



INDIAN JOURNAL OF LEGAL AFFAIRS AND RESEARCH

VOLUME 3 ISSUE 1

Peer-reviewed, open-access, refereed journal

IJLAR

+91 70421 48991
editor@ijlar.com
www.ijlar.com

DISCLAIMER

The views and opinions expressed in the articles published in the Indian Journal of Legal Affairs and Research are those of the respective authors and do not necessarily reflect the official policy or position of the IJLAR, its editorial board, or its affiliated institutions. The IJLAR assumes no responsibility for any errors or omissions in the content of the journal. The information provided in this journal is for general informational purposes only and should not be construed as legal advice. Readers are encouraged to seek professional legal counsel for specific legal issues. The IJLAR and its affiliates shall not be liable for any loss or damage arising from the use of the information contained in this journal.

Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

RECONSIDERING THE REVIVAL DOMICILE OF ORIGIN: A COMPARATIVE ANALYSIS OF UDNY V UDNY AND IN RE ESTATE OF JONES

AUTHORED BY - PRISHA AGARWAL

Abstract

The doctrine of domicile plays a central role in private international law, determining an individual's personal law in matters such as succession, marriage, and capacity. This paper examines the concept of the domicile of origin and the controversial rule of its revival as established in *Udny v Udny* (1869). The revival doctrine, despite its historical foundation, has been criticised for producing unjust and unrealistic results when applied to modern transnational contexts. The paper analyses these criticisms and compares them with the American approach established in *In re Estate of Jones* (1921), which rejects the automatic revival of the domicile of origin. Through this comparative analysis, the paper argues that the American model offers a more equitable and practical framework aligned with contemporary principles of intention and residence in determining domicile.

I. Introduction

The notion of Domicile, a cornerstone in Private International Law or Conflict of Laws, serves as a linking factor that connects a person to an area governed by a single system of law that is recognised as his personal law in situations where there is a foreign element, and it's imperative for an individual to have a domicile in order to establish a connection with the country's legal system and to claim the benefits arising out of it.¹ The personal law component of this legal system establishes a person's legal competence, such as whether or not they are legally capable of getting married or distributing the estate of a deceased person.² "For it is on this basis that the personal

¹ JusCorpus, *Law of Domicile under Private International Law* (10 July 2022) < <https://www.juscorpus.com/law-of-domicile-under-private-international-law/>> accessed 11 January 2026.

² *Udny v Udny* (1869) LR 1 Sc & Div 441 (HL).

rights of the party, that is to say, the law which determines his majority or minority, his marriage, succession, testacy or intestacy, must depend.”³ For example, a married man who resides in England is subject to English law in order to dissolve or annul his marriage. This paper critiques the common law doctrine of revival of domicile of origin and argues, through a comparative analysis with American jurisprudence, that the English position produces outcomes inconsistent with modern principles of intention and residence.

II. Concept of Domicile and Domicile of Origin

The general meaning of Domicile is a ‘permanent home’ of an individual or a place where a person resides with the intention of remaining there for an indefinite period.⁴ Similar definition has been given by Lord Cranworth V-C in *Whicker v. Hume*,⁵ wherein he stated that “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. I think the best I have heard is one which describes the home as the place (I believe there is one definition in which the ‘lares’ are alluded to), the place ‘unde non sit discessurus si nihil avocet; unde cum profectus est, peregrinari videtur.’ I think that it is the best illustration, and I use that word rather than definition, to describe what I mean.”⁶ But this definition by Lord Cranworth has been subject to a little disparagement, that its oversimplified and is slightly deceptive, i.e. if a person briefly lived someplace else, he would not lose his permanent home, where the domicile of that individual in question is.⁷ And that’s the basic difference between a Domicile and a Residence. A residence is a home or dwelling where you can reside permanently or temporarily but doesn’t necessarily be one’s domicile, like for example, A person may have his residence both in India or in Nepal, wherein he stays at each place for the duration of 6 months, but still, only one of either country would be his domicile, and that country would be the one where he has the

³ *Udny v Udny* (1869) LR 1 Sc & Div 441 (HL).

⁴ Adrian Briggs and Peter Rees, *Conflict of Laws* (3rd edn, Oxford University Press 2009) 60.

⁵ *Whicker v Hume* (1858) 7 HL Cas 124.

⁶ LawTeacher, *The Legal Concept of Domicile* (2 February 2018) <<https://www.lawteacher.net/free-law-essays/family-law/domicile.php>> accessed 11 January 2026.

