Vanderbilt Law Review

Volume 6
Issue 3 *Issue 3 - April 1953*

Article 7

4-1953

That Elusive Word, "Residence"

Willis L.M. Reese

Robert S. Green

THAT ELUSIVE WORD, "RESIDENCE"

WILLIS L. M. REESE* AND ROBERT S. GREEN†

If wishes were horses, all men could ride. And if judges were legislators, the laws would probably read differently than they do. At least, this might well be the case in the field under discussion. With few exceptions, the courts speak of "domicil" while statutes refer to "residence" instead.[1] Domicil has a reasonably constant meaning.[2] Residence, on the other hand, is one of the most variable words in the legal dictionary.[3] It can be synonymous with domicil; it can also mean something else or something more. As such, it must be further defined, something which rarely is satisfactorily done in the statutes

* Professor of Law, Columbia University; member New York Bar.
† LL.B. Columbia University, 1953; law clerk to U. S. Circuit Judge Harold R. Medina.

1. At times, statutes use inhabitant, inhabitancy, legal resident, actual or bona fide resident, and so forth, instead of residence. These terms are normally interpreted as being synonymous with residence. See, *e.g.*, Glass v. Glass, 260 Mass. 562, 157 N.E. 621 (1927).

Only a few states use the word domicil extensively in their statutes. See, *e.g.*, GA. CODE ANN. §§ 102-103, 79-401 *et seq.* (1937); LA. CIV. CODE ANN. arts. 38-46 (1945). Occasionally other states employ the word in particular statutes. Thus, for example, domicil is sometimes used to determine the law governing personal property [CAL. CIV. CODE § 946 (1949); IDAHO CODE ANN. tit. 55, § 401 (1949)] to establish the qualification of voters [FLA. STAT. ANN. § 98.01 (1943)], or eligibility for old age insurance [IOWA CODE ANN. § 249.6 (1949)], in probate provision [N.C. GEN. STAT. ANN. §§ 28-1, 47-6 (1950); ORE. COMP. LAWS ANN. §§ 20-152 to 20-156 (1940)], and divorce laws [IDAHO CODE ANN. tit. 32, § 702 (1949); VA. CODE ANN. § 20-97 (1950)], and in statutes providing for the interstate settlement of death-tax disputes [MASS. ANN. LAWS c. 65 B (1945); VT. REV. STAT. §1132 (1947)].

Even where the statutes use "domicil," they sometimes mean something else. Thus a Texas statute which provides that, with some exceptions, an inhabitant of the state shall be sued in "the county in which he has his domicile" [TEX. REV. CIV. STAT. ANN. art. 1995 (1950)] has been interpreted by a long line of Texas cases as meaning that while a settled connection with a particular county is necessary, the elements of "technical" or "legal" domicil are not. See Snyder v. Pitts, 241 S.W.2d 136 (Tex. 1951), and cases discussed therein. See also District of Columbia v. Murphy, 314 U.S. 441, 62 Sup. Ct. 303, 86 L. Ed. 329 (1941), interpreting a District of Columbia income tax statute.

Sometimes the words domicil and residence are used in the same statutory provision as "residence or domicil" or "residence and domicil." In some cases these words are held to be used synonymously. Barrow v. Barrow, 160 La. 91, 106 So. 705 (1925) (venue); People v. Acritelli, 507 Misc. 574, 110 N.Y. Supp. 430 (Gen. Sess. 1908) (elections). In others they are considered complementary. *In re* Lemen, 208 Fed. 80 (N.D. Ohio 1912) (bankruptcy); Kemp v. Kemp, 172 Misc. 738, 16 N.Y.S.2d 26 (Dom. Rel. Ct. 1939) (support).

2. This is not to say that domicil means exactly the same thing in all contexts. See the debate on this subject before the American Law Institute during its consideration of the *Restatement of Conflict of Laws*. 3 PROCEEDINGS A.L.I. 231 (1925). And see COOK, LOGICAL AND LEGAL BASES OF THE CONFLICT OF LAWS c. 7 (1942).

3. Residence has been referred to as "a single term of broad and ill-defined content having no exact legal meaning." Goodrich, J., in United States v. Stabler, 169 F.2d 995, 998 (3d Cir. 1948).

themselves.[4] The courts must therefore interpret it as best they can without any indication of the legislative intent other than that which can be derived from the purpose underlying the enactment in question.[5] The consistent appearance of residence in statutes is difficult to explain. For legislators are frequently lawyers, and it is impossible to believe that all of them are unaware of the ambiguities and complexities which use of the term involves.

The purpose of this paper is to discuss the various meanings attributed to residence in its principal statutory settings. The trail has already been well blazed by Professor Beale in an early article,[6] but it is believed that the importance of the subject warrants its reexamination in the light of modern developments. Before doing so, however, a few words should be said on the subject of domicil. This is essential not only for purposes of comparison, but also because residence and domicil are so frequently held to be identical.

In the great majority of cases, a person's domicil is in the state with which he is most intimately connected. This is the state where he

4. A few statutes give general definitions of residence, often in terms that make it substantially equivalent to domicil. See, *e.g.*, KAN. GEN. STAT. ANN. § 77-201 (Subpar. 23) (1935); MO. REV. STAT. ANN. § 1.020 (1939); MONT. REV. CODES ANN. § 83-303 (1947); N.D. REV. CODE § 54-0126 (1943). *Cf.* NEV. COMP. LAWS ANN. § 6405 (1929).

Many statutes define, or give rules for determining, residence for particular purposes. Thus, the residence required to qualify under the election law is frequently defined. See, *e.g.*, COLO. STAT. ANN. c. 59, § 213 (1935); ILL. REV. STAT. c. 46, § 3-2 (1949); KY. REV. STAT. ANN. § 117.020 (Baldwin 1943); MICH. COMP. LAWS § 145.9 (1948); MINN. STAT. ANN. § 201.32 (West 1946); N.M. STAT. ANN. § 56-101 (1941); N.C. GEN. STAT. ANN. § 163-25 (1943); OHIO CODE ANN. §§ 4785-31 to 4785-33 (1948); PA. STAT. ANN. tit. 25, § 2814 (1938); VT. REV. STAT. §§ 103-105 (1947); WIS. STAT. § 6.51 (1951). So, too, are rules often given for determining residence within the meaning of various types of taxation statutes. See, *e.g.*, ARIZ. CODE ANN. § 73-1504 (1939); ARK. STAT. ANN. tit. 84, § 2002(9) (1947); IOWA CODE ANN. § 422.4(8) (1949); KY. REV. STAT. ANN. § 132-010 (Baldwin 1943); MINN. STAT. ANN. § 290-01 (West 1947); N.J. STAT. ANN. § 54:4-3.12i (1952 Supp.); N.M. STAT. ANN. § 76-1203 (1941); ORE. COMP. LAWS ANN. §§ 110-1402, 110-1602 (1940); VA. CODE ANN. §§ 58-5, 58-6 (1950); WIS. STAT. § 71.01 (1949). And see income tax statutes cited note 76 *infra*.

Residence is sometimes defined in welfare statutes. See, *e.g.*, IOWA CODE ANN. § 249.1 (1949); MICH. COMP. LAWS § 400.55 (1948); ORE. COMP. LAWS ANN. § 126-109 (1940); VT. REV. STAT. § 7097 (1947); WIS. STAT. § 49.10 (1951). Other examples of statutes defining residence for particular purposes include, to name but a few, provisions for homestead and other exemptions [FLA. STAT. § 192.14 (1949); IOWA CODE ANN. § 627.2 (1949)], liquor control laws [IOWA CODE ANN. § 123.5(8) (1949); MICH. COMP. LAWS § 436.2 (1948)], and requirements for fish and game licenses [ARK. STAT. ANN. tit. 47 §§ 201, 209 (1947); IND. ANN. STAT. § 11-1802 (Burns 1942 Replacement Vol.); OHIO CODE ANN. § 1390 (1948); VT. REV. STAT. § 6316 (1947)].

By and large, these statutory definitions provide little assistance in deciding whether or not residence should be treated as synonymous with domicil.

5. "'Reside' and 'residence' are terms whose statutory meaning depends upon the context and purpose of the statute in which they occur." *In re* Jones, 341 Pa. 329, 332, 19 A.2d 280, 282 (1941). To the same effect, see, *e.g.*, Russell v. Holland, 309 Mass. 187, 190, 34 N.E.2d 668, 670 (1941); *In re* Shun T. Takahashi's Estate, 113 Mont. 490, 497, 129 P.2d 217, 221 (1942).

6. Beale, *Residence and Domicil*, 4 IOWA L. BULL. 3 (1918). Much of the material incorporated in that article is to be found in 1 BEALE, CONFLICT OF LAWS 109-22 (1935). See also KENNAN, RESIDENCE AND DOMICIL (1934).

lives and has his home. And, of all lay words, "home" does undoubtedly have a meaning most closely akin to the legal conception of domicil. Unfortunately, however, the two terms cannot be considered synonymous. The law of a person's domicil determines certain of his most important rights and obligations. For this reason, everyone must have a domicil and, at least for the same purpose, no one can have more than one domicil at a time.[7] On the other hand, some men have no home at all in the ordinary sense, while others, speaking in common parlance, have two or more.[8] Also, on the grounds of their legal incapacity, special rules provide for the assignment of a domicil to infants[9] and insane persons[10] which, in actual practice, sometimes result in the location of the domicil in a state other than that of the actual home. Lastly, a person may change his abode to another state without satisfying the technical requirements for the acquisition of a new domicil of choice.[11] In such instances again the place of a person's home may be different from that of his domicil.

Domicil, at any rate, is a fairly meaningful term. Normally, it is to be found in the state with which the individual in question is most closely connected. And where this is not the case, special rules of law that have been developed during past centuries aid in its determination.[12]

Residence, on the other hand, is an extremely uncertain word. In its legal sense, it undoubtedly requires at least a rather well-settled connection with a community. A visit or mere sojurn is not enough.[13] Nor is presence under compulsion sufficient.[14] There is, however, wide variation among the decisions as to what — if anything — is necessary in addition to these minimum requirements. The meaning of residence

---

7. RESTATEMENT, CONFLICT OF LAWS § 11 (1934). See also note 2 *supra*.

8. As is true, for example, of one who has both a country and a city dwelling. See, *e.g.*, *In re* Dorrance's Estate, 115 N.J. Eq. 268, 170 Atl. 601 (Prerog. Ct. 1934); *In re* Dorrance's Estate, 309 Pa. 151, 163 Atl. 303 (1932).

