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# REPLIES OF MEMBER GOVERNMENTS TO THE SUPPLEMENTARY LIST OF QUESTIONS ON NATIONALITY AND DOMICILE AS THEY AFFECT THE STATUS OF MARRIED PERSONS

Memorandum prepared by the Secretariat

## Introductory Note

The Economic and Social Council on 1 August 1949, in its resolution 242 (IX) C, invited

> "... Member States to transmit to the Secretary-General by November 1949 their replies to the supplementary list of questions on nationality and domicile as they affect the status of married persons" (document E/CN.6/81/Rev.1).

and requested

> "... the Secretary-General to prepare and circulate to Member States an analysis of the conflicts of laws demonstrated in documents E/CN.6/82, E/CN.6/82/Add.1 and 2 and E/CN.6/81/Rev.1 and in any further replies received from governments."

In accordance with this resolution, the Secretary-General has prepared and circulated to Member States an Analysis of conflicts of laws in the field of nationality of married women (document E/CN.6/126).

As of 8 February 1950, the Secretary-General had received replies to the Supplementary list of Questions from the following fifteen countries: Belgium, Brazil, Burma, Chile, Czechoslovakia, Denmark, France, Greece, Guatemala, Israel, Lebanon, Netherlands, Pakistan, Philippines and the United States. The Government of Egypt has transmitted its reply to question III of the Supplementary list.



/The present

The present document is a collation of the replies as received by the Secretary-General.

An analysis of conflicts of laws affecting the domicile of married women, demonstrated in these replies as well as in information obtained by the Secretariat through independent research will be issued as a separate document.

## REPLIES OF GOVERNMENTS

### I. Law governing personal status

1. Which law governs the validity of marriage - the law of the nationality or the law of domicile

(a) of the bridegroom

(b) of the bride

(c) of both spouses?

Or is the validity of marriage governed by the law of the place where the marriage ceremony takes place, or by any other law?

#### BELGIUM

Under the provisions of the Belgian Civil Code, a marriage is regarded as valid as to <u>form</u> if contracted according to the forms adopted in the country where it is celebrated, and <u>as to substance</u> if both the contracting parties fulfil the conditions which, under their personal status, are required for their capacity to marry and non-fulfilment of which would void the marriage.

#### BRAZIL

The validity of marriage is governed by the law of the domicile of the future spouses when they have the same domicile. The applicable legal provision is Article 7 of the Law of Introduction to the Civil Code:

> "Article 7 - The law of the country in which the person is domiciled governs the beginning and the end of his personality, his name, his legal capacity and his family rights."

If the future spouses do not have the same domicile, the applicable law will be the law of the first domicile they have after marriage, in accordance with Article 7, paragraph 3, of the Law of Introduction to the Civil Code:

/"If the

"If the future spouses have different domiciles, the cases of invalidity of marriage shall be governed by the law of the first domicile of the couple."

BURMA

The validity of marriage is governed by:

(i) Customary law - that is,

(a) where both the parties are Burmese Buddhist, the Buddhist Law where however a Buddhist woman belonging to any of the indigenous races of Burma contracts a marriage with a non-Buddhist man, the validity or otherwise of such marriage is determined in accordance with the Buddhist Women's Special Marriage and Succession Act (Burma Act. No. 24 of 1939);

(b) where both the parties are Hindus, the Hindu Law;

(c) where both the parties are Mohamedan, the Mohamedan Law.

(ii) Statutory Law

(a) The Special Marriage Act

It enables marriage to be contracted under a special procedure between persons neither of whom professes Christian or Jewish or Hindu or Buddhist or Mohamedan or Parsi or Sikh or Jaina religion, or between persons each of whom professes one or other of the following religions namely, Hindu, Buddhist, Sikh or Jaina.

(b) The Christian Marriage Act

Marriage between persons one or both of whom is or are Christian, solemnized according to the provisions of the said Act.

Note: Under the Foreign Marriage Act, 1947 (an Act of the British Parliament) as amended by Foreign Marriage (Amendment) Order, 1949, a British subject belonging to the United Kingdom can contract a valid monogamous marriage in Burma in accordance with the local laws.

CHILE

Any marriage celebrated in Chile, whether between nationals or aliens, is governed, as regards its outer forms, by Chilean law under Article 14 of the Civil Code which states: "The law is binding on all inhabitants of the Republic, including aliens".

A marriage celebrated abroad, whether between two Chileans, between two aliens or between a Chilean and an alien, must always be governed, as regards its outer forms, by the laws of the country in which it takes place, in accordance with the provisions of Article 15, paragraph 1, of the Civil Marriages Act of 10 January 1884 which states: "A marriage celebrated in a foreign country in conformity with the laws of that country shall produce the same effects in Chile as if it had been celebrated on Chilean soil."

The inner or substantive conditions for marriages celebrated in Chile, whatever the nationalities of the future spouses, are governed wholly by Chilean law. The basis of this principle is Article 14 of our Civil Code.

In the case of marriages celebrated outside Chile, however, two separate situations must be considered - marriage between two Chileans or between a Chilean and an alien and marriage between two aliens.

Marriage abroad between Chileans or between a Chilean and an alien.

In this case the general rule set forth in Article 1 of the Civil Marriages Act cited above applies. All the inner or substantive conditions of marriages celebrated abroad, whether between two Chileans or between a Chilean and an alien, are governed entirely by the law of the country in which the marriage takes place.

Nevertheless the second paragraph of Article 15 of the Civil Marriages Act established an exception to the general rule in stating: "Nevertheless, if a Chilean of either sex marrying in a foreign country violates the provisions of Articles 4, 5, 6 and 7 of the present Act, the violation shall produce the same effects in Chile as if it had been committed in Chile."

This rule, being an exception to the general rule, is to be interpreted restrictively, with a limitation both of persons and of laws. There is a limitation of persons because only Chileans are affected and of laws because such persons are bound not by all the substantive requirements of Chilean law but only by some of them, such as the diriment impediments, i.e. those which nullify the marriage.

/Marriage of

Marriage of aliens celebrated abroad.

The law governing the inner or substantive conditions in the case of marriages celebrated abroad is the law of the country in which the ceremony takes place. The capacity, impediments and other conditions applying to an alien marrying in a country other than Chile are therefore determined by the law of the place in which the marriage takes place.

The foreign law applies, and a Chilean judge must refer to it in adjudicating upon the inner or substantive conditions of such marriages.

CZECHOSLOVAKIA

In the Czechoslovak legislation relating to private international law, the conclusion of marriage is governed by the provisions of Articles 10 to 12 of Act No. 41/1948 in the Official Collection of Laws and Ordinances. These are as follows:

Article 10

"The capacity to contract marriage shall, as regards each of the prospective spouses, be governed by the legislation of the State of which he or she is a national.

Article 11

"In the case of a widow whose marriage with her late husband was declared dissolved under Article 6, second sentence, the capacity to contract marriage shall be governed by Czechoslovak law.

Article 12

"The form in which a marriage is concluded shall be governed by the legislation of the place where the marriage is performed. It shall, however be sufficient to observe the forms prescribed by the legislation of the States of which the prospective spouses are nationals."

DENMARK

As a general rule a marriage is considered valid in Denmark if it is valid according to the law of the place where the marriage ceremony took place.

FRANCE

The substantive conditions governing the validity of a marriage are determine by the national law of each of the spouses.

However, such conditions may not be repugnant to the principles of French public policy. Accordingly:

1. A polygamous marriage cannot be regularly celebrated in France even if the prospective spouses are aliens and are authorized to contract the marriage under their personal law;

2. The provisions of Articles 161 et seq. of the Civil Code under which the marriage of persons who are within the prohibited degrees of relationshi; is unlawful (directly related ascendants and descendants, brothers and sisters, brothers-in-law and sisters-in-law when the relative through whom the relationship is traced is alive, uncles and nieces, adoptive parents) must be respected. Dispensations, when admitted by French law, shall be agreed to by the foreign authority;

3. The minimum age conditions required by French law must also be observed in the case of a marriage celebrated in France;

4. Any bars which, under the personal law of the spouses, apply to marriage and which are based on differences of race or religion, are not recognized in France.

In France, the conditions as to form are governed by French law. Nevertheless, two prospective spouses of the same nationality may regularly be married in France before the consuls or diplomatic representatives of their country.

GREECE

The national law of both spouses (Civil Code, Article 11)

The lex loci celebrationis is not applied to the marriages of Greek citizens who are Christians. Consequently, the religious ceremony is indispensable for the validity of the marriage (Civil Code, Article 1367).

GUATEMALA

Under Guatemalan legislation the intrinsic validity of marriage is governed by the law of the place of celebration (lex loci celebrationis).

Laws: Article XXII of the Fundamental Principles of the Act establishing the Judicial System, and articles 35 and 36 of the Aliens Act.

ISRAEL

The validity of marriage is governed by the personal law of both spouses. Personal law means:

(a) In the case of a citizen who is a member of one of the recognized religious communities, the law of the community of which he is a member;

(b) In the case of a foreigner, the law of his nationality, unless that law imports the law of his domicile.

LEBANON

A careful distinction must be made between the rules of municipal law, and those of international law.

(a) Under Lebanese municipal law there is no such thing as civil marriage, for marriage is still a purely religious matter.