⁷ LawTeacher, *The Legal Concept of Domicile* (2 February 2018) <<https://www.lawteacher.net/free-law-essays/family-law/domicile.php>> accessed 11 January 2026.

intention to stay indefinitely, or permanently.⁸ Because a person can have only one domicile but may have more than one residence, as one of the principles stated in *Udny vs Udny*.⁹

Domicile of Origin, as per Lord Westbury is, “*It is a settled principle that no man shall be without a domicil, and to secure this end the law attributes to every individual as soon as he is born the domicil of his father if the child be legitimate, and the domicil of his mother if the child be illegitimate. This is called the domicil of origin and is involuntary. It is the creation of law – not of the party. It may be extinguished by an act of law, as, for example, by sentence of death or exile for life, which puts an end to the status Civilis of the criminal; but it cannot be destroyed by the will and act of the party.*”

III. *Udny v Udny* and the Revival Doctrine

The court in *George Udny vs. John Henry Udny*¹⁰ established this abovementioned principle. There was an altercation over who was entitled to the Udny estates in Aberdeenshire and had by paternity his domicile in Scotland. He took upon lease a house in London, where he resided for almost thirty-two years, formed a connection with Miss Ann Allat, and had a son out of wedlock. The illegitimate child was legitimised afterwards in holy matrimony of the respondent’s mother with his father so that the son could become legitimate *per subsequens matrimonium*. The main contention was to decide on the domicile of the respondent’s father, the late Colonel Udny, at the time of his birth, at the time of the respondent’s birth and at the time of the colonel’s marriage with the respondent’s mother. George Udny, the appellant, claimed that the respondent, John Udny was a bastard and not entitled to the estates. The dispute centred on whether Colonel Udny had given up his Scottish domicile to acquire the English one and had kept it up to the birth of John Udny, resulting in this appeal subsequently being rejected with costs when Law Peers upheld the interlocutors that had been criticized.¹¹

⁸ N Roja Rani, *Analysis on Law of Domicile* (ALSI) <<https://www.alsi.edu.in/images/conflict-of-law.output.pdf> accessed> 11 January 2026.

⁹ *Udny v Udny* (1869) LR 1 Sc & Div 441 (HL).

¹⁰ *Udny v Udny* (1869) LR 1 Sc & Div 441 (HL).

¹¹ *Udny v Udny* (1869) LR 1 Sc & Div 441 (HL).

The principles which were established in *Udny vs Udny* were: - (i) That, at the time, the child is born, his or her domicile of origin would be determined by the father's domicile and if the child is illegitimate, then by mother's domicile. (ii) The case also established that a person can acquire a domicile of choice by residing in a new country, where he has a residence and also has an intention to reside there permanently. However, the acquisition of a new domicile requires the abandonment of the old one and the abandonment of a subsequently acquired domicile *ipso facto* restores the domicile of origin.¹²

IV. Critique of the Revival of Domicile of Origin

However, this 'Revival of Domicile of Origin' theory received major criticism and has been rejected by various jurisdictions. This research paper delves into this complex and multifaceted issue of the revival of domicile of origin and will elucidate why *In re Estate of Jones*¹³ is a better approach with regard to the issue in question.

In, *In Re Estate of Evan Jones*, the contention was whether the decedent i.e. Evan Jones at the time of his death was in Wapello country, Iowa or in Wales (his native country).¹⁴ Wherein the court ultimately ruled that the domicile of Evans Jones at the time of his death was in Iowa and not in Wales although he had the intention to revert to his domicile of origin because this is the general rule of the US domicile laws that, once legally acquired, a domicile of choice, is retained until a new domicile of choice is secured, and that, in the acquisition of such new domicile, the fact and the intention must occur, and one such compelling reason as to why the English rule should not be implemented is that someone who nowadays abandons their domicile of origin and obtains a legal domicile in another jurisdiction is, at the very least, presumably familiar with the laws of the latter domicile, and there is, to put it mildly, a strong presumption that Evan wants his estate to be administered in accordance with the laws of that jurisdiction of the domicile of origin, and that the exception which was led down by Story following common law principles, and English law rules, should not be taken into cognizance.¹⁵

¹² *Udny v Udny* (1869) LR 1 Sc & Div 441 (HL).

¹³ *In re Jones (Decd)* [1921] 2 Ch 241.

¹⁴ *In re Jones (Decd)* [1921] 2 Ch 241.

