

**LEX DOMICILII AND ITS CONSEQUENCES IN FAMILY LAW:
A COMPARATIVE ANALYSIS OF POSITIONS IN UNITED KINGDOM, SOUTH AFRICA,
TRINIDAD AND TOBAGO AND NIGERIA***

Abstract

The common law position, that a married woman takes the domicile of her husband on marriage and continues to do so until the marriage is terminated by death or divorce has created a lot of hardship for the married woman in Nigeria. For instance, if she desires to divorce her husband, she is compelled to follow him to the country to which he has acquired domicile. Then the husband has the opportunity of changing his domicile from time to time in order to avoid being divorced by the wife. The husband could claim to have abandoned any domicile he was alleged to have. However, the Matrimonial Causes Act, 1970 in Nigeria has to a certain extent mitigated some of this hardship by creating a special provision for a deserted wife. Notwithstanding, the married woman in Nigeria should be allowed to have the right of choice with regards to her domicile as in other jurisdictions of the world. The article makes a comparative analysis of the concept of lex domicilii in United State of America, South Africa, Trinidad and Tobago and Nigeria; highlights the benefits of the legal framework in those jurisdictions and suggests necessary legal reforms to make the law of domicile better in Nigeria. These reforms include the need for a comprehensive legislation on domicile in Nigeria; the need for a review of the Matrimonial Causes Act as it relates to domicile and the abolition of the revival doctrine of domicile.

Keywords: *Lex Domicillii, Domicile, Family Law, United Kingdom, South Africa, Trinidad and Tobago, Nigeria*

1. Introduction

Domicile is of great importance in the determination of the personal affairs of an individual and family. Issues of legitimacy, legitimation, adoption, marriage such as (capacity to marry), divorce and basic citizenship rights are connected to domicile and are determined by the law of domicile. It is however important for us to note that ‘domicile’ is declining in use today; many States instead use ‘residence’ or ‘inhabitation’ to distribute state citizenship-based rights such as voting, welfare, or tuition benefits. However, at common law, domicile was a more robust and far-reaching concept.¹ The concept of Domicile is not uniform throughout the world. Lord Cranworth in the case of *Whicker v Hume*² said ‘... by Domicile, we mean the home, the permanent home, I am afraid that no illustration drawn from foreign writers or foreign languages will very much help you to it’

In Matrimonial proceedings in Nigeria, the jurisdiction of the High Court to entertain matrimonial causes is based on domicile and only a person domiciled in Nigeria can institute a matrimonial cause. Capacity to marry is governed by the antenuptial domicile and a marriage is valid if the parties have the legal capacity to marry. A testator’s capacity to make a will of moveables is governed by domicile. A will is treated as properly executed if its execution conformed to the internal law in force in the territory where it was executed or in the territory where as at the time of execution or of the testator’s death, the testator was domiciled or had his habitual residence or was a national.

The main aim of this work is to give a comparative discussion on the law of domicile as it relates to family law. This article examines the concept of domicile, the common law rule as it relates to domicile, the revival doctrine of domicile. This article discusses the general principles of domicile in Nigeria, the forms of domicile which includes domicile of origin, domicile of choice and domicile of dependency. The challenges and hardship created by the law of domicile on women and children in Nigeria. It reviews the law of domicile in jurisdictions such as United State of America, South Africa and Trinidad and Tobago and makes recommendation relating to the law of domicile in Nigeria for the sake of easy reference and to avoid unnecessary repetition, the Matrimonial Causes Act will be hereinafter referred to as MCA.

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¹C. Nwagbara, ‘Domicile- A Critical Analysis of The Position in Cheshire, North & Fawcett Private International Law’, (2014), *Journal of Law, Policy And Globalization* Vol.24.- <Www.Iiste.Org> Accessed 1st Of June 2017

² (1858)7HLEL 124@160.

2. Conceptual Clarification

Domicile

Black's law dictionary defines domicile as a place a person has been physically present and regards as home; a person's fixed principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere. A person has a settled connection with his or her domicile for legal purposes, either because that place is his home or because the law so designated that place.³ According to Cheshire, domicile indicates a man's civil status and provides the laws for determining his personal rights and obligations. It is constituted by residence in a place or country with the requisite intention to remain there permanently.⁴ The English concept of domicile is more than habitual residence because the intention required for the residence is stronger, the two basic ingredients of the English concept of domicile which are the permanent and voluntary living in a particular legal unit determines the individual's capacity to contract, to acquire legitimacy or to make a valid will.