The law therefore provides that in matrimonial causes, the court competent to deal with questions of personal status is the religious authority before which the marriage was contracted (Legislative Decree No. 6 of 3 February 1920, Article 36).

If the marriage took place before two different authorities, jurisdiction is vested in the court of the religious authority before which the marriage was celebrated (ibid., Article 37).

It should, however, be noted that under Lebanese municipal law, jurisdictional competence ipso facto implies legislative competence.

/Any

Any marriage celebrated in Lebanon between Lebanese nationals in accordance with a law to which neither of the contracting parties is subject is void absolutely (Order 146/LR of 18 November 1948, Article 24).

Even in the case of the "secession" (i.e. a change in religious denomination) on the part of one of the spouses, the marriage, together with the documents relating to the status of the individuals concerned, continue to be governed by the law under which marriage was celebrated, performed or contracted.

If, however, both spouses "secede", the marriage and all the documents or obligations relating to the personal status of the individuals concerned will, as from the date on which their "secession" is officially registered, be governed by the law of their new status (Order 60/LR referred to above, Article 23, as amended by Order 146/LR of 18 December 1948).

If a marriage is contracted abroad between Syrians or between Lebanese, or between a Syrian or a Lebanese and an alien, the marriage is valid if celebrated in the forms usually observed in the country concerned (Order 146/LR, Article 25).

The law adds: "If the form as well as the effects of the marriage as they result from the law under which the marriage was contracted are not admitted by the personal status of the spouse, the marriage, in Syria and Lebanon, be governed by the civil law" (ibid., paragraph 2).

[Since no civil legislation has yet been enacted to deal with this subject, the foregoing provision seems to have remained inoperative.]

(b) Marriages between aliens are governed by the provisions of the national law of the aliens concerned (ibid., Article 10).

## NETHERLANDS

The validity of a marriage, in so far as it is dependent on the capacity of the spouses to contract it, is governed by the national law of each of the spouses.

With regard to the forms of the solemnization or the celebration of the marriage, the validity of the marriage is dependent on the law of the country in which it was contracted (lex loci actus).

PAKISTAN

The validity of marriage depends upon two factors:

(a) The formalities which determine the form, and

(b) The essentials which determine the capacity to contract a valid marriage.

In Pakistan a marriage between two Muslims, wherever celebrated, would be regarded as depending on the personal law both as to the formalities and the essentials; the same with a marriage between two Hindus and the same with a marriage between two Parsis. In the case of a marriage between two Christians the validity would be regarded as depending as to form on the place where the marriage ceremony takes place and as to the essentials on the law of the domicile of the parties; this, however, must be regarded as a general statement not necessarily true in every case.

Where the parties do not profess the same religion or any religion, the validity of marriage will depend, as to form, on the place where the ceremony takes place and as to essentials probably on the domicile of the parties.

Where the parties have different domiciles and the marriage is celebrated in a place in which a defect imposed by the law of domicile is not recognized, very complicated questions may arise and it is impossible to go into them here.

PHILIPPINES

The Philippine law on marriage adopts the rule that the validity of the marriage shall be governed by the law of the place where the marriage ceremony takes place. Thus, section 19 of Act No. 3613, presently in force, provides as follows:

> "Sec. 19. Marriage performed abroad. - All marriages performed outside the Philippine Islands in accordance with the laws in force in the country where they were performed and valid there as such, shall also be valid in these islands."

Under the New Civil Code (Rep. Act No. 386) which shall take effect some time in 1950, the rule is restated in the following manner:

> "Art. 71. All marriages performed outside the Philippines in accordance with the laws in force in the country where they were performed, and valid there as such, shall also be valid in this country, except bigamous, polygamous, or incestuous marriages as determined by Philippine law."

UNITED STATES

As a general rule, the validity of marriage is governed by the law of the place where the marriage ceremony takes place.

2. Which law governs the matrimonial relationship - the law of the nationality or the law of domicile

(a) of the husband

(b) of the wife

(c) of both spouses?

Or is the matrimonial relationship governed by any other law?

BELGIUM

According to authors and precedents the consequences of the marriage are, as a rule, governed by the national law of the spouses. If the spouses have different nationalities and have never had the same nationality, the national law of the husband prevails.

BRAZIL

There is no express provision in Brazilian law regarding the matter of marital relationship. In accordance with article 7 of the Law of Introduction, the law of the domicile determines a person's family rights, and these family rights include the marital relationship.

/As the

As the domicile of the head of the family also is the domicile of the other spouse (Law of Introduction, article 7, paragraph 7), the conclusion is that the law governing the marital relationship is the law of the domicile that the husband has established for the couple.

BURMA

Matrimonial relationships are governed in the case of Burmese Buddhists by the Buddhist Law; in the case of Hindus, by the Hindu Law; in the case of Mohammedan, by the Mohammedan Law; in other cases they are governed by provisions of special enactments set out in the answer to question 1.

CHILE

In determining the law governing the matrimonial relationship, the following situations have to be considered:

(a) Marriages celebrated in Chile

As provided in article 14 of the Civil Code, such marriages, regardless of the nationality of the parties, are governed wholly by Chilean law.

Consequently, the personal rights and obligations and reciprocal duties of the spouses, as well as the character and extent of marital power and the legal capacity of the wife, are governed by Chilean law.

Nevertheless, the position of spouses who, having married in Chile, become domiciled in a foreign country requires definition. This depends on whether the spouses are Chilean or not. If the husband and wife are Chilean, their residence or domicile abroad does not limit the application of Chilean law, and this follows them as regards their personal rights and duties, which they are required to observe as provided in article 15, paragraph 2, of the Civil Code as follows: "Article 15. Chileans shall remain subject to the national laws governing their civil rights and obligations, notwithstanding their residence or domicile in a foreign country: 1. as regards personal status and capacity to perform certain acts which are to have effect in Chile; 2. as regards obligations and rights arising from family relations; but only vis à vis their Chilean spouses and relatives."

/Nevertheless

Nevertheless, the capacity of a Chilean woman married in Chile and domiciled or resident abroad is of no concern to Chilean law, save as regards the execution of acts which are to produce effects in Chile. In such cases the wife's capacity will be governed by Chilean law, as provided in article 15, paragraph 1, of the Civil Code, to which reference was made in the preceding paragraph. In this situation, a Chilean woman, married in Chile and under a relative legal disability under Chilean law, would be unable to conclude a contract abroad without complying with the requirements laid down by Chilean law for the performance of this act if the contract was intended to produce effects in Chile.

In any other case, whether only one of the spouses is Chilean or both are aliens, even though the marriage was celebrated in Chile, Chilean law does not affect the spouses abroad, except to govern the legal capacity of a Chilean wife in the case already mentioned which arises under article 15, paragraph 1, of the Civil Code. Other cases are governed by the local law.

(b) Marriages celebrated abroad

1. Between a Chilean and an alien

Such marriages are not governed by Chilean law, the provisions of which therefore do not apply either to the personal relationships of the spouse or to the legal capacity of the wife.

Nevertheless, if the wife is Chilean, Chilean law will be concerned with her compliance with its provisions regarding the efficacy of acts performed by persons under a relative legal disability (provided the legal capacity of the wife is relatively limited in accordance with the law under which she married) in the case of acts or contracts intended to produce effects in Chile, as provided in article 15, paragraph 1, of the Civil Code already cited several times.

2. Between aliens

Chilean law has no bearing in such marriages on the personal relationships between the spouses or the legal capacity of the wife.

If they become domiciled in Chile, the position regarding their reciprocal rights and duties and the wife's legal capacity is that indicated in the previous cases; in other words, it is governed by article 14 of the Civil Code.

/3. Between Chileans

3. Between Chileans

The spouses are subject to Chilean law as regards their personal and reciprocal rights and obligations; actions may therefore be brought in Chile on grounds of the failure of one of the spouses to observe the relevant provisions of our legislation with the object of enforcing compliance with the obligations involved. For example, a husband might sue for divorce in Chile on the grounds that his wife has refused, without good cause, to follow him when he changed his residence.

If the spouses take up domicile in Chile, Chilean law will govern their personal obligations. As regards the wife's legal capacity, she will be regarded in Chile as enjoying separation of property and full legal capacity if the property system adopted abroad, when the marriage was contracted, did not imply the type of community of goods to which the Chilean law refers.

This conclusion follows from the provisions of article 135, paragraph 2, of the Civil Code which applies, since no distinction is made in the law, both to Chileans and aliens married outside Chile. The paragraph states: "Persons married abroad and taking up domicile in Chile shall be regarded as enjoying separation of property provided that, under the laws under which they were married, there was no community of goods between them".

CZECHOSLOVAKIA

The legal consequences of marriage, concerning personal relations of the spouses, are governed by the provisions of Articles 13 and 14 of the aforesaid Act. These are as follows:

Article 13

"With respect to personal relations of the spouses, the legal consequences of marriage, including the right to alimony, are governed by the legislation of the State of which the spouses are nationals.

Article 14

"If this legislation is different for each of the two spouses, the legal consequences are governed by the last legislation to which both spouses were subject. If they have never been subject to the same legislation, the consequences are governed by Czechoslovak law."