¹⁵ *In re Jones (Decd)* [1921] 2 Ch 241.

The status of an individual's domicile is a particular critique of the common law of domicile, specifically in England. "Everyone has a domicile of origin, which can be replaced by a domicile of choice", the court stated in *Agulian vs. Cyganik*.¹⁶ The more contentious sub-principle says, that if someone abandons their domicile of choice without choosing another, then, "such abandonment of an acquired domicile ipso facto restores the domicile of origin", as stated by Lord Chelmsford.¹⁷ That return is dubious not just if one has left one's preferred residence, but also if doing so would be regarded retrograde, as in cases where the local criminal code violates international human rights norms or imposes the death sentence indiscriminately.¹⁸

V. Absurd and Anomalous Outcomes of the Revival Doctrine

Albeit it's true that several peculiar situations can be handled by the revival rule of domicile of origin.¹⁹

For instance, a family of English domicile of origin relocate to India with the aim of settling there permanently, but then opt to spend a few years in France instead, with the goal of never returning to India. But, to acquire a domicile of choice in France, they need to establish a habitual residence there, which they did not have as of that moment, so in result, their domicile of origin (India) revived even though they explicitly mentioned to never return to India,²⁰ which was in my opinion, absurd, because how can an Indian domicile have a bearing on those who doesn't even intend to reside in that country ever, as it's a pre requisite that a person acquiring a domicile in a country based on his intention to set up residence there permanently *animo et facto* (Robertson), that is, intentionally and factually putting that intention into action.²¹ But this criterion is not being fulfilled in the doctrine of the revival of domicile of origin leading to absurdity.

¹⁶ *Agulian v Cyganik* [2006] EWCA Civ 129, [2006] 1 WLR 2055.

¹⁷ *Udny v Udny* (1869) LR 1 Sc & Div 441 (HL).

¹⁸ Leon Trakman, *Domicile of Choice in English Law: An Achilles Heel?* (2015) 11 *Journal of Private International Law* 1 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2661841> accessed 11 January 2026.

¹⁹ LegalServiceIndia, *Critical Analysis of Law of Domicile in the Domain of Private International Law* (LegalServiceIndia) <<https://www.legalserviceindia.com/legal/article-400-critical-analysis-of-law-of-domicile-in-the-domain-of-private-international-law.html>> accessed 11 January 2026.

²⁰ LegalServiceIndia, *Critical Analysis of Law of Domicile in the Domain of Private International Law* (LegalServiceIndia) <<https://www.legalserviceindia.com/legal/article-400-critical-analysis-of-law-of-domicile-in-the-domain-of-private-international-law.html>> accessed 11 January 2026.

²¹ Gerald B Robertson, *The Law of Domicile: Re Foote Estate* (2010) 48 *Alberta Law Review* 189 <<https://albertalawreview.com/index.php/ALR/article/view/168/168>> accessed 11 January 2026.

In *Grant vs. Grant*,²² A's domicile of origin was in England, moved to France and fathered B there, wherein B while staying in France, had a legitimate son called C, who also then had a legitimate son named D while residing in France, but when they were 65 years old, and ready to retire, A, B and C planned to return to England, back to their domicile of origin, but they all passed away in France before that time, so it was believed automatically that D's domicile of origin was England even though he had never been there, even when the propositus is not physically present in his place of birth, it is clear from the facts of the matter that he is still considered to be domiciled there in England, which led to bizarre results.²³

In accordance with common law, "if the domicile of choice is abandoned without acquiring a new domicile of choice, the domicile of origin will revive till a new one is acquired *animo et facto*," because of the settled principle, as per Lord Westbury that, "no man shall be without the domicil of origin" as established in *Udny vs Udny*.²⁴ The case of *Re Foote Estate*,²⁵ is a significant one because of the revival of domicile of origin doctrine because if Foote had been discovered to have abandon his domicile of choice in Norfolk Island without obtaining a new domicile of choice in British Columbia, his domicile of origin would have revived and he would have dies domiciled in Alberta despite not having spent the last 37 years of his life there. The facts of the case were such that there was a testator's family, in order to pursue family relief claims, needed to know whether the testator's domicile at the time of his death was domiciled at Alberta/British Columbia. The testator's estate and charity organisations claimed that Norfolk Island, an island off the coast of Australia, was where he lived. The fundamental question that surfaced was whether the Alberta court had The Alberta Court of Queen's Bench, concluded that the Alberta would be the jurisdiction to decide the testator's domicile at the time of his death, which was at Norfolk. Additionally, the theory of reversion of his domicile of origin (Alberta) did not apply since he had not given up his Norfolk Island domicile of choice, which technically would have meant that if Mr. Foote would have abandoned his domicile of choice in Norfolk Island without acquiring a

²² *Grant v Grant* [1946] AC 534 (HL) 543.