Lex domicilii

According to the Black's law dictionary, '*lex domicilii*' means the law of the country where a person is domiciled. The determination of a person's right by establishing where, in law, that person is domiciled⁵ *lex domicilii* is applied in cases related to will divorce, marriage separation and contract. In *Re Harwood*, the court held that the validity of a last will is still governed entirely and solely by the *lex domicilii* of the testator.⁶

Domicile and Nationality

Originally, domicile meant one's personal home. Consequently, it is completely unconnected with nationality. These are two different conceptions. Nationality represents a man's political status, by virtue of which he owes allegiance to some particular country. Domicile indicates his civil status and it provides the law by which his personal rights and obligations are determined. Nationality depends, apart from naturalization, on the place of birth or on parentage; domicile is constituted by residence in a particular country with the intention of residing there permanently. It follows that a man may be a national of one country, but domiciled in another.⁷ Nationality denotes attachment to a particular legal territory or state. The concept of nationality is recognised as a sound legal principle in most continental countries although its retention as a connecting factor for determining an individual's personal relations has been much criticised. Nationality is a subject of international law and according to common law it is the place of birth which determines nationality. Article 1-2 Hague convention on conflict of nationality laws of 1930 provides that it is the duty of each State to determine who its own nationals are under its own laws and questions as to whether a person possesses the nationality of a particular state must be determined in accordance with the law of the state. Nationality is objectionable as a criterion of personal law on at the following grounds: (1) a person may have lost contact with the country of nationality or may never have been connected with it at all because he has chosen to establish his home elsewhere (2) he may either be stateless or may have more than one nationality. For examples in some federations and countries with multiple legal systems or law districts, it is difficult to state with certainty which of the laws is the law of the nationality and when this is coupled with the fact that the individual has a dual nationality a court faced with such problems would fall back to another connecting factor in order to ascertain the personal law. For instance, the court may adopt connecting factors like residence, domicile or where he has his or her ancestors. In some cases, the law may disregard some of the above-mentioned connecting factors and apply the law which it thinks best suits the circumstance. Nationality, cannot therefore determine the internal law to which a man is subject. Section 9(4) English Adoption Act provides that where a person has no nationality or his nationality is not ascertainable for the purpose of proceedings under the Act, he is to be treated as a national of a country he is habitually resident, or if the country is a part of a multi-jurisdictional nation, as a national of that nation.⁸

3. Common Law Rules as it relates to Domicile

Under the common law rules a married woman possesses her husband's domicile throughout the subsistence of her marriage. This rule may in certain circumstances cause hardship to married women for instance if she desires to divorce her husband, she is compelled to follow him to the country to which he has acquired domicile. Then the husband has the opportunity of changing his domicile from time to time in order to avoid being divorced by

³ A. Garner. *Black's Law Dictionary* (Ed): 6th Edition: Thomson Business: 2011 Page 597

⁴ C. Cheshire And North and Fawcett. *Private International Law* (15th Edn, Oxford University Press 2017)

⁵ Garner, *Black's Law Dictionary* Op. Cit, P 993

⁶ 104 Misc.653 (N.Y.Misc. 1918)

⁷H. Silving, 'Nationality In Comparative Law' (1956) *American Journal Of Comparative Law* 5

⁸ English Adoption Act 1968 Section9(4)

the wife. He could claim to have abandoned any domicile he was alleged to have. Domicile of origin is ascribed to children on the status of legitimacy or illegitimacy.⁹