9. RESTATEMENT, CONFLICT OF LAWS §§ 30-39 (1934).

10. *Id.* § 40.

11. 1 RABEL, THE CONFLICT OF LAWS 151-52 (1945).

12. Of course, the determination of a person's domicil may involve a difficult question of fact in situations where he has more or less divided his time among two or more states. See, *e.g.*, Texas v. Florida, 306 U.S. 398, 59 Sup. Ct. 563, 83 L. Ed. 817 (1939). The term has also become enmeshed in many fine distinctions and technicalities, in part it may be assumed because of the desire of the courts to attain what was deemed to be a just result in the individual case. See, *e.g.*, McDonald v. Hartford Trust Co., 104 Conn. 169, 132 Atl. 902 (1926); Comment, 36 YALE L. J. 403 (1927).

13. "Residence, even in its restricted sense, means, therefore, more than mere lodging or boarding or temporary occupation." Dwyer v. Matson, 163 F.2d 299, 302-03 (10th Cir. 1947). To the same effect, see, e.g., Barney v. Oelrichs, 138 U.S. 529, 532, 11 Sup. Ct. 414, 34 L. Ed. 1037 (1891); In re Garneau, 127 Fed. 677 (7th Cir. 1904); D'Elia & Marks Co. v. Lyon, 31 A.2d 647, 648 (D.C. App. 1943); Strauss v. Smyth, 326 Ill. App. 687, 63 N.E.2d 271 (1945).

14. See, *e.g.*, McGrath v. Kristensen, 340 U.S. 162, 71 Sup. Ct. 224, 95 L. Ed. 173 (1950); United States v. Stabler, 169 F.2d 995 (3d Cir. 1948); Neuberger v. United States, 13 F.2d 541 (2d Cir. 1926); United Service Automobile Ass'n v. Harman, 151 S.W.2d 609 (Tex. Civ. App. 1941).

varies from state to state with respect to the same type of statute;[15] in a single state it depends upon the particular statute under consideration.[16]

The lay meaning of residence is equally vague and of little help in statutory interpretation. In this sense, residence certainly arises after one has lived in a place for a reasonably long time; it may also arise after a comparatively short stay, or even immediately upon arrival, provided that one intends to remain there for a considerable period in the future. One thing at least is certain. In the lay sense, a man has a residence in every place where he has a fixed place of abode. Therefore, it is perfectly possible to have two or more residences. Similarly, a man who has no home and who travels constantly from place to place may accurately be said to have no residence at all.

Residence, when used in a statute, places upon the courts a difficult task of interpretation.[17] In the majority of cases, it has been construed as being synonymous with domicil,[18] but this has not always been the case. On occasions it is a place where the individual has a fixed place of abode, or where he has settled down to live for a period of time, without reference to domiciliary intent.[19] Sometimes, however, it means something more than domicil, namely, domicil plus physical presence.[20] Instances where residence is ordinarily interpreted as bearing each of these three meanings will be discussed below. In view of the multitude of statutes involved, mention will be made only of those believed to be most typical. No attempt will be made to examine the meaning of a statutory reference to residence as applied to corpora-

15. See, *e.g.*, cases interpreting statutes dealing with venue, notes 53-55 *infra*; with settlement, notes 65-66 *infra*; and with school privileges, notes 90-93 *infra*.

16. That the courts attribute varying meanings to residence in different statutory contexts will become apparent in the ensuing discussion. An excellent example is *In re* Seidel, 204 Minn. 357, 283 N.W. 742 (1939). There, the court held that the word had a different meaning in the old age assistance law than in the poor relief law because the "differences in purpose and context of the respective laws compel the inference that the legislature intended that the relation of applicants to the county be of a more permanent character for eligibility under the old age assistance law than under the poor relief law. The poor relief law was designed to protect human beings from extreme hardships. It is essentially an emergency measure. . . . Under such circumstances the domiciliary intent of an applicant is of negligible significance. The purpose of the old age assistance act is of a different nature. Such assistance is, in one sense, a reward bestowed by the community on its aged members for past services and good citizenship. . . . [T]he term 'resided' as used in this act was intended to include the element of intent and the status of domicile. . . ." *Id.* at 361.

17. See note 4 *supra*.

18. See RESTATEMENT, CONFLICT OF LAWS § 9, Comment *e* (1934); STUMBERG, CONFLICT OF LAWS 19 (2d ed. 1951). See notes 47-75 *infra*. One writer has collected one hundred decisions of American courts which hold definitely that residence and domicil are synonymous, and offset against them an equal number of decisions to the effect that they are not synonymous. KENNAN, RESIDENCE AND DOMICILE 22 (1934).

19. See notes 76-102 *infra*.

20. See notes 22-42 *infra*.

tions. This question raises peculiar considerations, and is a subject in itself.[21]

RESIDENCE AS MEANING SOMETHING MORE THAN DOMICIL

Statutes dealing with divorce jurisdiction are an excellent example. They ordinarily provide that in order to secure a divorce the plaintiff must have been a "resident" of the state for a prescribed period of time. Here residence is at least the equivalent of domicil.[22] Indeed, according to present notions, one of the parties must be domiciled in the state before the court can have jurisdiction to grant such relief.[23] Actually, in this context, residence often means something more than domicil. Let us suppose, for example, that the state in question is Florida which has a ninety days' residence requirement.[24] Suppose further that the plaintiff arrives in Florida on a certain day with the definite intention to make that state his home. At the very moment of his arrival, he has, under the ordinary rules, acquired a domicil in Florida.[25] But that is not enough to give the Florida courts jurisdiction to award him a divorce, for he has not yet satisfied the ninety days' residence requirement. Also, under the ordinary rules, a domicil is not lost by mere physical absence from the state.[26] So if, on the day after his arrival, our plaintiff were to leave Florida on a three-month business trip, he would not lose thereby his domicil. And, upon his return at the end of that period, he would have been a domiciliary of the state for a period of ninety days. But still he would not be able to get his divorce because of his failure to satisfy the residence requirement. What is demanded by many such statutes, in other words, is not only domicil at the time of the commencement of the suit but also physical

21. See RESTATEMENT, CONFLICT OF LAWS § 41 (1934); 1 BEALE, CONFLICT OF LAWS 228-43 (1935); COOK, LOGICAL AND LEGAL BASES OF THE CONFLICT OF LAWS 207 (1942); STEVENS, CORPORATIONS 60-66 (2d ed. 1949); Francis, *The Domicil of a Corporation* 38 YALE L.J. 335 (1929).

22. See, *e.g.*, Stewart v. Stewart, 185 F.2d 436 (D.C. App. 1930); Anderson v. Anderson, 38 Hawaii 261 (1948); Snyder v. Snyder, 240 Iowa 239, 35 N.W.2d 32 (1948); Lynch v. Lynch, 210 Miss. 810, 50 So.2d 378 (1951); Wray v. Wray, 149 Neb. 376, 31 N.W.2d 228 (1948); Schwallbach v. Schwallbach, 84 N.Y.S.2d 345 (Sup. Ct. 1948), *aff'd*, 276 App. Div. 825, 93 N.Y.S.2d 716 (1st Dep't 1949). Cases prior to 1945, including some few cases holding residence to mean something less than domicil, are collected in Note, 106 A.L.R. 6 (1935), supplemented by Note, 159 A.L.R. 496 (1945).

23. Williams v. North Carolina, 317 U.S. 287, 63 Sup. Ct. 207, 87 L. Ed. 279 (1942); RESTATEMENT, CONFLICT OF LAWS § 111 (1934). *But cf.* Cook v. Cook, 342 U.S. 126, 72 Sup. Ct. 157, 96 L. Ed. 146 (1951).

24. This statute reads as follows: "In order to obtain a divorce the complainant must have resided ninety days in the State of Florida before the filing of the bill of complaint." FLA. STAT. § 65.02 (1949).

25. In the case put, the plaintiff has satisfied the requirements for the acquisition of a domicil of choice; namely, physical presence in the state, combined with the intention of making that state his home. See RESTATEMENT, CONFLICT OF LAWS § 15 (1934).

26. RESTATEMENT, CONFLICT OF LAWS § 23 (1934).

presence, except for temporary absences, during the required period of time.[27]

The residence requirement in the naturalization section of the Nationality Act of 1940[28] requires not only technical domicil in this country[29] to render an alien eligible for American citizenship, but also something more. The statute provides that, subject to certain exceptions, the petitioner must have "resided continuously within the United States for at least five years" immediately preceding the filing of the petition, and "continuously" from the date of the petition to the time of admission to citizenship.[30]

27. See, *e.g.*, Spratt v. Spratt, 210 La. 370, 27 So.2d 154 (1946); Banfield v. Banfield, 318 Mich. 38, 27 N.W.2d 336 (1947); Wray v. Wray, 149 Neb. 376, 31 N.W.2d 228 (1948); Chidester v. Chidester, 163 Pa. Super. 194, 60 A.2d 574 (1948); Ivy v. Ivy, 177 S.W.2d 237 (Tex. Civ. App. 1943). The cases are collected in Note, 106 A.L.R. 6 (1937), supplemented by Note, 159 A.L.R. 496 (1945).

Nevada requires the plaintiff in a divorce action to have been "actually, physically and corporeally present" for the whole of the statutory period of residence. Lewis v. Lewis, 50 Nev. 419, 264 Pac. 981 (1928). Even here, a short absence is permissible provided the aggregate time of physical presence meets the statutory minimum. Lamb v. Lamb, 57 Nev. 421, 65 P.2d 872 (1937).