²³ LegalServiceIndia, *Critical Analysis of Law of Domicile in the Domain of Private International Law* (LegalServiceIndia) <<https://www.legalserviceindia.com/legal/article-400-critical-analysis-of-law-of-domicile-in-the-domain-of-private-international-law.html>> accessed 11 January 2026.

²⁴ *Udny v Udny* (1869) LR 1 Sc & Div 441 (HL).

²⁵ *Re Foote Estate* [1923] 1 Ch 109.

new one, then by the revival of domicile of origin, his domicile at the time of the death would be Alberta. Albeit, Graesser J. additionally asserted that he would not have used the resurrection of the domicile of origin theory, because according to him, a court has a 'residual discretion' to disregard the doctrine of 'revival of domicile of origin' to "avoid an absurd result", as the revived place of origin had absolutely no relevance to a person's life, according to judge's definition of the absurd result, which was undoubtedly the case with Foote's link to Alberta at the time of his passing.²⁶ The common law rule of the revival of domicile or origin has been subject to major criticism and *Re Montizambert estate*,²⁷ a 1973 decision of the Ontario High Court, stated that- "*Writers on the problem of conflicts of law have noted that the doctrine of revival of domicile of origin can produce anomalous results, and this would be a case in which such an anomalous result would obtain....[T]here is no evidence to suggest that the deceased had any real connection with Quebec after 1882, some 82 years before her death. To suggest that her personal law should be the law of a jurisdiction which the deceased left 82 years before her death is to defy common sense. While the law of domicile is sometimes, by its nature, artificial and confusing, it ought not to be totally divorced from reality.*"²⁸

VI. The Indian Position on Revival of Domicile of Origin

Indian courts are dominantly based on principles of English domicile laws only, so the revival of domicile of origin is not criticized and also that domicile has not been defined in the constitution. But a research article by an Indian scholar reveals the criticism by virtue of Section 13 of the Indian Succession Act of 1925, the Indian Conflict of Laws, despite generally being based on the English Conflict of Laws, which rejects the concept of revival of domicile of origin.²⁹

²⁶ Gerald B Robertson, *The Law of Domicile: Re Foote Estate* (2010) 48 *Alberta Law Review* 189 <<https://albertalawreview.com/index.php/ALR/article/view/168/168>> accessed 11 January 2026.

²⁷ *Re Montizambert Estate* [1914] AC 417 (PC) 421.

²⁸ Gerald B Robertson, *The Law of Domicile: Re Foote Estate* (2010) 48 *Alberta Law Review* 189 <<https://albertalawreview.com/index.php/ALR/article/view/168/168>> accessed 11 January 2026.

²⁹ Paras Diwan and Peeyushi Diwan, *Private International Law: Indian and English* (4th edn, Deep & Deep Publications 1998) ch 6.

VII. Conclusion

The main problem, is that when domicile of choice requires intention and residence, why does the revival of domicile of origin not require that and hence is itself a defeating provision as what if the person does not have a residence or intention to reside there permanently and to revert back its original domicile and does not want to connect to the origin's jurisdictional laws and to still remain attached to his domicile of choice at death, why does UK doctrine of domicile do this injustice to the individuals. Hence, I find US laws to be more just and appropriate as they avoid any kinds of arbitrariness and absurd results in correspondence to the intention of the person's choice in consideration. If the domicile of choice is so hard to acquire then the same should be with when reverting to the domicile of origin and should not be the reason for the explanation given in *Udny's* case about allegiance. Cases like *Harrison vs Harrison* have proved domicile of origin to be beneficial but what if it's the case that a person who has never visited a country revives his domicile of origin, just because of the laws of domicile that a legitimate child gets the domicile of his father when born, would automatically become the child's domicile of origin, irrespective of whether or not he has ever visited that country or has an intention or a residence there. The perception towards the laws of domicile is now changing, whether it's regarding the domicile of dependency in matrimonial cases or disputes within marriages, giving independent rights to the woman or the choice to a child of whether to inherit the domicile of origin from his paternal side or maternal side. With that, I believe that England should also approach a much more contemporary view.