General Principles of Domicile

- 1) It is a settled principle that nobody shall be without a domicile, and in order to make this effective, the law assigns a domicile of origin to every person at birth (which is that of the father for a legitimate child) and that of the mother for an illegitimate child, and to a child found, the place where he is found. This prevails until a new domicile has been acquired, so that if a person leaves the country of his origin with an undoubted intention of never returning to it again, his domicile of origin subsists until he actually settles with the requisite intention in some other country. The rationale for this rule is to link everyone with a legal system which may govern a number of legal relationships.¹⁰
- 2) A person cannot have two domicile - since the object of the law in insisting that no person shall be without a domicile is to establish a definite legal system by which certain of his rights and obligation may be governed, and since the facts and events of his life frequently impinge upon several countries, it is necessary on practical grounds to hold that he cannot possess more than one domicile at the same time, at least for the same purpose.¹¹
- 3) Domicile signifies connection with a simple system of territorial law, but it does not necessarily connote a system that prescribes identical rules for all classes of persons.
- 4) There is a presumption in favour of the continuance of an existing domicile. Hence, the burden of proving a change lies in all cases upon those who allege that a change has occurred. In the case of *Harrison v. Harrison*,¹² The standard of proof necessary to rebut the presumption is adopted in civil actions, which requires the intention of the *propositus* to be proved on a balance of probabilities, not beyond reasonable doubt as is the case in Criminal Proceedings.

4. Domicile in Nigeria

Before the commencement of the Matrimonial Causes Decree (now Act) there used to be judicial confusion which clogged the Nigerian law in relation to the concept of Domicile in the sense that Nigeria was governed as a unitary state, and it was assumed that for all purposes, there was a common Nigerian domicile. This was decided in the case of *Jones v. Jones*.¹³ From 1951, Nigeria was governed as a federation and the question whether there is a common Nigeria domicile or different regional domiciles came to fore. One school of thought held the view that there is a single Nigeria domicile. This view is founded on the fact that the federal legislature has exclusive legislative competence in matrimonial causes. And in the exercise, it has by statute conferred jurisdiction on the state High Courts and prescribed the law to be applied. The result is that there is uniformity of law and jurisdiction both deriving from the same source. Upon this, there can only be one Nigerian domicile.¹⁴ The other school of thought argues that each of the old regions (now states) constitute a domicile. Hurley, Acting Chief Justice, in *Okonkwo v Eze* stated clearly some grounds put forward by this school. First is by the State Courts (Federal Jurisdiction). The jurisdiction of the High Court in matrimonial causes is exercised in conformity with the law and practice for the time being in force in England. The jurisdiction of the High Court in England in relation to this subject is confined to cases where the Husband is domiciled in England. Similarly, the jurisdiction of the High Court of a region or state should be confined to cases where the husband is domiciled in that region or state.¹⁵ A further argument was put forward in support of regional or state domicile, to the fact that the federation is composed of independent and sovereign units, each unit with its own legislature and courts of justice. Legislative power is shared between the federal and state units in Nigeria hence where a region legislates bin relation to legitimacy or domicile, it confers jurisdiction on its courts only with regard to the matter in hand and not on all the High Courts in the Country. This was a stated in the case of *Adeyemi v. Adeyemi*¹⁶ Second of all, it was stated that legitimacy and succession to moveables depends on domicile. Neither of these subjects is within the exclusive legislative competence of the Federal Legislature. Each unit of the federation may legislate in regard to them independently of one another; hence domicile therefore lies in the components of the federation. However, it is impossible to have different domicile such as one domicile for marriage and another domicile for legitimacy and

⁹ 'Domicile In Common Law Systems' (Law Teacher . Net, June 2020, <<https://www.lawteacher.net/free-law-essays/commercial-law/domicile-in-common-law-systems-commercial-law-essay.php?vref=1>> Accessed 1st June 2020)

¹⁰ (1868)L.R.I Sc&Div 307, 320

¹¹ (1869)L.R.I.SC &Div 441, 448

¹²(1953) 1W.L.R 865

¹³ (1938) 14 NLR 12

¹⁴R. Nwabueze, The History And Sources Of Conflict Of Laws In Nigeria With Comparisons To Canada, <<https://www.collectionscanada.gc.ca/obj/S4/F2/Dsk2/Ftp01/MQ53117.Pdf>> Accessed 1st June 2020.