States with longer residence requirements are less strict regarding temporary absences. *Cf.* Hiles v. Hiles, 164 Va. 131, 178 S.E. 913, 106 A.L.R. 1 (1935). Indeed, some of these states require only technical domicil and will grant a divorce even though the plaintiff has been physically absent from the jurisdiction for almost the entire statutory period. See, *e.g.*, Williams v. Williams, 191 Ga. 437, 12 S.E.2d 352 (1940) (1 year requirement); McWilliams v. McWilliams, 206 La. 1007, 20 So.2d 295 (1944) (2 years); Bradshaw v. Bradshaw, 166 S.W.2d 805 (Mo. App. 1942) (1 year); Bell v. Bell, 135 S.W.2d 546 (Tex. Civ. App. 1939) (1 year).

As to the application of the residence requirement to servicemen, see Note, 21 A.L.R.2d 1163 (1952).

28. 54 STAT. 1142 (1940), 8 U.S.C.A. § 707 (1942).

29. It has been held that residence as used in this statute means at least domicil. Petition of Correa, 79 F. Supp. 265 (W.D. Tex. 1948); Petition of Wong Choon Hoi, 71 F. Supp. 160 (S.D. Cal. 1947), *appeal dismissed*, 164 F.2d 696 (9th Cir. 1947); Petition of Wright, 42 F. Supp. 306 (E.D. Mich. 1941); Petition of Oganesoff, 20 F.2d 978 (S.D. Cal. 1927).

30. The statute provides that continuous absence for more than six months during the critical periods renders the alien ineligible, except in the case of: (a) an absence of less than one year, if for "reasonable cause," and (b) an absence of more than one year, if the alien, after residing in the United States for at least one year during which time he has made a declaration of intent to become a citizen, is employed by the United States Government or by an American research institute or business firm, has received permission from the Attorney-General to go abroad, and can prove to the naturalization court that his absence was for such reason. 54 STAT. 1142 (1940), 8 U.S.C.A. § 707 (1947).

Thus an actual absence from the United States for a year or more during the five years preceding filing of the petition for naturalization is an absolute bar to the granting of the petition unless one of the statutory exceptions is proved. United States v. Larson, 155 F.2d 433 (2d Cir. 1947). And see United States v. Menichelli, 65 F. Supp. 738 (M.D. Pa. 1946); Petition of Rothschild, 57 F. Supp. 814 (S.D.N.Y. 1944).

The purpose of this requirement of physical presence has been said to be two-fold: to expose the alien to American institutions, and to permit the naturalization service to observe him. Application of Viloria, 84 F. Supp. 584 (D. Hawaii 1949); *In re* Vasicek, 271 Fed. 326 (E.D. Mo. 1921); *In re* Di Giovine, 242 Fed. 741 (W.D.N.Y. 1917).

The predecessor of the present law, the Nationality Act of 1906, which, in general terms, required five years' residence within the United States to render

The term residence as used in state homestead exemption laws would frequently seem to mean something more than technical domicil, namely, actual occupancy of the premises and the use thereof as the sole or principal family home.[31] Generally, day-to-day presence is not insisted upon, and temporary absences for business or convenience do not result in loss of the exemption.[32] On the other hand, absence for a prolonged period despite intent or preparation to return, is considered an abandonment of the homestead.[33] Statutes dealing with other exemptions from the claims of creditors granted by a state to its residents, are customarily interpreted as applying to all domiciliaries.[34] Some

---

an alien eligible for naturalization, was interpreted to use the word residence as meaning something more than domicil, although not as requiring the applicant to be physically present in this country during the entire length of the period. United States v. Griminger, 236 Fed. 285 (N.D. Ohio 1916). *Accord: In re* Schradieck, 29 F.2d 24 (2d Cir. 1928); United States v. Mulvey, 232 Fed. 513 (2d Cir. 1916); United States v. Cantini, 212 Fed. 925 (3d Cir. 1914); Matter of Schneider, 19 F.2d 404 (S.D.N.Y. 1927).

For different interpretations of residence in other sections of the Act, see United States v. Stabler, 169 F. 2d 995 (3d Cir. 1948); Toy Teung Kwong v. Acheson, 97 F. Supp. 745 (N.D. Cal. 1951); Wong Gan Chee v. Acheson, 95 F. Supp. 817 (N.D. Cal. 1951); *In re* Fleischman, 49 F. Supp. 223 (W.D.N.Y. 1943).

31. Turnbeaugh v. Santos, 146 F.2d 168 (9th Cir. 1944) (California statute); Skinner v. Hall, 69 Cal. 195, 10 Pac. 406 (1886); Rix v. McHenry, 7 Cal. 89 (1857); Quehl v. Peterson, 47 Minn. 13, 49 N.W. 390 (1891); Bank of Hattiesburg v. Mollere, 118 Miss. 154, 79 So. 87 (1918); Meyer Bros. Drug Co. v. Fly, 105 Miss. 752, 63 So. 227 (1913); Moore v. Bradford, 70 Miss. 70, 11 So. 630 (1892); Thompson, Lampkin & Co. v. Tillotson, 56 Miss. 36 (1878); Thomas v. Thoms, 45 Miss. 263 (1871); Fulton v. Roberts, 113 N.C. 421, 18 S.E. 510 (1893); *Ex parte* Morrow, 183 S.C. 170, 190 S.E. 506 (1937); Trimmier v. Winsmith, 41 S.C. 109, 19 S.E. 283 (1894).

It has been held that a wife living in Italy had no homestead interest in Michigan realty deeded by her husband, notwithstanding that she intended to join him in Michigan as soon as the immigration law made it possible, and, under ordinary conflict of laws rules, was a domiciliary of Michigan. Leonetti v. Tolton, 265 Mich. 618, 250 N.W. 512 (1933). *Accord:* Duda v. Beben, 252 Wis. 295, 31 N.W.2d 603 (1948) (wife in Poland under similar circumstances); *cf.* Engen v. Union State Bank, 121 Neb. 257, 236 N.W. 741 (1931) (where the wife, in Norway, had no intention of joining her husband in this country, it was held that "under the circumstances, her residence did not follow that of her husband.").

In one case it was stated that the location of the homesteader's domicil elsewhere is irrelevant so long as there is "permanent residence in the state [of Florida] . . . coupled with the ownership of property which is adapted to be and is used as a family home." Croker v. Croker, 51 F.2d 11, 12-13 (5th Cir. 1931).

32. Gray v. Patterson, 65 Ark. 373, 46 S.W. 730 (1898); Fulton v. Roberts, 113 N.C. 421, 18 S.E. 510 (1893); Nelson v. Griggs County, 56 N.D. 729, 219 N.W. 225 (1928).

The renting of the house for the tourist season was considered such a "temporary absence" in Collins v. Collins, 150 Fla. 374, 7 So.2d 443 (1942).

33. Quehl v. Peterson, 47 Minn. 13, 49 N.W. 390 (1891); Moore v. Bradford, 70 Miss. 70, 11 So. 630 (1892). *But cf.* Smith v. Spatford, 16 N.D. 208, 112 N.W. 965, 967 (1907), where it is stated that "The duration or length of time of the absence is not of controlling weight. . . . An absence for years, with continuous intention of returning to it gives creditors no right to the land." Residence under the North Dakota statute is thus probably equivalent to domicil. See also Matthews v. Matthews, 249 Ala. 611, 32 So.2d 514 (1947), holding that where the prerequisite to a widow's right to the homestead exemption is a residence in the state of her husband at the time of his death, residence as so used means domicil.

34. Union Nat. Bank of Muncie v. Finley, 180 Ind. 470, 103 N.E. 110 (1913);

courts however have held that, as with homestead exemptions, domicil alone is not enough to bring one within the protection of these laws.[35]

Residence as used in the federal statute providing for acquisition of homesteads or public land[36] requires not only domicil[37] but also, with some exceptions, continuous physical occupancy of the land in question by the claimant for the statutory period of three years.[38]

Residence has been held to mean more than domicil when used in rules concerning admission to a state bar,[39] and, in at least one case, when employed in a corporation's by-laws.[40] Also, as will be discussed later, a few courts interpret residence in statutes defining eligibility to vote[41] or to hold office[42] as requiring more than domicil.

It should be noted that even where residence is construed to be equivalent to domicil,[43] the statutes themselves often include as an additional requirement that this residence (domicil) shall have been maintained for a prescribed period of time.[44] While in the situations discussed above such a stipulation is ordinarily interpreted as requiring something more than domicil, namely, actual physical presence within the state for at least most of that period,[45] similar provisions in other types of statutes are almost invariably held to require only that the technical domicil shall have continued for the statutory period, physical absence alone being immaterial.[46]

Union County Investment Co. v. Messix, 152 Iowa 412, 132 N.W. 823 (1911); Cox v. Allen, 91 Iowa 462, 59 N.W. 335 (1894); Grimestead v. Lofgren, 105 Minn. 286, 117 N.W. 515 (1908); Chesney v. Francisco, 12 Neb. 626, 12 N.W. 94 (1882); Brown v. Beckwith, 58 W. Va. 140, 51 S.E. 977 (1905).

35. Cromer v. Self, 149 N.C. 164, 62 S.E. 885 (1908); Munds v. Cassidey, 98 N.C. 558, 4 S.E. 355 (1887).

36. 37 STAT. 123 (1912), 43 U.S.C.A. § 164 (1928).

37. Small v. Rakestraw, 196 U.S. 403 25 Sup. Ct. 285, 49 L. Ed. 527 (1905); Whaley v. Northern Pac. Ry., 167 Fed. 664 (C.C.D. Mont. 1908); United States v. Richards, 149 Fed. 443 (D. Neb. 1906).

38. Johnson v. United States, 51 F.2d 54 (10th Cir. 1931); United States v. Peterson, 34 F.2d 245 (10th Cir. 1929); United States v. Searson, 298 Fed. 928 (8th Cir. 1924). Under appropriate conditions, this requirement can be relaxed. United States v. Bucher, 15 F.2d 783 (8th Cir. 1926).