As regards the property relationship of husband and wife, the provisions of Articles 15 to 17 of the aforesaid Act apply. These are as follows:

Article 15

"The property relationship of husband and wife shall be governed by the legislative provisions in force in the State of which the spouses were nationals at the time of the celebration of the marriage. If this law is different for each of the two spouses, the property rights shall be governed by Czechoslovak law. The said legislative provisions shall be applied even if there is a change of nationality.

Article 16

"The same principles shall be applied to determine the rights to property under contract, though in this case the nationality held at the time when these rights are being determined shall be decisive.

Article 17

"If the law of the State on whose territory the immovable property of the spouses is situated provides that such property is subject to the lex situs, such property shall be governed by the lex situs."

DENMARK

The personal legal effects of marriage are governed by Danish law, if the spouses are resident in Denmark. The property relationship of the spouses is normally governed by the law of the husband's domicile at the time the marriage took place; however article 53 of Act. No. 56 of 18 March 1925 concerning the legal effects of marriage, includes a special rule relating to the conclusion and validity of marriage settlements.

It should be added that the property relationship of spouses who are, or were at the time of marriage, nationals of Denmark, Finland, Iceland, Norway or Sweden, are governed by the provisions of articles 3-6 of the Convention containing provisions of private international law relating to marriage, adoption and guardianship concluded on 6 February 1931 between those countries.

FRANCE

A distinction must be made between (1) the relationship between the spouses, independently of the matrimonial regime and (2) the relationship governed by the matrimonial regime.

1. Relationship between the spouses, independently of the matrimonial regime

This is governed, subject to considerations of public policy, by the national law of both spouses when they are of the same nationality. For cases

/in which the spouses

in which the spouses do not possess the same nationality, judicial precedent does not appear to have laid down any general rule, and the authors are divided.

One may, however, note the solution admitted in similar matters (e.g. the possibility of divorce) in which judicial practice applies the personal law of each of the spouses.

2. The matrimonial regime

(a) In concluding a marriage contract, the spouses may themselves choose the law which is to apply to their matrimonial regime.

(b) In the absence of a marriage contract, they are subject to a statutory regime determined by circumstances which create a reasonable presumption that the parties wish to adhere to one legal system. In practice it is almost always the law of the matrimonial domicile which determines the regime applicable to the spouses.

GREECE

The personal relationship of the spouses is governed by the national legislation to which they were both last subject during the marriage, and otherwise by the national legislation to which the husband was subject at the time of the marriage (Civil Code, Article 13).

The property relationship of the spouses is governed by whatever was the national legislation of the husband at the time of the marriage (Civil Code, Article 15).

GUATEMALA

Personal relationships are governed by the law of matrimonial domicile, which in turn is determined by the husband's domicile. In the last resort, therefore, personal relationships are governed by the law of the husband's domicile.

Property relationships are governed by the personal common law of the spouses at the time the marriage was celebrated; or, if there was no common law, by the law of the place where they established their first conjugal domicile.

Laws: Articles 37 and 126 of the Civil Code and Article 40 of the Aliens Act.

/ISRAEL

ISRAEL

The matrimonial relationship is governed by the personal law (as explained under 1.) of both spouses.

LEBANON

The question what law governs the property relations between the spouses is not settled by statutory enactments.

Judicial practice seems rather uncertain (see Répertoire de Jurisprudence libanaise, Juridictions mixtes, Volume II, p. 849).

NETHERLANDS

The conjugal rights and duties of the spouses are governed by their national law. If the spouses have a different nationality even after marriage, the national law of the husband at the time of the marriage prevails.

With regard to the matrimonial system of property the national law of the husband at the time of the marriage governs the relations between the spouses in the absence of a marriage contract.

The national law of each of the spouses governs their capacity to draw up a marriage contract. The proprietary relations between the spouses and their consequences are governed by the national law of the husband at the time of the marriage.

PAKISTAN

Generally speaking, Muslims, Hindus, Christians and Parsis domiciled in Pakistan will be governed in their matrimonial relationship by their personal law subject to modifications imposed by statute. Where the parties are domiciled outside Pakistan they will be governed as to the matrimonial relationship in Pakistan by law of their domicile except Parsis who will be governed by the Parsis Marriage and Divorce Act, 1936. The law of the domicile may be in fact a personal law or a personal law modified by statute.

/PHILIPPINES

PHILIPPINES

The law governing the matrimonial relationship insofar as the family rights, duties and status of the spouses are concerned is determined by the nationality of the spouses. So it is provided in article 9 of the Civil Code of Spain presently in force in this country that:

"Art. 9. The laws relating to family rights and duties, or to the status, condition, and legal capacity of persons, are binding upon Filipinos even though they reside in a foreign country."

The above provision is re-embodied in the New Civil Code as follows:

"Art. 15. Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad."

Insofar as the property relationship between the husband and wife is concerned, the following provisions apply:

"Art. 1315. Persons who unite in marriage may, before entering into it, execute contracts stipulating the conditions for the conjugal partnership with respect to present and future property, without any other limitations than those specified in this Code.

In the absence of a contract about property, it shall be understood that the marriage has been contracted under the system of legal ganancial partnership." (Civil Code of Spain)

"Art. 118. The property relations between husband and wife shall be governed in the following order:

(1) By contract executed before the marriage;
(2) By the provisions of this Code; and
(3) By custom." (Rep. Act. No. 386)

"Art. 1325. If the marriage is contracted in a foreign country between a Filipino and a foreign woman or between a foreigner and a Filipino woman, and the contracting parties do not state or stipulate anything about their property, it shall be understobd, when the husband is a Filipino, that he marries under the regime of the ganancial partnership and when the wife is a Filipino, that she marries under the system of the laws which are in force in the husband's country, all without prejudice to what is established in this Code with regard to immovable property." (Civil Code of Spain)

"Art. 124. If the marriage is between a citizen of the Philippines and a foreigner, whether celebrated in the Philippines or abroad, the following rules shall prevail:

(1) If the husband is a citizen of the Philippines while the wife is a foreigner, the provisions of this Code shall govern their property relations;

(2) If the husband is a foreigner and the wife is a citizen of the Philippines, the laws of the husband's country shall be followed, without prejudice to the provisions of this Code with regard to immovable property," (Rep. Act No. 386)

/UNITED STATES

UNITED STATES

Legislative power over the marriage relationship exists in the state of the matrimonial domicile, and not in the United States except in territories thereof (26 Amer., Jurisprudence, sec. 4., page 633).

The power of regulation of marriage within a state belongs to that state and not to Congress or another state; but Congress has power and control over marriages in the territories of the United States, and may delegate, and has delegated, such power to territorial legislative bodies (35 Amer. Jurisprudence, sec. 11, p. 187).

Thompson v Thompson, 218 U.S. 611
Simms v Simms, 175 U.S. 162
Also, 201 U.S. 303

The legislature may prescribe who may marry, the procedure and form essential to constitute the marriage, the duties and obligations that marriage creates, and the effect of marriage on the property rights of the spouses, present and prospective. The legislature may also prescribe what shall be grounds for the dissolution of the marriage. (35 Amer. Jurisprudence, sec. 12, p. 187)

Maynard v. Hill, 125 U.S. 190
Kinney v. Commonwealth, 30 Grattan (Va.) 858
Sweigart v. State, 213 Indiana 157; 12 N.E. - 2nd, 134

5. Which law governs the dissolution of marriage or the separation of the spouses - the law of the nationality or the law of the domicile

(a) of the husband

(b) of the wife

(c) of both spouses?

Or does some other law apply, e.g. the law of the forum?

BELGIUM

Divorce and separation from bed and board are clearly within the scope of the laws governing status, capacity and family relationships; these are questions which, under Belgian private international law, are governed by the national law of the spouses. In these circumstances, divorce and separation from bed and board are subject to the respect for public policy in Belgium, governed by the

/national law of

national law of the parties concerned. When the spouses are of different nationality, the courts usually apply the national law of the husband.

In a recent case, however, a Belgian woman was authorized to institute divorce proceedings against her Italian husband, even though the national law of the latter does not recognize divorce (Court of Appeal of Ghent, 17 June 1948).

When the nationality of the spouses is not determined, or when they are stateless persons, the lex fori is applied.

BRAZIL

The Law of Introduction to the Civil Code establishes in article 7, paragraph 3:

> "If the future spouses have different domiciles, the cases of invalidity of marriage shall be governed by the law of the first domicile of the couple."

On the other hand, when the bride and the bridegroom have the same domicile, the dissolution of marriage or the separation of the spouses shall be governed by the law of their common domicile.

BURMA

The answer is the same as answer to question 2.

CHILE

The system established under Chilean law in this important matter is mixed or eclectic. On the one hand it accepts the lex fori as regards all suits for divorce instituted in Chile, since article 14 of the Civil Code establishes that on Chilean soil, all persons, whether Chilean or alien, are subject to Chilean law as regards their persons, property and acts. Further, article 15 establishes that certain laws are applicable to Chilean subjects even beyond the national boundaries. It states that: "Chileans shall remain subject to the national laws governing civil rights and obligations notwithstanding their residence or domicile in a foreign country: (1) as regards personal status and capacity to perform certain acts which are to have effect in Chile ..."; from this it follows that if a marriage between Chileans is dissolved abroad by divorce a vinculo, the dissolution will be without effect

/in Chile and the

in Chile and the spouses will not be able to remarry under Chilean law. The same would be true in Chile of a decision of a foreign court authorizing separation a mensa et thoro on grounds not envisaged in article 21 of the Civil Marriages Act, as for instance on grounds of mutual consent.