¹⁵ (1960) NNLR 80

¹⁶(1962) LLR 70

succession as a person cannot have more than one domicile at a particular time.¹⁷Section 2(2) of the Matrimonial Causes Act provides that: Proceedings for a decree of dissolution of marriage; or of nullity of a voidable marriage; of nullity of a void marriage; or of judicial separation; or of restitution of conjugal rights; or of jactitation of marriage, may be instituted under this Act only by a person domiciled in Nigeria. Section (3) of the Act also provides that: 'For the avoidance of doubt it is hereby declared that a person domiciled in any State of the Federation is domiciled in Nigeria for the purposes of this Act and may institute proceedings under this Act in the High Court of any State whether or not he is domiciled in that particular State.'¹⁸ The effect Section 2(2) and Section 3 of the Matrimonial Causes Act of the law was to create one Nigeria domicile for matrimonial causes only. And it does not create nor purport to create a single Nigerian domicile for all purposes.

5. Forms of Domicile

It is possible in a federation that a person has more than one domicile, in which case each of the territorial and legislative units will constitute a separate domicile. But a person can only have one domicile at a particular point in time. However, it is impossible for one to be without domicile. There are however several ways by which domicile can be acquired, some of which will be explained below

5.1. Domicile of Origin

In the case of *Henderson v Henderson*,¹⁹ Simon P defined a person's domicile of origin as his domicile of dependence at birth. In essence, at birth every person receives a domicile of origin. This was stated in the case of *Udny v Udny* where Lord Westbury stated succinctly that 'No man shall be without a domicile, and to secure this result, the law attributes to every individual as soon as he is born the domicile of his father, if the child is legitimate while an illegitimate or posthumous child acquires the domicile of the mother'.²⁰ This may be different in a situation a child where the parents are unknown; it is the domicile of the country where the child was found that he acquires.²¹ The domicile of a child changes with that of his father. At the death of the father, he will depend on his mother for a change if the change is in his interest. And if the parents are dead, the domicile will change with that of his guardian. From the above, it can be said that the domicile of origin is automatic, and cannot be controlled by the individual and it holds longer and can't be easily taken off except if neglected. It can only be put in abeyance by the acquisition of domicile of choice.

5.2. Domicile of Dependence

Domicile of the married women, children and mentally disordered changes with the domicile of the person to whom they are legally dependent. In law, the above categories of people are regarded as dependent persons. They are persons who cannot acquire the domicile of their own choice.

Domicile of a married woman

During the subsistence of a valid and voidable marriage, a woman cannot acquire the domicile of her own but that of her husband automatically becomes her own until the marriage is made void. In a situation where the marriage is void *ab initio*, the domicile of her husband is not acquired because in law there is no marriage. She will retain her last domicile and she can change it at will. In a situation where the marriage is nullified or terminated by death, she ceases to depend on her husbands' domicile but and of course she does not automatically fall back to her last domicile hence, she retains her husband's domicile pending the time she acquires a new domicile of choice. This was the Courts decision in *Re Scullard*²²

Exception to the Case of a Married Woman

Deserted wife

As earlier stated and for the sake of appreciation of our matrimonial causes act it will be necessary to reiterate at this point that under the common law rules a married woman possesses her husband's domicile throughout the subsistence of her marriage. This rule may in certain circumstances cause hardship to married women for instance if she desires to divorce her husband, she is compelled to follow him to the country to which he has acquired domicile. Then the husband has the opportunity of changing his domicile from time to time in order to avoid being divorced by the wife. He could claim to have abandoned any domicile he was alleged to have. In order to alleviate this difficulty, the Matrimonial Causes Act presumes a deserted wife who is domiciled in Nigeria either immediately before her marriage or immediately before the desertion to be domiciled in Nigeria, thereby giving

¹⁷ Ibid

¹⁸ Section 2 And 3 Matrimonial Causes Act, LFN 2004

¹⁹1944AC 49.

²⁰Oppcit At Div 441, 457

²¹ A.V Dicey & J.H.C Morris. *Conflict of Laws* (8th Edition Stevens Publishers London, 1967).