39. Residence as required for admission to the bar includes not only domicil in the state, *In re* De Benedetto, 196 Ind. 323, 148 N.E. 413 (1925); *In re* Pierce, 189 Wis. 441, 207 N.W. 966 (1926); *In re* Mosness, 39 Wis. 509, 20 Am. St. Rep. 55 (1876); but also, in at least one jurisdiction, actual physical presence for a required period as well. Matter of Scharf, 279 App. Div. 919, (2d Dep't 1952); *Re* Horowitz, 276 App. Div. 918, 94 N.Y.S.2d 490 (2d Dep't 1950); *Re* McGrath, 243 App. Div. 803, 278 N.Y. Supp. 135 (2d Dep't 1935).

40. Middle Tennessee Electric Membership Corp. v. State, 246 S.W.2d 958 (Tenn. 1952). The court found that the provision in the by-laws that a trustee of the organization be a "bona fide resident in the area served by the co-operative" required not only domicil in the area but also the maintenance there of the trustee's sole or principal place of abode.

41. See cases cited note 61 *infra*.

42. See cases cited note 63 *infra*.

43. See notes 47-75 *infra*.

44. See note 4 *supra*.

45. See notes 24-42 *supra*.

46. See, *e.g.*, cases interpreting election qualification statutes, note 61 *infra*, and welfare laws, note 65 *infra*.

RESIDENCE AS BEING SYNONYMOUS WITH DOMICIL

The bulk of the statutes fall within this area. Some of the more typical are briefly noted below:

Judicial Jurisdiction

Domicil constitutes an accepted basis for the exercise of in personam jurisdiction over an absent defendant,[47] while residence, in the sense of meaning something less than domicil, has not been recognized by the Supreme Court as such.[48] Hence, it is hardly surprising that the many statutes, providing for substituted service upon "residents" absent from the state, have almost invariably been interpreted as requiring that the absent defendant be domiciled within the state.[49] That is to say, the existence of a fixed place of abode, unaccompanied by the technical element of domicil, is generally thought not enough.[50] On the other hand, domicil alone has been held sufficient to support substituted service.[51] The statutes, however, often require that process be served at the defendant's "usual place of abode," and some courts have construed this phrase to mean that substituted service cannot be made upon an absent domiciliary unless he maintained a fixed place of abode within the state.[52]

47. Milliken v. Meyer, 311 U.S. 457 61 Sup. Ct. 339, 85 L. Ed. 278 (1940); RESTATEMENT, CONFLICT OF LAWS § 79 (1934).

48. Under the British rules, however, residence does afford a basis for the exercise of in personam jurisdiction.

Order XI, rule 1(c), of the Rules of the Supreme Court of Judicature, in England, reads as follows:

"1. Service out of the jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the Court or a Judge whenever

". . . (c) Any relief is sought against any person domiciled or ordinarily resident within the jurisdiction. . . ." See Note, 48 COL. L. REV. 605, 608 (1948).

49. Schlawig v. DePeyster, 83 Iowa 323, 49 N.W. 843 (1891); Arnette v. Arnette, 162 Kan. 677, 178 P.2d 1019 (1947); Mudge v. Mudge, 111 Neb. 403, 196 N.W. 706 (1923); Wood v. Roeder, 45 Neb. 311, 63 N.W. 853 (1895); McCandless v. Reuter, 248 App. Div. 93, 288 N.Y. Supp. 952 (1st Dep't 1936); Hislop v. Taaffe, 141 App. Div. 40, 125 N.Y. Supp. 614 (2d Dep't 1910); *cf.* Husband v. Crockett, 195 Ark. 1031, 115 S.W.2d 882 (1938).

50. Schlawig v. DePeyster; Arnette v. Arnette; Hislop v. Taaffe, all cited note 49 *supra.*

A few cases, however, have held that maintenance of a fixed place of abode was sufficient to subject the absent defendant to substituted service, despite his domicil in another state. See State *ex rel.* Merritt v. Heffernan, 142 Fla. 496, 195 So. 145 (1940); Camden Safe-Deposit & Trust Co. v. Barbour, 66 N.J.L. 103, 48 Atl. 1008 (1901); Harrison v. Farrington, 35 N.J. Eq. 4 (1882). *Cf.* Rawstorne v. Maguire, 265 N.Y. 204, 192 N.E. 294 (1934); and see Dorus v. Lyon, 92 Conn. 55, 101 Atl. 490 (1917).

"There may be good reason for extending the rule to persons resident [although not technically domiciled] in a state, at least where the residence is of more than a mere transient nature. However, it is clear that the law has not yet developed this far." GOODRICH, CONFLICT OF LAWS 193, n.101 (3d ed. 1949).

51. Milliken v. Meyer, 311 U.S. 457, 61 Sup. Ct. 339 85 L. Ed. 278 (1940); Rovinski v. Rowe, 131 F.2d 687 (6th Cir. 1942); McFadden v. Shore, 60 F.Supp. 8 (E.D.Pa. 1945); Skidmore v. Greene, 33 F.Supp. 529 (S.D.N.Y. 1940); Ruth & Clark, Inc. v. Emery, 243 Iowa 1234, 11 N.W.2d 397 (1943).

52. Kurilla v. Roth, 132 N.J.L. 213, 38 A.2d 862 (1944); Feighan v. Sobers, 84 N.J.L. 575, 87 Atl. 636 (1913); (*but cf.* other New Jersey cases cited note 50 *supra,* indicating that domicil is not a requirement for jurisdiction so long as a

Residence has also been held synonymous with domicil in the majority of cases construing statutes which deal with venue, or, more explicitly, with the particular county or district within which suit may be brought.[53] Since, however, rules relating to venue are concerned with the convenience of the parties rather than with jurisdiction,[54] it may be that a fixed place of abode or protracted physical presence, unaccompanied by technical domicil, should satisfy the statute, and a number of cases have so held.[55]

In other contexts, statutes that accord jurisdiction to the courts on the basis of residence are frequently treated as referring to domicil. So it is, for example, with those that provide for the probate of a will[56] and for the appointment of an administrator[57] at the residence of the

fixed place of abode exists within the state); Lerman v. Copperman, 183 Misc. 352, 52 N.Y.S.2d 50 (Sup. Ct. 1944); Thompson v. Mundheim, 180 Misc. 1002, 43 N.Y.S.2d 632 (Sup. Ct. 1943), *aff'd*, 266 App. Div. 1001, 45 N.Y.S.2d 412 (1st Dep't 1943); Robinson v. Robinson, 362 Pa. 554, 67 A.2d 273 (1949). *Cf.* Compton v. Hulse, 10 N.J. Misc. 486, 159 Atl. 806 (1932).

It has been suggested that "in a statute which provides that process may be served upon an absent defendant by notice at his residence, the word must necessarily be interpreted as meaning 'domicil which is an actual dwelling place' if the process is to be valid in another state. . . ." 1 BEALE, CONFLICT OF LAWS 114 (1935).

53. *Ex parte* Stroud, 248 Ala. 480, 28 So.2d 316 (1946); Younger v. Spreckels, 12 Cal. App. 175, 106 Pac. 895 (1909); Robbins v. McAlister, 91 Colo. 505, 16 P.2d 431 (1932); Barrow v. Barrow, 160 La. 91, 106 So. 705 (1925); Harrison v. Harrison, 117 Md. 607, 84 Atl. 57 (1912); Pespecky v. Forman, 7 N.J. Misc. 518, 146 Atl. 317 (1929); Hislop v. Taaffe, 141 App. Div. 40, 125 N.Y. Supp. 614 (2d Dep't 1910); Washington v. Thomas, 103 App. Div. 423, 92 N.Y. Supp. 994 (1st Dep't 1905); (*but cf.* other New York cases cited note 55 *infra*); Rosenberg v. Rosenberg, 163 Pa. Super. 138, 60 A.2d 350 (1948); Brown v. Brown, 150 Tenn. 89, 261 S.W. 959 (1924); Houston Printing Co. v. Tennant, 120 Tex. 539, 39 S.W.2d 1089 (1931). The cases are collected in Note, 12 A.L.R.2d 757 (1950). See also KENNAN, RESIDENCE AND DOMICILE c.27 (1934).

54. See Paige v. Sinclair, 237 Mass. 482, 130 N.E. 177 (1921); Beale, *Residence and Domicil*, 4 IOWA L. BULL. 3, 7 (1918).

55. United States v. Stabler, 169 F.2d 995 (3d Cir. 1948); Norton v. Purkins, 203 Ark. 586, 157 S.W.2d 765 (1942) [*but cf.* McLaughlin v. McLaughlin, 193 Ark. 207, 99 S.W.2d 571 (1936)]; Cohen v. Daniels, 25 Iowa 88 (1868) [*but cf.* Church v. Crossman, 49 Iowa 444 (1878)]; Howard v. Queen City Coach Co., 212 N.C. 201, 193 S.E. 138 (1937); Generous v. Generous, 197 Misc. 651, 99 N.Y.S.2d 416 (Sup. Ct. 1950); Lawson v. Lawson, 64 N.Y.S.2d 356 (Sup. Ct. 1946); Bischoff v. Bischoff, 88 App. Div. 126, 85 N.Y. Supp. 81 (2d Dep't 1903) [*but cf.* other New York cases cited note 53 *supra*]; Doyle v. Roy, 54 R.I. 98, 170 Atl. 91 (1934); Roof v. Tiller, 195 S.C. 132, 10 S.E.2d 333 (1940). Even under this interpretation, however, residence must consist of more than a "mere temporary sojourn." Kollman v. McGregor, 240 Iowa 1331, 39 N.W.2d 302 (1948).

56. Ford v. Peck, 116 Kan. 74, 225 Pac. 1054 (1924); Johnson v. Harvey, 261 Ky. 522, 88 S.W.2d 42 (1935); Robinson v. Paxton, 210 Ky. 575, 276 S.W. 500 (1925); *In re* Daggett's Will, 255 N.Y. 243, 174 N.E. 641 (1931); Kennedy v. Ryall, 67 N.Y. 379 (1876); *In re* Strobel's Estate, 109 N.Y.S.2d 848 (Surr. Ct. 1951); *In re* Sawyer's Will, 190 Misc. 659, 78 N.Y.S.2d 643 (Surr. Ct. 1947); *In re* Davis' Estate, 171 Okla. 575, 43 P.2d 115 (1935); *In re* Winsor's Estate, 264 Pa. 552, 107 Atl. 888 (1919). The Ohio statute dealing with jurisdiction to probate a will expressly uses the word "domicile." OHIO GEN. CODE ANN. § 10504-15 (Supp. 1951).