Chilean legislation refers to this important matter in three articles which constitute its doctrine on the subject. The articles are articles 121 and 120 of the Civil Code and article 15 of the Civil Marriages Act.

Article 121 of the Civil Code states: "A marriage which, under the laws of the country in which it was contracted, could be dissolved in that country may nevertheless not be dissolved in Chile except in accordance with Chilean law".

Article 120 of the Civil Code states: "A marriage dissolved in a foreign country in accordance with that country's laws, but which could not have been dissolved under Chilean law, does not entitle either of the spouses to marry in Chile during the lifetime of the other spouse".

Article 15 of the Civil Marriages Act of 10 January 1884 lays down that "a marriage celebrated in a foreign country in conformity with the laws of that country shall produce the same effects in Chile as if it had been celebrated on Chilean soil". Nevertheless, paragraph 2 adds that "if a Chilean of either sex marrying in a foreign country violates the provisions of articles 4, 5, 6 and 7 of the present Act, the violation shall produce the same effects in Chile as if it had been committed in Chile".

From the foregoing it follows that no marriage can be dissolved in Chile except in accordance with Chilean law.

## CZECHOSLOVAKIA

The dissolution of the marriage and of the marital partnership is governed by the provisions of articles 18 and 19 of the above-mentioned Act. These are as follows:

### Article 18

"The dissolution of the marriage and of the marital partnership shall be governed by the legislation of the State of which the spouses are nationals at the time when proceedings are instituted or the petition is filed. If this legislation is different for each of the spouses, the dissolution shall be governed by the last legislation to which the spouses were jointly subject. If they have never been jointly subject to any legislation, Czechoslovak law shall apply.

/Article 19

Article 19

"If there has been a change of nationality, it shall not be permissible to plead an event which occurred before that change as grounds for the dissolution of the marriage or of the marital partnership unless such event could have been so pleaded under the legislation previously applicable."

DENMARK

If Danish authorities have jurisdiction in the matters referred to in Section V, the case is dealt with in accordance with the provisions of Danish law.

FRANCE

The law governing the dissolution of marriage or the separation of the spouses is the personal law of each of the spouses applied distributively, each spouse being entitled to claim the benefit of his or her own personal law.

GREECE

The law of the last nationality held in common by the spouses during marriage and before the proceedings were instituted. Otherwise, the law to which the husband was subject at the time of the marriage. (Civil Code, Article 16).

GUATEMALA

Dissolution of marriage and separation of spouses are governed by the law of the forum. Article 1116 of the Code of Civil Procedure, which is reproduced in article 39 of the Aliens Act, lays down that: "Guatemalan courts alone may grant divorce or separation, on the grounds specified in the Civil Code".

ISRAEL

The dissolution of marriage or the separation of the spouses is governed by the personal law (as explained above) of both spouses.

LEBANON

As a rule, the law governing personal status applies (see No. 1 above). It should, however, be noted that judicial opinion appears to be divided if the marriage is one between a Lebanese national and an alien woman or vice versa (see Répertoire, pages 850 et seq.), since the legislator did not solve the problem that might arise in that contingency. (See A. Nazas, Divorces mixtes au Liban, Annales de l'Ecole Francaise de droit, No. 2-3 1947, p. 30).

NETHERLANDS

The question of jurisdiction with regard to the dissolution of a marriage or the separation of the spouses is in principle governed by the national law of both spouses.

If one of the spouses is of Netherlands nationality, divorce or judicial separation can only be granted or recognized in the Netherlands on the grounds provided by the Netherlands law.

PAKISTAN

The law (which may be a personal law, or a personal law modified by Statute or statute law) of the domicile of the husband.

PHILIPPINES

The dissolution of the marriage or legal separation is governed by the law of the matrimonial domicile. Thus, it has been consistently held by the Philippine Supreme Court that a divorce granted by the court of a country in which neither of the spouses is domiciled and to which one or both of them may resort only for the purpose of obtaining divorce is not valid and may not be given legal recognition in this country for lack of jurisdiction of said foreign country to determine the termination of the matrimonial status (Ramirez vs. Gmur, 42 Phil. 855; Gorayeb vs. Hashim, 50 Phil. 22; Hix vs. Fluemer, 55 Phil. 851; Sicat vs. Censon, 37 O. G. 3148). Where the spouses are Filipinos, the Supreme Court has stated that in view of the provisions of article 9 of the Civil Code, it is a serious question whether any foreign divorce will be recognized in this jurisdiction "except it be for a cause and

/under conditions for which

under conditions for which the courts of the Philippines would grant a divorce" (Barretto vs. Gonzales, 58 Phil. 67).

The New Civil Code has abolished divorces in the Philippines and provides only for legal separation which may be granted in accordance with articles 97 to 107 thereof. Pursuant to article 99, any person may apply for a legal separation if he has resided in the Philippines for at least one year prior to the filing of the petition unless the cause for legal separation has taken place within the territory of the Republic.

UNITED STATES

Every state has the right to determine the marital status of the persons bona fide domiciled within its limits, and the courts may acquire, under statutory sanction, jurisdiction to dissolve the marriage relation of such persons, irrespective of where the marriage was celebrated, of where the cause of divorce arose, or of where the domicile of the defendant may be, and although the parties never cohabited together as husband and wife within the state. (See 17 Amer. Jurisprudence, sec. 248, p. 278).

Aliens may obtain divorces on proper grounds where they in good faith have made their homes within the state for the statutory period of time necessary to confer jurisdiction upon the courts to grant divorces. (Sedgwick v. Sedgwick, 50 Colo. 164; 114 Pac. 488).

Jurisdiction of a suit for alimony or maintenance without divorce exists where either of the parties is actually, legally, and bona fide domiciled in the state where the suit is brought, particularly where personal service is made upon the husband (27 Amer. Jurisprudence, sec. 419, page 26).

## II. Effect of nationality on marriage

Does the nationality of the future spouses affect their right to marry and, if so, in what way?

### BELGIUM

As explained above, the national law of the future spouses determines in what circumstances they may contract marriage. Only substantive questions are involved, such as questions relating to the consent of the spouses and of their parents, to age and prohibited degrees of relationship....

### BRAZIL

In accordance with Brazilian law, the nationality of the future spouses is immaterial as regards their right to marry. This rule has only one exception, to be found in article 3 of the Degree-law No. 9202, of April 26, 1946:

> "Article 3. Members of the diplomatic service can marry Brazilian-born only, and they must obtain permission from the Minister of State for External Relations."

The Supreme Federal Tribunal, however, in a recent decision, stated that members of the diplomatic service may also marry naturalized Brazilians, since no distinction can be made between Brazilian-born and naturalized Brazilian, which is not established in the Federal Constitution.

### CHILE

The nationality of the future spouses in no way affects their right to marry.

### CZECHOSLOVAKIA

For the extent to which political nationality affects capacity to contract marriage and the forms of concluding marriage, see the provisions of Articles 10 to 12 of the Act mentioned above under I.1.

### DENMARK

Persons fulfilling the general requirements of Danish marriage law may irrespective of their nationality at any time marry in Denmark.

/FRANCE

FRANCE

In principle, the nationality of the spouses does not affect their right to contract marriage.

However, aliens temporarily resident in France may not be married in France unless the authorization of the prefect has been obtained.

GREECE

No, though the difference of religion is an impediment to a marriage between Christians and non-Christians. (Civil Code, Article 1353).

GUATEMALA

Nationality has absolutely no effect on the right to marry.

ISRAEL

The nationality of the future spouses affects their right to marry in so far as their capacity to marry is concerned.

LEBANON

The nationality of the future spouses in no way affects their right to contract marriage.

NETHERLANDS

The nationality of the future spouse of a Netherlander does not affect his or her right to contract marriage.

PAKISTAN

Nationality does not affect the right to marry. Pakistan has imposed no ban regulating marriage between its nationals and foreigners.

PHILIPPINES

The alien nationality of the future spouses does not affect their right to marry, except that there are certain requirements imposed upon them in connexion with securing the necessary license. Thus, section 13 of Act No. 3613 provides the following:

/"Sec. 13. Marriage

"Sec. 13. Marriage licehse in case of members of the United States Army or Navy or Americans and foreigners not residing in the Philippine Islands. When both contracting parties, or the female, are citizens of the United States or of any of the territories thereof, but not habitual residents of the Philippine Islands, or when they are subjects of foreign countries whose habitual residence is not in this country, or when they are members of the United States Army or Navy, it shall be necessary for the contracting parties, before a marriage license can issue, to provide themselves with a certificate of legal capacity to contract marriage...."

Article 66 of the New Civil Code now states the rule in the following manner:

"Art. 66. When either or both of the contracting parties are citizens or subjects of a foreign country, it shall be necessary, before a marriage license can be obtained, to provide themselves with a certificate of legal capacity to contract marriage, to be issued by their respective diplomatic or consular officials."

UNITED STATES

No statutory restrictions, as to either man or women, exist on the basis of nationality with respect to choice of a marital partner.

## III. Effect of nullity of marriage upon the nationality of women

1. Upon the marriage being declared invalid, does the wife
   (a) keep the nationality acquired by marriage
   (b) if not, does she lose it
      (i) automatically
      (ii) subject to certain conditions?