²² *Re Scullard* (1957) CH.107

the Courts jurisdiction under section 2(2) of the matrimonial causes Act.²³ In the case of *Zanelli v Zanelli* where an Italian man who acquired an English domicile of choice deserted his wife by returning permanently to Italy, the wife was presumed to be domiciled in England immediately before the desertion.²⁴ Also section 7 of the Matrimonial Causes Act provides as follows: For the purposes of this Act, a deserted wife who was domiciled in Nigeria either immediately before her marriage or immediately before the desertion shall be deemed to be domiciled in Nigeria; and a wife who is resident in Nigeria at the date of instituting proceedings under this Act and has been so resident for the period of three years immediately preceding that date shall be deemed to be domiciled in Nigeria at that date.²⁵ In essence, the married woman who is been deserted and wants to seek divorce must:

1. Be domiciled in Nigeria either immediately before her marriage or immediately before the desertion, and
2. She must show to the court that she is deserted as at the time of commencing the matrimonial proceedings.

The court has the responsibility to decide whether the woman was domiciled in Nigeria immediately before the marriage or immediately before the desertion. The word residence as used under the Act connotes permanent residence. Hence, she must have a permanent place of abode in Nigeria at the prescribed date. And the residence must be continuous for over a period of three years immediately preceding the institution of the proceeding. However, a mere holiday or business trip outside of Nigeria will not constitute a break of residence. It is however expedient to state that the Court of Appeal in Nigeria in the case of *Bhojwani v. Bhojwani*²⁶ has rejected the concept of domicile of dependence. In that case it was declared that there are strictly two types of domicile, namely, domicile of origin and domicile of choice. There is no separate domicile known as domicile of dependence. However, the question still remains to what extent has this been followed in Nigeria?

5.3. Domicile of Choice

In the case of *Magun v Magun*, it was held that residence and intention must concur as elements before a domicile of choice can be established.²⁷ It should be noted that long residence does not constitute nor does brief residence negate domicile. For instance, a brief residence is no obstacle to the acquisition of a domicile if the necessary intention exists. Except a man clearly intends to live in another country permanently, as for example, where an emigrant, having wound up his affairs in the country of his origin, flies off with his wife and family to Australia, his mere arrival there will satisfy the element of residence. Motive, *animus manendi* or intention is one of the indices of intention as a requisite for the acquisition of a domicile of choice. Firstly, it may throw light upon the question as to whether the movement to another country was intended to be permanent. As a person can only have only one domicile at a particular time, to acquire a new one, he must abandon the old one. An existing domicile of origin goes into abeyance on the acquisition of the domicile of choice. But a domicile of choice is lost by a person leaving a place without the intention of returning there again permanently. If a domicile of choice is lost and a new domicile is not acquired, the domicile of origin automatically revives so as not to leave the person without a domicile.

Consequences and exceptions

1. Married women and infant with a domicile of dependence cannot change their domicile or acquire an independent domicile as long as they retain their dependent status. However, the infant on attaining majority or the married woman on termination of marriage can acquire domicile of choice
2. The law of domicile is used in determination of the jurisdiction to hear divorce matters.
3. Domicile of origin is ascribed to children on the status of legitimacy or illegitimacy. A legitimate child not born during the life time of the father and an illegitimate child has the domicile of origin in the country his mother was domiciled at the time of his birth. This creates a form of discrimination between legitimate and illegitimate children

6. Law of Domicile in Trinidad and Tobago

It is expedient to state that the law of Trinidad and Tobago with regards to domicile slightly differs from that of Nigeria. When it comes to domicile in Trinidad, the domicile that a person had at any time before the date of

²³ Section 7(A) Matrimonial Causes Act LFN 2004

²⁴(1948) 64 TLR. 556.

²⁵Section 7 Matrimonial Causes Act. Cap LFN 2004

²⁶ (1995)7 NWLR (Part 407) 349

²⁷ (1883), 3 OR 570 (ONTH Ct) At 579-80, Aff'd (1885),11 OAR 178

commencement of the Act shall be determined as if the Act had not been enacted.²⁸ By section 37 (1) of the Act, the domicile of a married woman, shall, instead of being the same as her husband's by virtue only of marriage, be determined as if she were unmarried and by reference to the same factors as in the case of any other individual capable of having an independent domicile and (if she is a minor) as if she were of full age; and the rule of law whereby upon marriage a woman acquires her husband's domicile and is thereafter during the subsistence of the marriage incapable of having any other domicile is abolished. The above statement of law applies to the parties to every marriage, wherever, whenever and pursuant to whatever law the marriage was solemnised, and whatever the domicile of the parties at the time of the marriage. A minor whose parents are living together has the domicile for the time being of his father. A minor whose parents are living apart shall have the domicile of the parent with whom he resides and if he resides with neither parent then of the person who for the time being has actual custody of him; and for the purposes of this section a minor who is in the care of an institution established in Trinidad and Tobago shall be deemed to be domiciled in Trinidad and Tobago.²⁹