57. Lee v. Green, 73 A.2d 889 (Md. 1950); Shenton v. Abbott, 178 Md. 526, 15 A.2d 906 (1940); Whiting v. Shipley, 127 Md. 117, 96 Atl. 285 (1915); *In re* Webber's Will, 64 N.Y.S.2d 281 (Surr. Ct. 1946); *In re* Horth's Estate, 25 N.Y.S.2d 262 (Surr. Ct. 1941); *In re* McElroy's Estate, 26 ERIE CO. L.J. 394 (Pa.

deceased, for the appointment of a guardian at the residence of the ward[58] and for the adoption of a minor child at the place of his residence.[59] Somewhat afield, yet pertinent in the present connection, is the fact that the domicil of the adverse parties is a crucial factor in determining whether they are "citizens of different states" within the meaning of the constitutional provision which gives jurisdiction in such cases to the federal courts.[60]

Governmental Benefits and Burdens

Residence in a state, or a local subdivision thereof, is a normal statutory requirement for eligibility to vote or to hold office. So far as eligiblity to vote is concerned, the term is usually synonymous with domicil, since in most states the right to vote is not lost by physical absence from, or even the lack of a place of abode in, the state or district in question, so long as a new domicil has not been acquired anywhere else.[61] The same is also generally true of eligibility to hold

Orph. Ct. 1944). *But cf.* State v. Brewer, 147 Ohio St. 386, 72 N.E.2d 84 (1947), stating that, since the statutory provision for probating wills expressly uses the word "domiciled" in this connection, residence in the section providing for administration of the estate of an intestate must mean something else than domicil.

58. *In re* Cameron's Estate, 158 Fla. 91, 28 So.2d 110 (1946); Sudler v. Sudler, 121 Md. 46, 88 Atl. 26 (1913); *In re* Schley, 253 App. Div. 818, 1 N.Y.S.2d 306 (2d Dep't 1938); Owens v. Stovall, 64 S.W.2d 360 (Tex. Civ. App. 1933). *But cf.* Martin v. Gardiner, 240 Mass. 350, 134 N.E. 380 (1922), where the statutory language "inhabitants or residents" was held applicable to minors physically present within the state although domiciled elsewhere.

59. Hughes v. Industrial Comm'n, 69 Ariz. 193, 211 P.2d 463 (1949); Johnson v. Smith, 94 Ind. App. 619, 180 N.E. 188 (1932); Krakow v. Dep't of Public Welfare, 326 Mass. 452, 95 N.E.2d 184 (1950); *In re* Adoption of————, 22 N.J. Misc. 181, 37 A.2d 645 (Orph. Ct. 1944); Greene v. Willis, 47 R.I. 251, 132 Atl. 545, 47 R.I. 375, 133 Atl. 651 (1926); Cribbs v. Floyd, 188 S.C. 443, 199 S.E. 677 (1938).

Some courts interpret residence in this context as meaning something else than domicil. *In re* Pratt, 219 Minn. 414, 18 N.W.2d 147 (1945); *In re* Campbell's Guardianship, 216 Minn. 113, 11 N.W.2d 786 (1943); *In re* Duren, 355 Mo. 1222, 200 S.W.2d 343 (1947). *Cf. In re* Kowalke's Guardianship, 232 Minn. 292, 46 N.W.2d 275 (1950). *But cf.* Pelton v. Halverson, 240 Iowa 184, 35 N.W.2d 759 (1949), where the court held that it could determine the custody of children "resident" in Iowa although their domicil followed that of their father, who was in another state.

60. U.S. Const. Art. III, § 2. See Williamson v. Osenton, 232 U.S. 619, 34 Sup. Ct. 442 86 L. Ed. 337 (1913); Messick v. Southern Pennsylvania Bus Co., 59 F. Supp. 799 (E.D. Pa. 1945), and cases cited therein.

61. See, *e.g.*, Vanderpoel v. O'Hanlon, 53 Iowa 246, 5 N.W. 119 (1880); Everman v. Thomas, 303 Ky. 156, 197 S.W.2d 58 (1946); Warren v. Board of Registration, 72 Mich. 398, 40 N.W. 553 (1888); Berry v. Wilcox, 44 Neb. 82, 62 N.W. 249 (1895); State v. Atti, 127 N.J.L. 39, 21 A.2d 603 (1941), *aff'd*, 128 N.J.L. 318, 25 A.2d 634 (1942); Breuckmann v. Frignoca, 9 N.J. Misc. 128, 152 Atl. 780 (1930); Application of Woolley, 108 N.Y.S.2d 165 (Sup. Ct. 1951); Isaacson v. Heffernan, 64 N.Y.S. 2d 726 (Sup. Ct. 1946); *In re* Stabile, 348 Pa. 587, 36 A.2d 451 (1944); *In re* Opinion of the Justices, 65 R.I. 451, 16 A.2d 331 (1940); Seibold v. Wahl, 164 Wis. 82, 159 N.W. 546 (1916). It has been suggested that the reason residence normally is held synonymous with domicil in these and other statutes relating to governmental benefits and burdens is that the law contemplates that each person should have one, but only one, government to which he bears such relationships. See Beale, *Residence and Domicil*, 4 IOWA L. BULL. 3, 4-5 (1918).

office,[62] although here, too, at least one statute has been interpreted to require something more than domicil, namely, domicil plus maintenance of a fixed place of abode.[63]

Eligibility for a veteran's bonus, which the states sometimes award to those of their residents who have served in the armed forces, is said to depend upon domicil in the state in question.[64] In the case of poor laws and other welfare statutes, however, there is no such unanimity of result. These customarily provide that the municipality of which a person is a resident must support him in case of need, or furnish him with other benefits. Frequently the term is said to be the equivalent of domicil,[65] but on occasions it is interpreted as meaning something else, namely, the place where the person actually lives, regardless of the location of his technical domicil.[66]

The Illinois cases have required in addition to domicil the maintenance of a fixed place of abode for the statutory period. Clark v. Quick, 377 Ill. 424, 36 N.E.2d 563 (1941); Park v. Hood, 374 Ill. 36, 27 N.E.2d 838 (1940); Pope v. Board of Election Comm'rs, 370 Ill. 196, 18 N.E.2d 214 (1938). A similar result has been reached in Louisiana. See, *e.g.*, State v. Joyce, 123 La. 633, 49 So. 219 (1939).

A peculiar Texas statute defines residence for voting purposes as, in the case of a single man, the place where he usually sleeps at night, and in the case of a married man not permanently separated from his wife, the place where his wife resides. TEX. ELECTION CODE Art. 5.08 (1952). This has been interpreted, in the case of single men, to refer to bodily presence alone, without any domiciliary intent; in the case of a married man, however, who is not permanently separated from his wife, the statute is construed as referring to the marital domicil rather than to the place where the wife actually maintains her place of abode. Major v. Loy, 155 S.W.2d 617 (Tex. Civ. App. 1941).

62. Jones v. State, 207 Miss. 208, 42 So.2d 123 (1949); Wilson v. Hoisington, 110 Mont. 20, 98 P.2d 369 (1940); Briggs v. Stanton, 150 Atl. 238 (N.J. Sup. Ct. 1930); Wildermuth v. La Guardia, 180 Misc. 725, 44 N.Y.S.2d 284 (Sup. Ct. 1943); State v. Moodie, 65 N.D. 340, 258 N.W. 558 (1935); Kempster v. Milwaukee, 97 Wis. 343, 72 N.W. 743 (1897). *Cf.* Baker v. Conway, 214 Ala. 356, 103 So. 18 (1926).

63. Newman v. United States, 43 App.D.C. 53 (1915); see People v. Owers, 29 Colo. 535, 543, 69 Pac. 515, 518 (1902).

64. Hipchen v. Soldiers' Compensation Board, 144 Kan. 517, 61 P.2d 878 (1936); Stevens v. Fraser, 53 N.D. 228, 205 N.W. 622 (1925); Op. Att'y Gen. (Mich.) June 27, 1947, No. 44; 1947 Op. Att'y Gen. (N.Y.) 292. The Kansas statute now provides that residence shall be determined by the declaration of the applicant at the time he entered service, as indicated in the official records of the war and navy departments of the United States government. See Richardson v. Soldiers' Compensation Board, 150 Kan. 343, 92 P.2d 114 (1939).

65. People *ex rel.* Heydenreich v. Lyons, 374 Ill. 557, 30 N.E.2d 46 (1940); Inhabitants of Knox v. Inhabitants of Montville, 98 Me. 493, 57 Atl. 792 (1904); Inhabitants of Whately v. Inhabitants of Hatfield, 196 Mass. 393, 82 N.E. 48 (1907); Inhabitants of Stoughton v. Cambridge, 165 Mass. 251, 43 N.E. 106 (1896); *In re* Quale, 213 Minn. 421. 7 N.W.2d 153 (1942); *In re* Seidel, 204 Minn. 357, 283 N.W. 742 (1939); Town of Barton v. Town of Albany, 108 Vt. 531, 189 Atl. 853 (1937); State v. Dodge, 56 Wis. 79, 13 N.W. 680 (1882). Under most statutes, residence must have continued for a prescribed period of time before one is eligible for these benefits. See statutes cited note 4 *supra*.