### BELGIUM

A woman who acquired Belgian nationality through marriage to a Belgian national, loses Belgian nationality when the marriage is annulled by the court, unless she can plead the benefit of putative marriage by establishing that she had contracted the marriage in good faith. In that case, she would continue to be treated as a Belgian national.

### BRAZIL

According to Brazilian law, marriage or its annulment have no effect whatsoever on the nationality of women. A Brazilian woman married to a foreigner does not lose her nationality, and a foreign woman married to a Brazilian does not acquire Brazilian nationality through this marriage. In the latter case, marriage to a Brazilian, however, makes easier for a foreign woman the process of naturalization, by entitling her to a reduction of the customary 10 year residence requirements.

### BURMA

Nationality is not affected by marriage being declared invalid. Each party keeps his or her own nationality even if the marriage is declared invalid.

### CHILE

In Chile nullity of marriage has no effect on the wife's nationality.

### CZECHOSLOVAKIA

Under the provisions of Article 2 of Act No. 194/1949 in the Official Collection of Laws and Ordinances, an alien woman who marries a Czechoslovak citizen does not acquire Czechoslovak nationality unless the National Regional Committee, on her application, consents thereto. Without this consent, marriage

/to a

to a Czechoslovak citizen has no effect on her nationality. Consequently, her nationality remains equally unaffected if the marriage is annulled. If, however, the National Regional Committee has given its consent to the acquisition of Czechoslovak nationality by an alien woman who has contracted marriage with a Czechoslovak citizen, the annulment of the marriage will, according to the Ministr of Justice, automatically entail loss of the Czechoslovak nationality acquired through marriage.

DENMARK

A foreign woman who has acquired Danish nationality through marriage will keep this nationality even after the marriage has been nullified unless the marriage suffers from such original defects as outlined in the marriage law of 30 June 1922, paragraph 38 (a marriage having legal effects only if performed by the competent authorities in accordance with the accepted legal procedures). If this condition is not fulfilled, the foreign woman will be regarded as a foreigner who has never acquired Danish nationality.

EGYPT

The Egyptian Nationality Act contains no provision on this subject. Here the general rule holds that anything based on a legal fault is void.

FRANCE

On annulment of her marriage, an alien woman who acquired French nationality by marriage (French Nationality Code, Article 37) is deemed never to have acquired that nationality (Article 42, paragraph 1). Nevertheless, any legal acts which were executed on the basis of presumed French nationality are valid (Article 42, paragraph 2).

GREECE

(b) Yes.

(i) Automatically. According to judicial precedent, when a marriage is annulled, the wife automatically loses the husband's nationality acquired through marriage.

GUATEMALA

Guatemalan legislation contains no rules directly applicable to the cases enumerated in this question; and there is no record of any such case having been submitted to the competent courts and authorities. There is therefore no jurisprudence on this subject.

Under Guatemalan law the following rules are applicable to cases of dissolution of marriage (death of one spouse or divorce); and these would also be applicable by analogy to the cases referred to in the questionnaire

Article 5 of the Aliens Act

"Any woman of Guatemalan nationality, married to an alien, who has not retained her nationality on marriage, may recover Guatemalan nationality by making a declaration in due form expressing such desire to the Ministry of Foreign Affairs or the diplomatic or consular agent of Guatemala at her place of domicile."

"A woman of foreign nationality, married to a Guatemalan national, who has not in the process of marriage adopted her husband's nationality, may acquire Guatemalan nationality at any time if she is domiciled in Guatemala and makes a declaration in the form referred to in the preceding paragraph. If she becomes a widow or the marriage is dissolved she shall retain Guatemalan nationality unless she makes an express declaration to the contrary in the form already indicated."

LEBANON

Lebanese national law makes no provision for this case.

NETHERLANDS

In case a marriage is declared null and void, it is deemed not to affect the wife's nationality. The woman who at the time of the marriage was not of Netherlands nationality shall not have the Netherlands nationality after the declaration of nullity.

This consequence follows ex ipso from the declaration of nullity of the marriage pronounced in court. Therefore, a judicial decree of nullity only is required.

PAKISTAN

The phrase "nullity of marriage" conceals two things

(a) nullity when a marriage is void ab initio; that is when in fact there was no marriage at all, and

/(b) nullity

(b) nullity when the marriage was not void ab initio but voidable i.e. subsisting until declared void.

An example of the first case is impotence known to both parties before they married. An example of the second is wilful refusal to consummate. The answer to the question then will have to be twofold and they can be suitably exhibited in two columns:

| | |
|---|---|
| (a) Since there was no marriage the wife never acquired nationality of her husband. | (b) Since there was a marriage though subsequently avoided, the wife acquired the nationality of her husband and retains it after the declaration of invalidity. |

PHILIPPINES

Invalid marriages are of two classes; to wit, those which are void ab initio, and those which are merely annullable. To the first class belong incestuous marriages and illegal marriages defined and enumerated in sections 28 and 29 of the Philippine Marriage Law, Act No. 3613, as amended. Voidable or nullable marriages, on the other hand, are those defined and enumerated in section 30 of the same act.

If the marriage is void ab initio it is as if there is no marriage at all and the woman does not acquire the nationality of the husband under such kind of marriage. Where the marriage is only annullable, that is, it is valid until set aside by a competent court for any of the reasons provided by law, it is believed that the effects of a valid marriage attach to a woman insofar as acquiring the nationality of the husband is concerned.

UNITED STATES

The alien spouse of a United States citizen does not acquire United States nationality automatically by virtue of marital status, but only by conformity with one of two methods of procedure prescribed by the naturalization law. If the naturalization is obtained under the general (or "long") method, it is on an individual basis, wholly apart from marital status. In such a case the fact that the marriage is declared invalid would have no effect on the wife's United States citizenship.

On the other hand, if the alien wife obtained naturalization through the shorter, simplified procedure available to alien spouses of United States

/citizens,

citizens, her marriage is a material fact in the granting of the citizenship. In this case, annulment of the marriage would not automatically revoke her United States citizenship, but would subject it to possible cancellation in a court action instituted in the discretion of the United States Government. This right of cancellation reserved to the Government is a necessary control against abuse of the privilege available to the alien spouse of a United States citizen, but is exercised with caution, and with due regard to the circumstances in a particular case.

2. Upon the marriage being declared invalid, does the wife reacquire her nationality lost by marriage

(a) automatically

(b) subject to certain requirements

(c) by simplified naturalization procedure?

BELGIUM

A solution similar to that applied to question 1 above is applied in the case of the annulment of the marriage of a Belgian woman who has become an alien through marriage.

BRAZIL

See 1 above.

BURMA

In view of the answer to question 1 above, the answer to this question does not arise.

CHILE

In Chile nullity of marriage has no effect on the wife's nationality.

CZECHOSLOVAKIA

Under the provisions of Article 5 of Act No. 194/1949 in the Official Collection, a woman of Czechoslovak nationality, loses her nationality by marrying an alien if, under her husband's national law, she acquires his nationality through marriage. The National Regional Committee may, however, on her application submitted before or within six months after the marriage issue a declaration to the effect that she retains her Czechoslovak nationality. If under this provision the Czechoslovak national has not lost her nationality by marrying an alien, she retains her nationality even if her marriage with the alien is annulled. If, however, the Czechoslovak national lost her nationality by acquiring her alien husband's nationality, the Ministry of Justice is of the opinion that her Czechoslovak nationality is automatically restored on the annulment of the marriage. With regard to the competence of the Ministry of the Interior in this matter, the remarks made under III/1 apply.

/DENMARK

DENMARK

A Danish woman who has lost her citizenship because of marriage to a foreigner, in accordance with paragraph 5 of law No. 123 of 18 April 1925, and paragraph 5 in law No. 42 of 19 March 1898, will reacquire her lost citizenship automatically only if the marriage has been declared invalid on account of original defects of the marriage, but not as an automatic effect of nullity of marriage ex tunc or ex nunc.

In practice Danish citizenship can be reacquired through naturalization if the woman has legal residence in the country or if, after the nullity of marriage, she has resumed residence in the country for at least one year.

EGYPT

The annulment of the marriage "automatically" voids all its effects, and the wife "automatically" reacquires the nationality she had lost through marriage.

FRANCE

A Frenchwoman who has lost her original nationality through marriage by signing the declaration of repudiation referred to in Article 94, is deemed never to have ceased being a Frenchwoman, because, since the marriage is void, her declaration, which was conditional upon marriage to an alien, is itself null and void.

Nevertheless, the validity of documents based on her apparent alien nationality is admitted (cf. Article 42, paragraph 2).

GREECE

(a) Automatically.

GUATEMALA

See answer under 1 above.

LEBANON

The Lebanese nationality law makes no provision for this case.

/NETHERLANDS

NETHERLANDS

After the declaration of nullity the woman who was of Netherlands nationality at the time of the marriage shall have the Netherlands nationality.

PAKISTAN

See also answer under 1 above.

(a) Yes, automatically

(b) No, she would have to be naturalized like any other foreigner.

These answers, as they stand, were valid on 31 December 1948. With the passing of the British Nationality Act, 1948, which came into force on 1 January 1949 it has to be borne in mind that a British subject marrying a foreigner does not by the marriage confer upon her the status of a British subject. Under the Act a British woman married to a foreigner regains her British nationality if she was married to him before 1 January 1949 and retains it if she marries him after that date. The British nationality acquired by a foreign woman marrying a British subject before 1 January 1949 is not lost as a result of the passage of the Act.