7. Law of Domicile in South Africa

Domicile in South African is governed by the Domicile Act 1992 of South Africa. For a child in South Africa, he is domiciled at a place where he is closely connected. If in the normal course of events, a child has his home with his parents or one of them, it is presumed that the parental home is the Child's domicile.³⁰ For an adult, he needs to possess the mental capacity to make a rational choice whether he is married or single in order to have a domicile of his choice. Such an adult must be of age 18 and above in order to qualify as an adult in South Africa. The individual must also need to be lawfully present at the domicile of his choice and have his intention to settle there for a definite period.³¹ For the women in South Africa, they have the capacity to acquire the domicile of choice regardless of her sex or marital status. The law of revival of domicile of Origin does no longer exist in South Africa.

8. Domicile in the United State of America

Even though it is a settled principle of law that a person cannot be without a domicile and to secure this result, the law attributes to every individual as soon as he is born the domicile of his father, if the child is very legitimate and the domicile of the mother if the child is illegitimate. Implicit in the idea of domicile of origin is that it is transferred from many generations even to those who have never lived in the country. The above is possible because the ascription of domicile of origin is by operation of law. However, this is only possible under the English law where domicile of origin can never be lost and not under the American Law. The reason for this approach is because of the multi-racial and plural nature of the American society, as the society would not permit such a rigid domicile of origin to hold sway in the United States. As a matter of fact, it has been declared with regards to the revival doctrine that 'this rule is most unnatural in America and has nothing of public policy here to recommend it.'³²

Revival of the Domicile of Origin in the United States

In the United States of America, the rule and situation are different. There is nothing as the revival of the doctrine of domicile of Origin. The rule of revival as rejected by the American law was revealed in the case of *Re Jones Estate*.³³ In that case, Jones had an English domicile of origin. In order to escape the responsibility for an illegitimate daughter he had sired, he went to the United States in 1883. He married there and he prospered financially and became an American citizen. His wife died in 1914 and he decided to return to Wales (where he was born) to live with his sister. On the first day of May 1915, he sailed to Lusitania from New York but it was sunk by a German submarine in the high seas of the Irish Coast. Under Iowa law, his illegitimate daughter succeeded his estate, but by English law, his brothers were entitled. The supreme court of Iowa held that since his Iowa domicile of choice continued till he acquired another, he was still domiciled in Iowa at the time of the time of death since he had not reached England. The justification for this approach is because of the multi-racial and plural nature of the American society, as the society would not permit such a rigid domicile of origin to hold sway in the United States. Unlike the English society where there is the attachment to their homeland as well as the myth of their superiority provides a socio historical explanation for the tenacity of domicile of origin.³⁴ In relation

²⁸ The Act Here Means Family Law (Guardianship of Minors, Domicile and Maintenance) Act Chapter 46:08 Laws of Trinidad And Tobago Act 15 Of 1981 Amended By 66 Of 2000 Trinidad And Tobago

²⁹ Section 38 Family Law (Guardianship of Minors, Domicile and Maintenance) Act Chapter 46:08 Laws Of Trinidad And Tobago Act 15 Of 1981 Amended By 66 of 2000 Trinidad And Tobago

³⁰ Section 2 Domicile Act of South Africa 1992

³¹ Section 1 Domicile Act South Africa 1992

³² *In Re Gilberts* 18 N.J. Misc. 540

³³ 192 Iowa 78

³⁴ Omoruyi I.O. Domicile as A Determinant of Personal Law: A Case for The Abandonment of The Revival Doctrine in Nigeria: *University of Benin Law Journal*, Faculty of Law, University of Benin.

to Nigeria, even though our history does not fit into either the American or the English categories, yet by history of our colonisation we are subjected to the doctrine which cannot withstand the realities and exigencies of the twenty- first century with emphasis on the global world as a village.