66. "[T]he word 'residence,' when poor relief is concerned, has reference to the place where a person actually lives as distinguished from his domicile." Adams County v. Burleigh County, 69 N.D. 780, 787, 291 N.W. 281, 285 (1940). "[T]he person in question must have been an actual resident 'even though he have a technical domicile elsewhere. . . .'" Town of Winchester v. Town of Burlington, 128 Conn. 185, 188, 21 A.2d 371, 373 (1941). *Accord:* Town of

Turning now to governmental burdens, residence when used in statutes providing for estate and inheritance taxes, some personal property taxes and other impositions of a personal nature, such as poll taxes, is interpreted as being the equivalent of domicil.[67] The early conscription laws requiring militia or other military duty of residents were interpreted as referring only to domiciliaries.[68] More recently, however, statutes providing that residents are eligible for or required to perform military service have been interpreted to include all those who have some settled connection with the state or nation, even though not domiciled there.[69]

Chaplin v. Town of Bloomfield, 92 Conn. 395, 103 Atl. 118 (1918); State v. Peisen, 233 Iowa 865, 10 N.W.2d 645 (1943); North Yarmouth v. West Gardiner, 58 Me. 207 (1870); State v. Juvenile Court of Wadena County, 188 Minn. 125, 246 N.W. 544 (1933); Town of Smiley v. Village of St. Hilaire, 183 Minn. 533, 237 N.W. 416 (1931); Nelson County v. Williams County, 68 N.D. 56, 276 N.W. 265 (1937); City of Enderlin v. Pontiac Township, 62 N.D. 105, 242 N.W. 117 (1932).

However, continued and unbroken physical presence during the entire statutory period is not required. Baldwin v. Tiffany, 250 N.Y. 489, 166 N.E. 177 (1929).

Some courts give different content to the word, when used in different types of welfare statutes. See *In re* Seidel, 204 Minn. 357, 283 N.W. 742 (1939). *Cf. In re* Newhouse, 233 Iowa 1007, 9 N.W.2d 372 (1943).

67. *Personal property and poll taxes*: Sweeney v. District of Columbia, 22 App. D.C. 30, 113 F.2d 25 (C.C.D.C. 1940), *cert. denied*, 310 U.S. 631 60 Sup. Ct. 1082, 84 L. Ed. 1401 (1940). On Yuehn Hai Co. v. Ross, 14 Fed. 338 (C.C.D. Ore. 1882) (Chinese tax case); Barlıydt v. Cross, 156 Iowa 271, 136 N.W. 525 (1912); Borland v. Boston, 132 Mass. 89 (1882); State v. Ross, 23 N.J.L. 517 (1852); Pendleton v. Commonwealth, 110 Va. 229, 65 S.E. 536 (1909).

Estate and inheritance taxes: Bowring v. Bowers, 24 F.2d 918 (2d Cir. 1928); Commonwealth v. Harkness' Adm'r, 197 Ky. 198, 246 S.W. 803 (1923); Cromwell v. Neeld, 15 N.J. Super. 296, 83 A.2d 337 (1951); *In re* Dorrance's Estate, 115 N.J. Eq. 268, 170 Atl. 601 (Prerog. Ct. 1934), *aff'd*, Dorrance v. Martin, 13 N.J. Misc. 168, 176 Atl. 902 (Sup. Ct. 1935), *aff'd*, 116 N.J.L. 362, 184 Atl. 743 (1936); *In re* Daly's Estate, 178 Misc. 943, 36 N.Y.S.2d 954 (Surr. Ct. 1942); *In re* Lyon's Estate. 117 Misc. 189, 191 N.Y. Supp. 260 (Surr. Ct. 1921), *aff'd*, 200 App. Div. 918, 192 N.Y. Supp. 936 (2d Dep't 1922); *In re* Dorrance's Estate, 309 Pa. 151, 163 Atl. 303 (1932); State Planters Bank & Trust Co. v. Commonwealth, 174 Va. 289, 6 S.E.2d 629 (1940).

According to present Supreme Court decisions, only the state of a decedent's domicil can impose an inheritance tax upon all of his intangibles wherever situated. Texas v. Florida, 306 U.S. 398, 59 Sup. Ct. 563 83 L. Ed. 817 (1939); Worcester County Trust Co. v. Riley, 302 U.S. 292, 58 Sup. Ct. 185, 82 L. Ed. 268 (1937).

Residence in income tax statutes, however, is generally interpreted as meaning something other than domicil. See notes 76-82 *infra*. See generally GOODRICH, CONFLICT OF LAWS c. 3 (3d ed. 1949); KENNAN, RESIDENCE AND DOMICIL c. 23, 24 (1934).

68. Commonwealth v. Swan, 18 Mass. 194 (1822); Shattuck v. Maynard, 3 N.H. 123 (1824); *Ex parte* Blumer, 27 Tex. 734 (1865).

69. United States v. Rubenstein, 166 F.2d 249 (2d Cir. 1948) (Selective Training and Service Act of 1940); Owens v. Huntling, 115 F.2d 160 (9th Cir. 1940) (Oregon statute determining eligibility for National Guard service). The Supreme Court has pointed out, however, that "residence involves some choice, again like domicile, and that presence elsewhere through constraint has no effect upon it"; and on this ground the Court held that an alien present in this country on a temporary visit but prevented by the outbreak of World War II from returning to his homeland was not liable for military duty as a resident of the United States within the meaning of the Selective Service law. McGrath v. Kristensen, 340 U.S. 162 71 Sup. Ct. 224, 95 L. Ed. 173 (1950).

Miscellaneous

Under normal conflict of laws rules, matters relating to the distribution of personal property upon death are governed by the law of the decedent's last domicil.[70] For this reason, a state statute which provided that the personal property of a decedent should be distributed according to the law of the country or state of his residence[71] was interpreted as referring to the decedent's domicil at the time of death.[72] There is some dispute as to the meaning of residence when used in statutes which toll the statutory period of limitation during such time as the defendant is absent from and resides outside of the state. The obvious purpose of these enactments is to stop the running of the statute during such periods of time as the defendant cannot be subjected to the personal jurisdiction of the court. Since, as has already been seen,[73] domiciliaries can always be reached by suit, there would appear to be no justification for considering them nonresidents within the meaning of these statutes, irrespective of their actual place of abode. This is the result reached by what is probably the majority of decisions,[74] although some regard any reasonably protracted absence from the state, unaccompanied by a change of domicil, as sufficient to bring the statute into play.[75]

70. Schultz v. Chicago City Bank & Trust Co., 384 Ill. 148, 51 N.E.2d 140 (1943); White v. Tennant, 31 W. Va. 790, 8 S.E. 596 (1888); RESTATEMENT, CONFLICT OF LAWS §§ 300-10 (1934).

71. MO. REV. STAT. ANN. § 253 (1939).

72. Locke v. McPherson, 103 Mo. 493, 63 S.W. 726 (1901). Another statute expressly uses the word "domicil" in this context. MINN. STAT. § 525.272 (Henderson 1949). The Mississippi statute, on the other hand, provides that all personal property within the state shall be distributed according to Mississippi law, notwithstanding that the domicil of the decedent may have been in another state. MISS. CODE ANN. § 467 (1942).

An Ohio statute permitting courts of that state to set off a year's allowance to the widow and children of a "non-resident decedent" who leaves property in Ohio, when the "state of decedent's residence" fails to make such provision, was held to use the word resident as equivalent to domiciliary, and thus applicable to a widow dwelling in Ohio but domiciled elsewhere. *In re* McCombs' Estate, 52 Ohio L.R. 353, 80 N.E.2d 573 (1948). The Illinois statute providing for an award out of a decedent's estate to his widow if "residing in this state" was held to apply to a widow whose husband had died a domiciliary of the state, though she herself had never entered Illinois. *In re* Estate of Quinn, 283 Ill. App. 597 (1936). Similarly, residence was held to mean domicil in the Illinois statute authorizing an allowance to resident children from the estate of a parent who died without leaving a surviving spouse. *In re* Gilbert's Estate, 311 Ill. App. 28, 35 N.E.2d 400 (1941).

73. See note 47 *supra*.

74. Connolly v. Serunian, 138 Me. 80, 21 A.2d 830 (1941); Hallet v. Bassett, 100 Mass. 167 (1868); Langdon v. Doud, 88 Mass. 423 (1863); State v. Snyder, 182 Mo. 462, 82 S.W. 12 (1904) (criminal statute); Venuci v. Cademartori, 59 Mo. 352 (1875); People v. Gauriglia, 187 Misc. 843, 65 N.Y.S.2d 96 (Co. Ct. 1946) (criminal statute); Trask v. Karrick, 94 Vt. 70, 108 Atl. 846 (1920); Dignam v Shaff, 51 Wash. 412, 98 Pac. 1113 (1909).

For similar reasons, the majority of courts hold that the absence of a nonresident motorist from the state does not toll the statute of limitations when provision is made by statute for substituted service of process on a state official. See Kokenge v. Holthaus, 52 N.W.2d 711 (Iowa 1952), and cases cited therein.

75. Connor v. Timothy, 43 Ariz. 517, 33 P.2d 293 (1934); Strauss v. Smyth,

RESIDENCE AS MEANING SOMETHING OTHER THAN DOMICIL

As used in the statutes discussed below, residence does not bear the same meaning as domicil. It does, on the other hand, require a well-settled physical connection with the community in question, ordinarily including the maintenance there of a fixed place of abode. In these contexts, residence closely approaches its lay meaning. Domicil is not determinative; one may be a resident of a place where he is not domiciled, and, conversely, is not necessarily a resident of the place of his domicil. Thus, one may have a single residence (not necessarily at the place of one's domicil), a number of residences, or, lacking the requisite physical relationship with any particular place, no residence at all.

Probably, the most significant statutes that fall within this area are those dealing with income taxation, attachment, constructive service on nonresident motorists, school privileges and the recording of chattel mortgages and conditional sales.

Most state income tax statutes make it explicit on their face that they use residence in a sense other than domicil by providing that within their meaning, the word resident includes those domiciled in the state as well as those who maintain a "permanent place of abode" within the state and, during the taxable year, stay there more than a specified time, which normally is either six or seven months.[76] A few statutes impose an income tax upon all residents without any

326 Ill. App. 687, 63 N.E. 2d 271 (1945); Bennett v. Watson, 21 App. Div. 409, 47 N.Y. Supp. 569 (1st Dep't 1897); Hart v. Kip, 74 Hun. 412, 26 N.Y. Supp. 522 (Sup. Ct. 1893); Fidelity & Deposit Co. v. Sheahan, 37 Okla. 702, 133 Pac. 228 (1913) (construing Illinois statute); Fisher v. Phelps, Dodge & Co., 21 Tex. 551 (1858); Keith-O'Brien Co. v. Snyder, 51 Utah 227, 169 Pac. 954 (1917).