PHILIPPINES

A woman who lost her citizenship by reason of her marriage to an alien does not reacquire her Philippine citizenship automatically. The law requires that to reacquire such citizenship she must be repatriated in accordance with the provisions of Commonwealth Act No. 63 after the termination of the marital status (Sec. 2, Com. Act No. 63). Repatriation pursuant to the said law may be effected by merely taking the necessary oath of allegiance to the Republic of the Philippines and registration in the proper civil registry (Sec. 4, Ibid.).

UNITED STATES

In the case of an alien wife, if she acquired citizenship through simplified procedure on the basis of her marital status, and if (as explained under III. 1 above) her United States citizenship is cancelled after appropriate legal proceedings, she would be regarded as having retained her former nationality unless the law of her State of origin provides otherwise.

/A United States

A United States citizen who marries an alien man, under present United States law does not automatically lose her United States nationality on her marriage. Consequently, annulment of the marriage has no effect on her nationality status.

If, under previous law, a woman who was a United States citizen lost her nationality, she may require it by compliance with the simplified naturalization procedure provided for the purpose. (8 U.S. Code, sec. 717.) If the marriage was invalid, however, the woman would be regarded as never having lost her United States citizenship.

## IV. Effect of marriage on domicile

1. What effect, if any, has the marriage as such on the domicile of the spouses?

### BELGIUM

Under Article 108 of the Belgian Civil Code, a married woman has no domicile other than that of her husband.

### BRAZIL

In the Brazilian system of international private law, marriage entails unity of domicile for the spouses. In accordance with article 7, paragraph 7, of the Law of Introduction, the husband has competence to establish the domicile of the couple.

### BURMA

Marriage as such has no effect on the domicile of the spouses.

### CHILE

Generally speaking, a married woman has the same domicile as her husband.

"A married woman who is not divorced follows her husband's domicile so long as he resides in Chile." (Article 71 of the Civil Code).

A wife automatically acquires her husband's domicile by the sole fact of marriage without being required to move to the place where her husband is domiciled.

The rule embodied in article 71, attributing the husband's domicile to the wife is an absolute one and no agreement she may conclude with her husband can give her another separate domicile.

### CZECHOSLOVAKIA

See the provisions of Act No. 41/1948 in the official Collection referred to above under I and II. Under those provisions, domicile does not in Czechoslovak private international law have the decisive importance implied in Question II.

It should also be pointed out that the terms of article 92 of the Civil Code requiring the wife to follow her husband to his domicile must be regarded as having been repealed by the provisions of Article 1, paragraph 2, in conjunction with those of Article 173, paragraph 2, of the Constitution of 9 May.

/DENMARK

DENMARK

Marriage as such has no effect on the domicile of the spouses, and under Danish law a wife need not necessarily have the same domicile as her husband.

FRANCE

As a rule, the wife, through marriage, acquires the domicile of her husband, the head of the family.

GREECE

The domicile of the married woman is that of her husband (Civil Code, Article 55).

GUATEMALA

Marriage as such has no effect on the domicile of the spouses. In particular, a married woman's domicile is that of her husband, unless they are separated or she is in charge of a business undertaking at some other place (article 37 of the Civil Code).

ISRAEL

The effect of the marriage as such on the domicile of the spouses is determined by their personal law (as explained above).

LEBANON

Yes, the married woman is deemed to have the same domicile as her husband, unless of course she is separated from bed and board.

NETHERLANDS

A married woman who is not separated has no other domicile than that of her husband.

PAKISTAN

A married woman acquires the domicile of her husband and is always deemed to have the domicile of her husband.

/PHILIPPINES

PHILIPPINES

Section 40 of the Civil Code of Spain provides that the domicile of natural persons for the enjoyment of civil rights and the performance of civil obligations is the place of their usual residence. In the case of a married woman who is not legally separated from her husband, it is presumed that her domicile is the same as that of her husband. (article 110, New Civil Code)

UNITED STATES

Inasmuch as the law of each State makes the husband primarily responsible for the support of his wife and children, the State laws declare that for the purpose of the marriage relationship his domicile shall determine ordinarily the domicile of his wife and children during continuance of the marriage and the minority of the children. This rule facilitates fulfillment of his legal duty to his family, and enforcement by the State if he fails to discharge it.

But the husband's choice of a marital domicile must be made with due regard to the welfare, comfort, and peace of mind of his wife, and to her legal status as his helpmeet and companion, and not as his servant. (See 26 Am. Juris. p. 639, section 10).

/2. In particular

2. In particular, is the wife deemed to have always the same domicile as the husband in the contemplation of the law?

BELGIUM

The wife is under a duty to live with her husband and to follow him wherever he thinks fit to reside.

BRAZIL

Brazilian law disposes that the domicile of the woman shall always be the domicile that the husband has established. The only exception is the case of abandonment. In this case, the wife will be competent to establish her own domicile. (Article 7, paragraph 9 of the Law of Introduction.)

BURMA

The answer is in the negative.

CHILE

There are exceptions to the general rule set forth in the preceding paragraph (1) to the effect that a wife follows her husband's domicile, in the case of (a) wives divorced permanently or temporarily; (b) wives whose husbands do not reside in Chile and (c) a wife acting as the guardian of her insane or deaf-mute husband.

(a) Divorced women

Applying the rule of article 71 of the Civil Code a contrario sensu, it may be stated that neither permanently nor temporarily divorced women follow the domicile of their husbands.

(b) Wife whose husband does not reside in Chile

According to article 71 of the Civil Code, the law imposes the husband's domicile on the wife so long as the former resides in Chile. Consequently a wife does not follow her husband's domicile when the latter resides abroad.

(c) Wife acting as her insane or deaf-mute husband's guardian

An insane or deaf-mute husband follows the domicile of his wife acting as his guardian, since, under article 72 of the Civil Code, "a person under guardianship or trusteeship follows the domicile of his guardian or trustee".

CZECHOSLOVAKIA

See answer under 1 above.

DENMARK

See answer under 1 above.

FRANCE

When the husband loses his status of head of the family (Civil Code, Article 373), some authors (Juillot de la Morandière, Traité Elémentaire de droit civil, vol. I, No. 667) consider that the wife ceases to have her legal domicile with her husband. The same is true in cases of separation from bed and board.

Lastly, a married merchant woman while remaining domiciled with her husband for general purposes, acquires a special domicile for her business operations if her business activities are carried in a commune other than that in which her husband is domiciled.

GREECE

The wife may acquire an independent residence so long as she is not under a duty to follow her husband (Civil Code, Article 55 in conjunction with Article 1386 relating to abuse of rights). In that case the court will rule on the wife's application.

GUATEMALA

See answer under 1 above.

ISRAEL

See answer under 1 above.

LEBANON

See answer under 1 above.

NETHERLANDS

See answer under 1 above.

/PAKISTAN

PAKISTAN

See answer under 1 above.

PHILIPPINES

While the wife, as a general rule, is considered to have the same domicile as her husband in the contemplation of the law, it is possible for her to acquire a domicile separate and distinct from that of the husband where the husband has given cause for divorce (De la Vina vs. Villareal, et. al., 41 Phil. 13).

UNITED STATES

A wife may establish a separate domicile for herself, if she is compelled by the husband's conduct to leave him. Her separate domicile will be recognized by the court for purposes of divorce or legal separation. This is the policy in practically all jurisdictions.

Also, some States recognize individual domicile of married persons for such political purposes as suffrage, public office, jury service, and some forms of taxation, if the person is living apart from the family.

## V. Jurisdiction

Under what conditions do the courts of your country assume jurisdiction in matters of

(a) nullity of marriage

(b) divorce

(c) separation

(d) other matrimonial causes

if both spouses or one of them is

(i) an alien, or

(ii) a person domiciled abroad?

### BELGIUM

The court competent to give a ruling in divorce, separation, nullity and similar cases, is the court of the common legal domicile of the spouses, that is to say in almost all cases, the domicile of the husband. If the spouses do not have the same legal domicile, which will be the case when there has been prior separation from bed and board, the competent court will be that of the defendant.

If, in cases where the husband is the defendant, his domicile is unknown, the case may be tried by the court of his last known domicile. Moreover, under the provisions of Belgian law, aliens, even in the case of litigation between them, have free access to Belgian courts, subject to certain differences in respect of competence and procedure (cautio judicatum solvi, assignment of property,...)

### BRAZIL

The law of Introduction to the Civil Code states in article 12:

> "The Brazilian judicial authority is competent when the defendant is domiciled in Brazil or when the obligation has to be fulfilled in Brazil."

The principal "actor sequitur forum rei" is, however, set aside in certain cases when there are interests of Brazilian persons to be protected. It is to be remarked that the institution of divorce does not exist in Brazilian law.

