applies to Dorothy's succession



# The Law Applicable to Succession IV

- However, would the position would be different if Dorothy were to relocate to London from Italy to invest in a Carnaby Street shop to sell her ruby slippers and decided she preferred London to Italy and remained there?
- Dorothy dies domiciled in London, leaving not only the Italian Will, but also an English Will containing a clause stating that the English Will is to apply to her worldwide assets
- Therefore, Dorothy's intention would be for the English Will to apply to her worldwide assets
- How are they treated under English law?



# Movable and Immovable Assets I

- Which law governs Dorothy's assets?
- Dorothy has movable assets such as the ruby slippers and her bank accounts and immovable assets, including her family home and farm land in Kansas and her Italian property
- The succession to the **movables** of a deceased person will be governed by the law of their domicile at the date of their death (*lex domicilii*)



# Movable and Immovable Assets II

- However: the succession to the **immovables** of the deceased will be governed by the law of the State in which the immovables are situated (*lex situs* or *lex rei sitae*)



# Movable and Immovable Assets II

- The *lex situs* governs whether an asset is to be classed as movable or immovable
- Where there is a conflict between the *lex fori* and the *lex situs*, the *lex situs* prevails



# Administration of Cross-Border Estates: Some Practical Guidance I

- In England and Wales the administration of estates is regarded as separate and distinct from succession
- The administration of a deceased person's assets is governed by the law of the country from which the personal representative derives their authority to collect them , which would be in accordance with a grant of representation in England and Wales
- If a grant is sought in respect of a Will of a person who died domiciled abroad, it must be shown that such a Will is admissible to proof in England and Wales
- Rule 30 of the Non-Contentious Probate Rules 1987, SI 1987/2024 as amended ('NCPR') provides that where a person dies domiciled in a foreign country the High Court will in general make a grant of probate to his or her personal representative under the law of such foreign country
- A person entrusted by the court of the domicile with the administration of the estate may apply for an order that a grant be made to him or her, whether directly, or through an attorney

# Administration of Cross-Border Estates: Some Practical Guidance II

- If the Deceased has made a formally valid Will which names an executor as such in English, or which describes (in any language) the duties of a named person in terms which according to English law are sufficient to constitute him or her an executor, probate may be granted to that person
  - ▣ See: *In the Goods of Cosnahan* (1866) L.R. 1 P. & D. 183; *In the Goods of Earl* (1867) L.R. 1 P. & D. 450. *cf.* *In the Goods of Von Linden* [1896] P. 148; *In the Goods of Briesemann* [1894] P. 260
  - ▣ Non-Contentious Probate Rules 1987, r.30(3)(a)

# Contentious Matters: Cross-Border Estates and Claims under the Inheritance (Provision for Family and Dependants) Act 1975 I

- Where the Deceased has assets in more than one jurisdiction, domicile within England and Wales is (at present) a prerequisite for any claim: Section 1(1) of the Inheritance (Provision for Family and Dependants) Act 1975
- The domicile of the *Deceased* is relevant; not that of the *Claimant*
- The only difficulties if the Claimant is domiciled abroad will be the practical ones inherent in any litigation being carried on with parties who live abroad, such as service of documents and the need to secure costs



# Key Points to Note I



- Domicile of origin is retained until the acquisition of a domicile of choice
- For the purposes of an English rule of the conflict of laws, the question where a person is *domiciled* is determined according to *English law*
- A Will is to be interpreted in accordance with the law intended by the testator
- Presumption that the law of the testator's domicile at the time of execution applies, unless clear evidence that law of a different jurisdiction has been elected by the testator to apply to his or her succession
- Succession to movables will be governed by the *lex domicilii*, succession to immovables will be governed by the *lex situs*

# Key Points to Note II



- In England and Wales the administration of estates is regarded as separate and distinct from succession
- The administration of a deceased person's assets is governed by the law of the country from which the personal representative derives their authority to collect them
- Where the Deceased has assets in more than one jurisdiction, the Deceased must have been **domiciled** within England and Wales for any claim to be brought under the Inheritance (Provision for Family and Dependants) Act 1975

**“Oh Auntie Em, there’s no place like home...!”**



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