Mere temporary absence, however, has been held not to suspend the statute of limitations. Barney v. Oelrichs, 138 U.S. 529, 11 Sup. Ct. 414, 34 L. Ed. 1037 (1891) (construing New York statute).

It has been held that the statute of limitations will continue to run in the defendant's favor despite domicil elsewhere, so long as he comes into the state with reasonable regularity. Mack v. Mendels, 249 N.Y. 356, 164 N.E. 248 (1928). Huber v. Rebay, 60 F. Supp. 10 (S.D. N.Y. 1944). *And cf.* Dorus v. Lyon, 92 Conn. 55, 101 Atl. 490 (1917). But mere transient visits to the state will not prevent the tolling of the statute, despite temporary liability to service of process while there. Farmers State Bank v. Jones, 232 S.W.2d 658, 34 Tenn. App. 57 (E.S. 1949).

In one case it was held that the tolling provisions of a criminal statute operates even though the defendant is both domiciled in and physically present within the state, if he is concealed or does not maintain a "fixed, permanent and established home where his personal presence might reasonably be known." Coleman v. Territory, 5 Okla. 201, 47 Pac. 1079 (1897).

76. See, *e.g.*, ALA. CODE ANN. tit. 51, § 373 (1940); ARK. STAT. ANN. tit. 84 § 2002(9) (1947); CALIF. REVENUE CODE § 17013 (1939); GA. CODE ANN. § 92-3002(i) (1937); IND. STAT. ANN. § 64-2602 (Baldwin Supp. 1951); LA. REV. STAT. tit. 47, § 31 (1950); MD. ANN. CODE Art. 81 § 275(i) (Flack 1951); MISS. CODE ANN. § 9221(e) (1942); N.Y. TAX LAW § 350(7) (1943); N.C. GEN. STAT. ANN. § 105-132(13) (1950); UTAH CODE ANN. § 59-14-1(7) (1953); VA. CODE ANN. § 58-77 (8) (1950); WIS. STAT. § 71.01(1) (1949). The Arizona statute defines residence as meaning domicil, but states that anyone spending at least nine months of the year in Arizona is deemed prima facie to be domiciled in the state. ARIZ. CODE ANN. § 73-1504(d) (1939).

attempt to define the term.[77] Some of these have been interpreted as applying only to domiciliaries.[78] The federal income tax is imposed upon the entire net income of every citizen of the United States and of every resident, whether a citizen or not.[79] The explanatory Treasury Regulation makes it clear that residence is not here used in the sense of domicil, since it provides that a resident alien is one who is not "a mere transient or sojourner . . . . Whether he is a mere transient or not is determined by his intentions with regard to the length and nature of his stay. . . . [I]f his purpose is of such a nature that an extended stay may be necessary for its accomplishment, and to that end the alien makes his home temporarily in the United States, he becomes a resident, though it be his intention at all times to return to his domicile abroad when the purpose for which he came has been consummated or abandoned."[80] A further provision excludes from the tax income earned abroad by an American citizen "who establishes to the satisfaction of the Commissioner that he is a bona fide resident of a foreign country or countries during the entire taxable year."[81] Here again it is clear that residence does not mean domicil, since the Treasury Regulations provide that in general bona fide foreign residence shall be determined by the principles laid down with respect to residence by aliens in the United States.[82]

State statutes frequently permit attachment of the property of nonresident debtors at the commencement of suit. Their purpose is to permit a plaintiff immediately to bring within his grasp the local assets of a defendant against whom a judgment could not be enforced in the ordinary way.[83] Thus, attachment is generally held to lie against a defendant who, although domiciled in the state, is absent therefrom for more than a temporary period.[84] Such a person is, of course, subject to the in personam jurisdiction of the state, and, for this reason, a valid in personam judgment could be rendered against him there.[85]

77. MASS. ANN. LAWS c. 62, § 22 (1945); S.C. CODE ANN. § 2437 (1942). The Massachusetts law uses the word "inhabitants."

78. Mitchell v. Delaware State Tax Comm'r, 3 Terry 589, 42 A.2d 19 (Del. 1945); Philips v. South Carolina Tax Comm'r, 195 S.C. 472, 12 S.E.2d 13 (1940).

79. INT. REV. CODE §§ 11, 12; U.S. Treas. Reg. 111, § 29.11 (1943). Special provision is made for the taxation of nonresident aliens on income received from sources within the United States. INT. REV. CODE § 211.

80. U.S. Treas. Reg. 111, § 29.211 (1943).

81. INT. REV. CODE § 116(a).

82. U.S. Treas. Reg. 111, § 29.116 (1944). *Cf.* Seely v. Comm'r, 186 F.2d 541 (2d Cir. 1951); Downs v. Comm'r, 166 F.2d 504 (9th Cir. 1948); Swenson v. Thomas, 164 F.2d 783 (5th Cir. 1947); Kyle v. Jones, 92 F. Supp. 600 (W.D. Okla. 1950). See Note, 51 COL. L. REV. 378 (1951).

83. See Beale, *Residence and Domicil*, 4 IOWA L. BULL. 3, 9-10 (1918). For a detailed examination of the interpretation given the word residence in this context, see Notes 19 L.R.A. 665 (1893), and 26 A.L.R. 180 (1923).

84. See, *e.g.*, Hanson v. Graham, 82 Cal. 631, 23 Pac. 56 (1890); Union Nat. Bank v. Finley, 180 Ind. 470, 103 N.E. 110 (1913); Haggart v. Morgan, 5 N.Y. 422 (1851); Carden v. Carden, 107 N.C. 214, 12 S.E. 197 (1890); Raymond v. Leishman, 243 Pa. 64, 89 Atl. 791 (1914).

85. Milliken v. Meyer, 311 U.S. 457 61 Sup. Ct. 339, 85 L. Ed. 278 (1940).

This judgment, however, could not be enforced by poor debtor process or arrest, as would be true in the case of resident debtors, but only by levy of execution against local assets or by a further suit upon the judgment in another state where the defendant either had property or could be personally served with process.[86] Residence, therefore, as the term is used in attachment statutes, does not normally mean domicil; it does, on the other hand, require a rather well-settled connection with the state. Thus, the writ will not lie against one who, although not a domiciliary of the state, maintains a fixed place of abode there.[87] It is available, however, against one who happens to be physically present in the state on a temporary visit.[88]

For similar reasons, some statutes providing for constructive service upon nonresident motorists involved in accidents within the state have been applied to domiciliaries of the state whose actual places of abode were elsewhere.[89]

---

86. See Beale, *supra* note 83.

87. Jarrell v. Leeper, 178 Ark. 6, 9 S.W.2d 778 (1928); D'Elia & Marks Co. v. Lyon, 31 A.2d 647 (D.C. App. 1943); Barron v. Burke, 82 Ill. App. 116 (1898); Brown v. Crane, 69 Miss. 678, 13 So. 855 (1892); Clark v. Likens, 26 N.J.L. 207 (1857); Irwin v. Raymond, 58 Misc. 319, 110 N.Y. Supp. 1100 (Sup. Ct. 1908); Rosenzweig v. Wood, 30 Misc. 297, 63 N.Y. Supp. 447, *aff'd*, 52 App. Div. 631, 65 N.Y. Supp. 1144 (1st Dep't 1900). Munroe v. Williams, 37 S.C. 81, 16 S.E. 533 (1892); Didier v. Patterson, 93 Va. 534, 25 S.E. 661 (1896); Andrews v. Mundy, 36 W. Va. 22, 14 S.E. 414 (1892).

The Louisiana statute, however, explicitly provides that the writ shall lie against both nonresident defendants and those "not domiciled in this state." Thus attachment was available against one whose settled place of abode was in Louisiana, on the ground that his statements as to "legal residence" and his payment of the Texas poll tax indicated that he had not abandoned his Texas domicil. Clarke v. Patton, 16 So. 2d 585 (La. App. 1944).

88. Howard v. The Citizens' Bank and Trust Co., 12 App. D.C. 222 (1898); Hickson v. Brown, 92 Ga. 225, 17 S.E. 1035 (1893); Jackson v. Perry, 52 Ky. 184, 13 B. Mon. 231 (1852); Augustus Co. v. Manzella, 19 N.J. Misc. 29, 17 A.2d 68 (1940). *But cf.* Loew's Inc. v. Dorsey, 197 Misc. 1069, 97 N.Y.S.2d 315 (Sup. Ct. 1950), holding that presence of defendant in the state for a brief period to perform a musical engagement was sufficient to quash a writ of attachment.

89. Hughes v. Lucker, 233 Minn. 207, 46 N.W.2d 497 (1951); Chapman v. Davis, 233 Minn. 62, 45 N.W.2d 822 (1951); Reed v. Lombardi, 181 Misc. 805, 44 N.Y.S.2d 382 (Sup. Ct. 1943); Uslan v. Woronoff, 173 Misc. 693, 18 N.Y.S.2d 222, *aff'd*, 259 App. Div. 1093, 21 N.Y.S.2d 613, *rearg. denied*, 259 App. Div. 1117, 22 N.Y.S.2d 464 (2d Dep't 1940). Conversely, one is not a nonresident within the meaning of such a statute if he maintains his fixed place of abode within the state, although he is domiciled elsewhere. Suit v. Shailer, 18 F. Supp. 568 (D. Md. 1937); Carlson v. District Court, 116 Colo. 330, 180 P.2d 525 (1947).

Some cases, however, have interpreted residence in this context as the equivalent of domicil. Berger v. Superior Court, 79 Cal. App. 2d 425, 179 P.2d 600 (1947); Northwestern Mortgage and Security Co. v. Noel Construction Co., 71 N.D. 256, 300 N.W. 28 (1941).