9. The Revival Doctrine and Nigeria

The commonwealth law bulletin declares that another unsatisfactory feature is the technical rule that a person's doctrine of origin automatically revives whenever he abandons his domicile of choice without immediately acquiring a new one. This rule can produce absurd results when a person has never had any connection with the country of his domicile of origin. For example, a person born in England to parents domiciled in India would acquire an Indian doctrine of origin although he may never in the course of his life set foot in that country. If when he died, he had abandoned his current domicile, his Indian domicile of origin would revive and his moveable estate be distributed according to the Indian Law, though he had never been there.³⁵ In recognition of the above problem, the English and Scottish Law commissions have recommended the abolition of the revival doctrine, they further suggested that a new rule to the effect that an established doctrine continues until the acquisition of a new one should replace the former as enunciated in the case of *Udny v Udny*³⁶

10. Conclusion and Recommendations

This article has been able to explain the concept of domicile both under common law, in Nigeria and a selected Jurisdiction of the world. To this extent, a comparative analysis of the forms of the concept of domicile, and their rules as they apply in Nigeria, South Africa, Trinidad and Tobago, the United States of America has been taken into consideration. The article has also been able to look into the consequences of the concept of domicile on the married woman and the child. The common law concept of domicile has been seen to be very harsh viz a viz the revival doctrine though does not apply to married women in Nigeria but applies every other person. The doctrine cannot adequately fit into the realities of contemporary society and there is a need of reformation of Nigerian laws to this effect. Furthermore, from the above explication, it can be seen that children and mentally incapacitated persons do not have the capacity to form domicile of choice. For the mentally incapacitated person whether a child or an adult, the close connection test should be applied. In South Africa, the domicile of a child is that which he is closely connected to unlike other jurisdictions explained above where the domicile of a child is defined by the legitimacy of the child. Residence in a place no matter how long can never be recognised as domicile or nationality without the requisite intention that the person wants to choose the place as his permanent home or nationality. To this extent, this article makes recommendations to better our laws in Nigeria. The following recommendations may be apt:

1. The Need for the Enactment of Domicile Act in Nigeria:
The Matrimonial Causes Act 1970 has contributed positively to on the issue of domicile by relieving the deserted wife from the hardship of the English concept of domicile of husband and wife as a deserted wife continues to retain the domicile she has before marriage or immediately preceding the desertion. However, there is need for the enactment of a domicile Act to cover: (a) A wife's domicile with respect to a separated or deserted wife's will and succession (b) The domicile of children by removing the discrimination through the ascription of different domiciles to children whether the legitimate or illegitimate children and adopt the system used in other jurisdictions by using the close connection test. (c.) The married woman should be given the capacity to have the domicile of her choice as practiced in other jurisdictions of the world like South Africa and Trinidad and Tobago. The woman should not be compelled to having the domicile of the marriage during the continuance of the marriage. The enactment of the domicile Act will go a long way in reforming the usefulness of the concept of domicile and also make our law on the subject accord with current trends in other jurisdictions which have enacted a domicile Act worthy of note is South Africa, Trinidad and Tobago, New Zealand and England.
2. The doctrine of the revival of domicile of origin should be abolished and there should be a new rule to the effect that a recognized domicile continues until the acquisition of the new one and the rule in *Udny v Udny*³⁷ be replaced by a new one. An unsatisfactory feature of the rule is its technicality that a person's doctrine of origin automatically revives whenever he abandons his domicile of choice without immediately acquiring a new one. This rule can produce absurd results when a person has never had any connection with the country of his domicile of origin.
3. The element of intention (*animus manendi*) which is relevant for the acquisition of a domicile of choice, should be made relevant for the revival doctrine to be effected as the situations in the nineteenth century when Lord Westbury made the rule differs from the actual situation of today

³⁵ January 1988, P.341

³⁶Ibid

³⁷Ibid.

4. Laws reflect people's social life. Nigerians are known to have constant mobility for greener pastures and most cases form a bond with the locality of their residence. This does not seem to be the cases of an English man who has a bond to its origin. It is hereby recommended that Nigeria should shrink itself from the slavish application of the traditional application of the definition of domicile as offered by the English Judges centuries ago. A new definition of domicile should be made taking into consideration the economic and social condition of the Nigerian people.