/BURMA

BURMA

No special conditions are laid down in any of the existing laws enabling the Courts to assume jurisdiction in matters of nullity of marriage, divorce, separation or other matrimonial causes if both the spouses are aliens or persons domiciled abroad. The Courts, however, accept this principle that in such matters regard must be had to the English practice of private international law, and also to the domicile and the personal law of the married pair in question. But in the case in which one of the spouses is an alien or a person domiciled abroad and the other a Buddhist woman, then the Courts assume jurisdiction under the Buddhist Women's Special Marriage and Succession Act. If however, the other spouse is not a Burmese Buddhist, and if the marriage is one contracted under the Christian Marriage Act or under the Special Marriage Act, or under the Foreign Marriage Act of the United Kingdom, then jurisdiction is assumed by Courts under the Burma Divorce Act.

For the native converts, domiciled in Burma who are not Christians, Mohamedans of Jews, Courts assume jurisdiction under the Native Converts Marriage Dissolution Act.

If, however, none of these Acts applies, an if both the spouses are aliens or if one of them is domiciled abroad (subject to the special statutory provisions set out above), Courts assume jurisdiction under the general principle of private International Law and the decision in such matters will be in accordance with justice, equity and good conscience (vide sub-section (3) of section 13 of the Burma Laws Act).

CHILE

Chilean courts are competent to deal with the matters set forth under (a), (b), (c) and (d), unconditionally even if both parties or one of them is an alien or a person domiciled abroad.

Article 5 of the Organic Code of Courts gives the courts established pursuant thereto power "to deal with all judicial matters arising in the temporal domain in the territory of the Republic". The cases in question are not included among the exceptions to this article.

Moreover, according to article 57 of our Civil Code "the law does not recognize any difference between a Chilean and an alien as regards the acquisition and enjoyment of civil rights".

/CZECHOSLOVAKIA

CZECHOSLOVAKIA

The jurisdiction of the Czechoslovak courts in matrimonial causes with the international features indicated in the questionnaire is determined by the provisions of Articles 76 and 76a of the Rules concerning Jurisdiction, as given in Article II of Act No. 105/1947 of the Official Collection. These are as follows:

Article 76

"Applications for separation, divorce or nullity of marriage and any other applications which affect the property rights created by a matrimonial relationship shall, if either or both of the parties are of Czechoslovak nationality, be submitted to the court in whose area of jurisdiction the spouses had their last common domicile.

"If the spouses had no common domicile in the country, the competent court shall be that of the defendant and, failing that, the ordinary court of the applicant. If there is no court of this kind either, the court at Prague shall have jurisdiction."

Under Article 76a, the following provision is added:

"If neither of the parties possesses Czechoslovak nationality, the competent court to deal with the disputes mentioned in the preceding paragraph shall be the court in whose jurisdiction the spouses had their last common domicile and, failing that, the ordinary court of the defendant. If, however, the grounds on which an annulment of marriage is applied for are not grounds which would under Czechoslovak law be automatically admitted to consideration, the court may not deal with the case unless its decision is admissible in the State to which the two spouses belong, and, if they are of different nationalities, in both States concerned.

"If the wife was a Czechoslovak subject at the time of her marriage to an alien, she may, if there is no court competent under paragraph 1 to deal with the case, submit her application for annulment of her marriage, to the Czechoslovak court in whose jurisdiction she lived before the marriage, and, failing that, to the court at Prague.

"If different provisions are made by an international agreement published in the Official Collection of Laws and Ordinances, the provisions of that agreement will apply instead of those of paragraphs 1 and 2."

The above-mentioned provisions are in force in Bohemia and Moravia, whilst in Slovakia the provisions applied are those of Article 639 of Act. No. I/1911 in the form as given in Article V of Act No. 105/1947 in the Official Collection, which is concordant with the text given in Articles 76 and 76a of the Rules concerning Jurisdiction.

/DENMARK

DENMARK

Under article 448d of the Judicial Procedure Act the following rules apply:

"Matrimonial suits may be instituted in Denmark if the defendant is resident in Denmark at the time the action commenced or if both spouses are nationals of Denmark.

"The same rule applies if the spouses are not nationals of the same country, provided that their last common nationality was Danish.

"Matrimonial suits may likewise be initiated in Denmark if the last common residence of the spouses was in a place which is Danish at the time the action is commenced, and the defendant spouse has deserted the other spouse against the will of the latter and without just cause or has changed his residence after grounds for divorce or separation have come into existence.

"Matrimonial suits may also be initiated in Denmark if the plaintiff is a national and a resident of Denmark at the time the action is commenced, or if the plaintiff was a national of Denmark at the time of the marriage and is resident in Denmark at the time the action is commenced, and the whereabouts of the defendant are not known.

"Legal proceedings related to the dissolution or continuance of marriage may at any time be initiated in Denmark if either spouse was a national of Denmark at the time of the marriage."

It should be added that the legal provisions referred to permit these rules to be defined in greater detail or qualified by agreement with other countries. In this connexion reference should be made to the enclosed copy of articles 7-10 of the Convention of 6 February 1931 referred to above.

In conclusion it may be noted that under Danish law divorce and separation may in many cases be granted by administrative authority. In exercising these powers, however, the administrative authorities are largely guided by the same rules as in accordance with the foregoing principles, govern the jurisdiction of the courts in matters of divorce and separation.

FRANCE

As a rule, French courts are competent to deal with proceedings for a declaration of nullity of marriage, divorce, separation and all other matrimonial causes if one of the spouses is French or if the defendant is domiciled in France.

GREECE

(a) If the alien spouses have agreed by common consent to recognize the competence of the Greek courts,

/(b) If both the

(b) If both the spouses or the defendant are domiciled or resident in Greece (Civil Code, Article 4, in conjunction with Article 126 of the Law of Introduction to the Civil Code). The text of this provision is as follows:

Civil Code, Article 4:

"Aliens are subject to the jurisdiction of the national courts and may appear as plaintiffs or defendants on the same terms as Greek subjects in accordance with the provisions concerning jurisdiction in force (Code of Civil Procedure, Article 16 et seq)."

GUATEMALA

The Guatemalan courts assume jurisdiction in the matters referred to, as follows:

(a) nullity of marriage: when the defendant is domiciled in Guatemala;

(b) divorce: when the conjugal domicile was established in Guatemala, unless the divorce was preceded by separation, in which case the courts assume jurisdiction if the defendant is domiciled in Guatemala;

(c) separation: when the conjugal domicile is in Guatemala;

(d) other matrimonial causes if both spouses or one of them is an alien, or a person domiciled abroad: the Guatemalan courts assume jurisdiction in any of the general cases enumerated in article XXV of the Fundamental Principles of the Act establishing the Judicial System, which lays down the following provisions:

"ARTICLE XXV. An alien, even if resident outside Guatemala, may be summoned before the Guatemalan courts:

"1. In connexion with legal proceedings concerning real property situated in Guatemala;

"2. In connexion with civil proceedings resulting from an illegal act committed by the alien in Guatemala;

"3. In connexion with a contract concluded abroad, if the terms of the contract specify that disputes arising therefrom are to be decided by the Guatemalan courts."

ISRAEL

(1) The civil courts assume declaratory jurisdiction in matters of nullity and divorce between foreigners; they also decide on matters of nullity when

/such matters

such matters arise incidentally in other cases of personal status over which they exercise jurisdiction, and deal in separation and other matrimonial causes between foreigners.

(2) The religious courts assume jurisdiction in matters of nullity, divorce, separation and other matrimonial causes of citizens who are members of their religious community.

(3) So far as jurisdiction is concerned, the question of domicile is of no consequence.

LEBANON

In municipal law the competent court of personal status will be the judicial body of the religious authority before which the marriage was contracted.

In any case involving personal status which affects one or more aliens at least one of whom is a national of a country in which under existing legislation personal status is governed by civil law, only the civil courts will have jurisdiction (Order 109/IR of 14 May 1935).

Otherwise, the competent court is the court which has jurisdiction in the domicile of the defendant or of the spouses.

NETHERLANDS

Generally, the Netherlands courts are competent if the respondent has his legal domicile or his actual residence in the Netherlands or if the complainant has his legal domicile in the Netherlands. The nationality of the parties does not affect this competency.

With regard to suits for divorce the Netherlands jurisdiction is competent when the husband, whether he is a Netherlander or an alien, has his legal domicile or his actual residence in the Netherlands.

In case of desertion or in case there has been a change of legal domicile or of actual residence after the cause for divorce has arisen, the suit for divorce may be brought before the court of the last common domicile or, if there is no such domicile, of the last common residence.

In case Netherlands parties are concerned, the Netherlands courts are competent even when the husband has no known legal domicile or actual residence in the Netherlands, provided the woman is actually residing in this country.

This provision also applies in case the woman alone has the Netherlands nationality.

/With regard

With regard to the nationals of the States which have acceded to the Hague Convention on Divorce and which have reserved their national jurisdiction, the competence of the Netherlands courts is limited.

PAKISTAN

If both spouses are aliens the courts in Pakistan will assume jurisdiction only if they are domiciled in Pakistan.

If only one spouse is an alien then different questions arise:

If the alien is the husband then, since the wife's domicile follows his, the courts in Pakistan will have no jurisdiction if his domicile is not in Pakistan.

If it is the wife who is alien then, if the husband's domicile is in Pakistan, the courts will have jurisdiction.

If both spouses are domiciled abroad, the Pakistan Courts have no jurisdiction.

If one of the parties is domiciled abroad then the courts have jurisdiction if that spouse is the wife, and no jurisdiction if that is the husband.