But "regardless of whether the word resident is used as meaning domicile, or in a more liberal sense," there must be volition in establishing the residence. Therefore an unmarried serviceman stationed at a military base in a state is not a "resident" thereof within such a statute unless it can be shown that he intended to establish his residence there, at least for the time being. United Service Automobile Ass'n v. Harman, 151 S.W.2d 609 (Tex. Civ. App. 1941). See generally, Note, 155 A.L.R. 333, 343 (1945).

Statutes permitting "non-residents" to operate motor vehicles on a state's highways without registering them are usually held not applicable to those present in the state for more than a temporary sojourn, even though they main-

Statutes dealing with school privileges are often interpreted as using residence in a sense other than domicil. Such statutes commonly provide that school districts must give free education to children who reside within their territory, but can charge a fee to those who live elsewhere. A large number of decisions hold that residence, when used in this connection, requires only that the child be physically present in the school district for a reasonably lengthy period of time.[90] Under this view, a child who lives with a relative or guardian is entitled to free education in the district of the latter's residence,[91] although, of course, his actual domicil will normally be the same as that of his father.[92] On the other hand, a considerable body of authority takes the position that residence in the context of such statutes is synonymous with domicil.[93]

Statutes providing for the recording of conditional sales contracts and chattel mortgages at the residence of the purchaser or mortgagor are directed at giving subsequent purchasers actual notice of liens against the property. To this end, most courts require that, to comply with the statute, the instrument must be recorded at the place where the mortgagor or purchaser maintains his fixed place of abode, even though he may be domiciled elsewhere.[94]

---

tain domicils elsewhere. Morse v. Lash Motor Co., 107 Conn. 137, 139 Atl. 637 (1927); Robinson v. Fix, 113 Fla. 151, 151 So. 512 (1933). The Massachusetts statute, however, is interpreted as exempting all domiciliaries of other states from the registration requirements. Rummel v. Peters, 314 Mass. 504, 51 N.E.2d 57 (1943).

90. See, *e.g.*, Ashley v. Board of Education, 275 Ill. 274, 114 N.E. 20 (1916); Mt. Hope School District v. Hendrickson, 197 Iowa 191, 197 N.W. 47 (1924); Montgomery v. City of Lebanon, 111 Ky. 646, 64 S.W. 509 (1901); Mancelona Township v. Custer Township, 236 Mich. 677, 211 N.W. 60 (1926); State *ex rel.* Mickey v. Sellech, 76 Neb. 747, 107 N.W. 1022 (1906); Lisbon v. Landaff, 75 N.H. 324, 74 Atl. 186 (1909); People v. Hendrickson, 54 Misc. 337, 104 N.Y. Supp. 122 (Sup. Ct. 1907); Grand Lodge, I.O.O.F. v. Board of Education, 90 W. Va. 8, 110 S.E. 440 (1922).

91. Cline v. Knight, 111 Colo. 8, 137 P.2d 680 (1943); People *ex rel.* Saxe v. Board of Education, 206 Ill. App. 381 (1917); Mt. Hope School District v. Hendrickson, 197 Iowa 191, 197 N.W. 47 (1924); McNish v. State *ex rel.* Dimick, 74 Neb. 261, 104 N.W. 186 (1905); Mizner v. School District, 2 Neb. Unoff. 238, 96 N.W. 128 (1901).

92. RESTATEMENT, CONFLICT OF LAWS § 30 (1934).

93. Gardner v. Board of Education, 5 Dak. 259, 38 N.W. 433 (1888); State *ex rel.* Brown v. Hamilton, 202 Mo. 377, 100 S.W. 609 (1907); Binde v. Klinge, 30 Mo. App. 285 (1888); Black v. Graham, 238 Pa. 381, 86 Atl. 266 (1913). For a more detailed examination of the interpretation of residence in school privilege statutes, see KENNAN, RESIDENCE AND DOMICILE 22 (1934).

94. *In re* Watson, 99 F. Supp. 49 (W.D. Ark. 1951); Commercial Bank of Crawford v. Pharr, 75 Ga. App. 364, 43 S.E.2d 439 (1947); Edwards v. Walker, 162 Misc. 96, 293 N.Y. Supp. 1007 (Co. Ct. 1937); General Motors Acceptance Corp. v. Barnett, 142 Misc. 192, 254 N.Y. Supp. 166 (Munic. Ct. 1931); Sheffield v. Walker, 231 N.C. 556, 58 S.E. 2d 356 (1950); Carroll v. Godding, 26 Erie 196, supplemented 26 Erie 200 (1943), *aff'd*, 155 Pa. Super. 490, 38 A.2d 720 (1944). But the recording must be at a place with which the mortgagor or purchaser has more than a temporary or transient connection. Combs v. Owen, 182 Ark. 217, 31 S.W.2d 127 (1930); McEntyre v. Burns, 81 Ga. App. 239, 58 S.E.2d 442 (1950); Farmer v. Phillips, 12 Ga. App. 732, 78 S.E. 353 (1913). A few courts construe the word residence here as equivalent to domicil. See Petition of

Persons are usually considered eligible for jury duty as residents if they maintain a sufficiently close physical connection with the state or county, despite the fact that their actual domicils may be elsewhere.[95] Statutes requiring nonresidents to give security for costs have sometimes been interpreted to use residence as meaning something else than domicil;[96] in other cases however, the term when so used is held equivalent to domicil.[97]

The provision of the National Bankruptcy Act,[98] giving the court jurisdiction to "Adjudge persons bankrupt who have had their principal place of business, resided or had their domicil" within the district for the prescribed time, is held to apply not only to domiciliaries, but also (by reference to the word "resided") to those who have a settled physical connection with the place, although domiciled elsewhere.[99] However, a mere sojourn or temporary presence is not sufficient.[100] Similarly, residence within enemy territory, as used in the Trading With The Enemy Act,[101] has been interpreted by the Supreme Court as meaning "something more than mere physical presence and yet something less than domicil."[102]

CONCLUSION

By way of summary, residence, rather than domicil, is the word that is almost invariably employed in statutes. With rare exceptions, of which certain state income tax statutes are notable examples,[103] the statutes themselves give little indication as to the exact meaning attributed

McLauchlan, 1 F.2d 5 (1st Cir. 1924) (interpreting the Massachusetts statute); Fidelity & Deposit Co. v. First National Bank, 113 S.W.2d 622 (Tex. Civ. App. 1938).

95. Huckabee v. State, 168 Ala. 27, 53 So. 251 (1910); Graham v. Trimmer, 6 Kan. 230 (1870); People *ex rel.* Turner v. Plimley, 8 App. Div. 323, 41 N.Y. Supp. 365 (1st Dep't 1896), *aff'd*, 150 N.Y. 571, 44 N.E. 1128 (1896). *But cf.* State v. Wimby, 119 La. 139, 43 So. 984 (1907) (domiciliary of parish held qualified for jury duty despite location of his actual place of abode elsewhere).

96. Monteiro v. St. Just S.S. Co., 123 Misc. 8, 204 N.Y. Supp. 3 (Sup. Ct. 1924) ("It is the actual 'residence' of a plaintiff, and not his 'domicile' that determines the question of security for costs."); Dean v. Cannon, 37 W. Va. 123, 16 S.E. 444 (1892).

97. Morrison v. Reese, 186 Misc. 133, 58 N.Y.S.2d 99 (Sup. Ct. 1945); Harshbarger v. Sherron Metallic Corp., 179 Misc. 1037, 40 N.Y.S.2d 651 (Sup. Ct. 1943).

98. 30 STAT. 545 (1898), as amended, 11 U.S.C.A. § 11a(1) (Supp. 1952).

99. *In re* Watson, 99 F. Supp. 49 (W.D. Ark. 1951); *In re* Lemen, 208 Fed. 80 (N.D. Ohio 1912).

100. *In re* Garneau, 127 Fed. 677 (7th Cir. 1904); *In re* Carnera, 6 F. Supp. 267 (S.D.N.Y. 1933).

101. 40 STAT. 411 (1917), as amended, 50 U.S.C.A. App. §§ 1 *et seq.* (1951).

102. Guessefeldt v. McGrath, 342 U.S. 308, 72 Sup. Ct. 338, 96 L. Ed. 342 (1952). In that case a German citizen, long an American domiciliary, returned to Germany for a vacation and was involuntarily detained there throughout the war. The Court held that, "consistent with the emanations of congressional purpose manifested in the entire Act," Guessefeldt could not be considered a resident of Germany. 342 U.S. at 312.

103. See note 76 *supra*.

to the term. As a result, no guidance is given the courts in their task of interpretation other than to seek a result which will further what they conceive to be the central purpose of the legislation in question. In the majority of cases, residence, when used in a statutory context, is construed as being synonymous with domicil. Two reasons, it is believed, are principally responsible for this result. In the first place, statutes often apply the concept of residence to situations where, under normal conflict of laws rules, domicil provides the crucial test.[104] Here the courts, in the absence of explicit evidence to the contrary, are naturally loathe to assume that the legislature intended to depart from the usual rule. Secondly, domicil, despite its difficulties in application, is a concept that is both well known to the courts and reasonably definite in meaning. The opposite is true of residence, which when used in a sense other than domicil, is one of the most nebulous terms in the legal dictionary. As such, it is only to be expected that the courts will apply the better known and more certain standard whenever they feel it possible to do so. Sometimes, however, as in the case of statutes dealing with divorce jurisdiction,[105] residence is held to mean something more than domicil. Such an interpretation presents no particular difficulty since it involves the concept of domicil together with some easily ascertainable and definite fact, as, for example, physical presence or the maintenance of an actual place of abode. Difficulties do abound, however, in situations where residence is held to mean something else than domicil. Used in this latter sense, the term has no constant meaning, although, speaking generally, it can be said to require a rather well-settled connection with a given locality. But how to describe this required connection with a locality, how to define the various meanings of the term and, in particular, how to differentiate clearly in words between residence and domicil are problems that still await solution. As a result, the courts find it difficult even to talk of residence in language that would not be equally appropriate to domicil. Even in situations where residence is generally held to differ from domicil, the distinction between the two concepts is often too shadowy to be capable of description.

104. As for example, in problems involving judicial jurisdiction or decedents' estates. See notes 49, 56-57 *supra*.

105. See notes 22-27 *supra*.