These answers are subject to exceptions in the case of British subjects domiciled in the case of the husband in the United Kingdom, if the suit was brought under the Indian and Colonial Divorce Jurisdiction Acts, 1926 and 1940, before 15 August 1947, and not otherwise.

These answers hold good in three of the cases stated, i.e.

(b) divorce

(c) separation

(d) the other matrimonial causes.

The position with regard to nullity of marriage is uncertain in the absence of rulings on the point. Presumably on the analogy of recent decisions under the English Divorce Law the courts would determine the voidness or voidability of the marriage according to the law regulating the essentials. The law applicable would in the first place be that of the husband's domicile, but might possibly be that of the intended matrimonial domicile. If according to that law the marriage was void the wife never acquired the domicile of the husband and consequently she would be able to sue within the jurisdiction of the courts of her own domicile. If on the other hand the marriage were only voidable then she acquired her husband's domicile and would have to sue in that domicile and not in the courts of her prenuptial domicile.

/PHILIPPINES

PHILIPPINES

An action for divorce under Act No. 2710 may be brought by a person who has resided for at least one year prior to the filing of the petition unless the cause for divorce is claimed to have taken place in the Philippines (Sec. 2, Act. No. 2710). Under the New Civil Code which abolished divorces and provides only for legal separation, it is provided that no person shall be entitled to a legal separation who has not resided in the Philippines for one year prior to the filing of the petition, unless the cause for legal separation has taken place within the territory of the Republic (Art. 99, Rep. Act No. 386). An action for nullity of marriage, not being specifically provided for, may be brought before the courts of the Philippines as in other ordinary cases.

As a general rule, there is no prohibition or limitation upon a person to be a party to an action in court on the ground of his alienage or residence abroad. However, if the defendant is a non-resident of the Philippines and the action affects the personal status of the plaintiff, the action should be brought and the defendant summoned in accordance with the provisions of section 2, rule 5, and section 17, rule 7 of the Rules of Court.

UNITED STATES

As a general rule, aliens (other than enemy aliens) who are sui juris and who are not incapacitated by the law of the place where the action is brought, may maintain suits in the proper courts to vindicate their rights and redress their wrongs (7 Peters (U.S.), 413).

The courts have generally accorded to alien friends the same privilege of suit that they have extended to citizens or subjects of the forum. The essentia test of the right to sue is residence and not nationality (175 N.C. 435; 95 SE 851. 208 U.S. 570).

Aliens residing in the United States, while they are permitted to remain, are in general entitled to the protection of the laws with regard to their rights of person and property (149 U.S. 698), and to their civil and criminal responsibility. They are entitled likewise to safeguards of the Constitution with regard to their rights of person and property.

If the petitioner is domiciled abroad, domestic courts of the United States would have no jurisdiction. If the defendant has a foreign domicile, domestic courts in the United States could not have jurisdiction over any action for which personal service on the defendant is required.

## VI. Domicile of children

What does the law provide concerning the domicile of children if the parents have different domiciles?

### BELGIUM

Under the provisions of the Belgian Civil Code, a non-emancipated minor has his domicile with his father and mother or guardian.

In case of divorce, the children are entrusted to the spouse who has obtained the divorce, unless the court, in the interests of the children, orders that they should be entrusted to either of the other spouse or of a third person.

The Belgian precedents suggest that in these circumstances the domicile of the child is transferred to that of the parent to whom custody has been awarded.

### BRAZIL

As stated in the reply to question I,1, Brazilian law endorses the principle of unity of domicile of the spouses, and therefore leaves no possibility for the spouses to have different domiciles. The only exception is the case of abondonment of the family by the husband. In such an instance, the domicile of the children shall be established by the person on whom devolves the responsibility for the family, - the wife, or any other person legally designated. (Reference to Article 7, Paragraph 7, of the Law of Introduction).

### CHILE

In determining the legal domicile of children under age, Chilean law does not consider whether the parents have different domiciles but distinguishes between legitimate, illegitimate and adopted children.

Legitimate children. In accordance with article 72 of the Civil Code, "a person living under parental authority follows the domicile of the father or mother as the case may be".

This provision refers to the legal domicile of legitimate children since only the father or mother of legitimate children can exercise parental authority. From this it may be inferred that this domicile will subsist so long as the child lives under the parental authority of the father or mother,

/as the case may be.

as the case may be. If the father or mother forfeits his or her parental authority and a guardian is appointed for the child, the child will follow the latter's domicile as provided in article 72 already cited which states: "A person living under parental authority follows the domicile of the father or mother as the case may be, and a person under guardianship or trusteeship that of his guardian or trustee".

Illegitimate children. In this category a distinction should be made between the position of natural and of merely illegitimate children.

(a) Natural children: Although the natural father does not have parental authority over the child he acknowledges, whoever acknowledges the child first, the father or mother, is appointed lawful guardian; if both acknowledge the child simultaneously, the father is appointed (article 368, paragraph 1 of the Civil Code).

Hence a natural child has his father's domicile, not because the latter is his father but because he is his guardian. Under Chilean law, a person under guardianship or trusteeship has the domicile of his guardian or trustee (article 72 of the Civil Code).

(b) Merely illegitimate children: If the child is merely illegitimate, he will have the domicile of his guardian or trustee, if he has one, and even if the father were known, the domicile of origin could not prevail since the father has no right to the administration of the child's property.

(c) Adopted children: An adopted child is subject to the parental authority of the adoptive parent and therefore has the latter's domicile.

## CZECHOSLOVAKIA

For the question of the domicile of the children, see remarks made under IV above. The law being as explained, the domicile of the children must be deemed to be the place where they actually live, and at the same time the question of the animus manendi must be judged in relation to the person of whichever of the parents is in fact taking care of the children.

DENMARK

The question of a child's domicile is normally settled by reference to the circumstances of the child himself; but it should be noted in this connexion that a child's presumptive domicile is that of the spouse under whose care he is.

FRANCE

As a rule, non-emancipated children who have not attained majority have the same domicile as the parent exercising the parental authority.

GREECE

The non-emancipated child who has not attained majority has the same domicile as his father or guardian.

GUATEMALA

The law makes no direct provision for this eventuality, but lays down the general principle that "the domicile of a person under parental authority, guardianship or ward shall be that of the person exercising those responsibilities" (article 41 of the Civil Code).

To provide an answer to this question, two cases must be distinguished, namely: (a) children born in wedlock, and (b) children born out of wedlock.

Children born in wedlock: The sole case in which spouses maintain separate households is that of separation. In this case the court granting the separation is required to decide which spouse is to retain custody of the children; and this determines their domicile.

Children born out of wedlock: This again comprises two cases, namely: (1) children voluntarily acknowledged by both parents, and (2) children who are voluntarily acknowledged by one of the parents and whose filiation in respect of the other has been legally declared.

1. Under the terms of the law a child born out of wedlock and voluntarily acknowledged by both parents presents a case of dual domicile, since both exercise parental authority.

/2. In the case of

2. In the case of a child born out of wedlock and voluntarily acknowledged by only one of the parents, parental authority is exercised by that parent alone, and the minor's domicile is determined thereby in accordance with the principles outlined above.

ISRAEL

The question of different domiciles may arise on separation, the domicile of the child is then determined by the domicile of the parent in whose custody the child is placed.

LEBANON

When the parents have separate domiciles, the boys are domiciled with their mother up to the age of seven years and the girls up to the age of nine years.

NETHERLANDS

In the case of judicial separation only, it may happen that the parents have different domiciles.

In that case the children have the domicile of the parent who by judicial decree has been granted paternal authority.

PAKISTAN

As minor children have the domicile of their parents (section 14 of the Succession Act, 1926) and the wife's domicile follows that of the husband (see IV above) the children's domicile is that of the father.

PHILIPPINES

Generally, the domicile of children shall be that of the spouses which, as stated above, is the domicile of the husband. Where, however, the parents have different domiciles, the minor children subject to parental authority may, with the acquiescence of their father, be considered domiciled with their mother in a place distinct from where the father lives (1 Manresa, 223, cited in De la Vina vs. Villareal, supra.). It has been held by the Philippine Supreme

/Court, however,

Court, however, that a Chinese woman entering the Philippines not on her own right but by virtue of her marriage to a second husband, has no right to bring in her minor children by the first husband who never had a legal residence in this country (Go Chen vs. Col. of Customs, 56 Phil. 550).

UNITED STATES

In the great majority of cases, parents have different legal domiciles only when family unity has been broken either by divorce or judicial separation. In such cases, the rules of law found generally applicable are:

1. That the minor child's domicile is that of the parent to whose custody it has been given by the court;
2. That if there has been no court order awarding custody, then the child's domicile is considered to be that of the parent with whom it lives; or
3. That if the child lives with neither parent, it normally retains the domicile of the father.

(See Restatement of the Law, Conflict of Laws, Domicil, sec. 32).

The general rule applied among the states for awarding custody of minor children is that the court which has jurisdiction of a dispute between the parents, or of an action to dissolve or annul a marriage, shall so dispose the custody of the child that his welfare is safeguarded, in view of all the facts of the particular case, neither parent having a superior right to the custody of the child. (Refer to Vernier's American Family Laws, vol. 2, sec. 142; also to Lyon v. Regan (1942) 110 Colo. 227, 132 Pac. 2d. 794 for observation on the current trend in English and American family law).

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