"MOBILIA SEQUUNTUR PERSONAM" IN PHILIPPINE LAW

> *"Few rules in our time are so well established that they may not be called upon any day to justify their existence as means adapted to an end. If they are diseased, they must not propagate their kind. Sometimes they are cut out and extirpated altogether. Sometimes they are left with the shadow of continued life, but sterilized, truncated, impotent for harm."*
> —Cardozo, *Nature of the Judicial Process, pp. 98-9.*

Meaning and origin.—The maxim *mobilia sequuntur personam* means that movables follow the law of the person. Black L. D.; Broom's Legal Max., p. 522; Story Conflict L., Sec. 378; 40 C. J. 1232; Latin for Lawyers, p. 193 pub. by Sweet & Maxwell, Ltd.

Personal law is either *lex domicilii* or law of one's domicil in states like the U. S. and England adhering to the domiciliary or territoriality theory of conflict of laws; or national law in states like the Philipines and European countries owing allegiance to the nationality theory. Concurring op., Torres, J., Ibañez de Aldecoa v. Hongkong & Shanghai Bank, 30 Phil. 228, 250, 252.

The maxim is as old as the law itself. Monidah Trust v. Sheehan, 45 Mont. 424, 430, 132 p. 692. It originated in Roman law and was introduced by Story from certain obscure French authors. It cannot be found in Bartolus' dealing with conflict of laws and no trace of it has been found in English or American law before Story. Beale, Treatise on the Conflict of Laws, students' ed., 1935, p. 978.

The maxim grew up in the Middle Ages when movable property consisted chiefly of gold and jewels, which could be easily carried by the owner from place to place, or secreted in spots known only to himself. Pullman's Palace-Car Co. v. Commonwealth of Pennsylvania, 141 U. S. 18, 22, 11 S. Ct. 876, 878, 35 L. ed. 613. It is based on considerations of policy and convenience.

It originally applied to the testator's movable estate which is deemed to accompany him wherever he may become domiciled, so that he acquires rights of disposing it according to the law of his domicil. The maxim did not apply to the succession and distribution of property of an intestate without issue. Broom's L. Max., p. 337, 1939 ed.

Maxim is embodied in civil code.—The maxim was elevated to the dignity of a statutory rule in the Spanish Civil Code of 1889 in force in the Philippines. Art. 10 of the code provides that personal property is subject to the laws of the nation of the owner thereof. The rule is modified in Art. 18 of the code commission's proposed civil code. The modification consists in that personal property is made subject, not to the owner's national law, but to the law of the country where the owner has his domicil. The proposed code abandons the nationality theory and embraces the domiciliary theory.

Rule has yielded to lex situs.—In modern times, since the great increase in amount and variety of personal property, not immediately connected with the person of the owner, that maxim has yielded more and more to the *lex situs,* the law of the place where the property is kept and used. Green v. Van Buskirk, 5 Wall. 307 & 7 Wall 139; Hervey v. Locomotive Works, 93 U. S. 664; Harkness v. Russell, 118 U. S. 663, 679, 7 S. Ct. 51; Walworth v. Harris, 129 U. S. 355, 9 S. Ct. 340; Story, Confl. Laws, Sec. 550; Whart. Confl. Laws, Secs. 297-311.

As observed by Mr. Justice Story, in his commentaries just cited, altho movables are for many purposes to be deemed to have no situs except that of the domicil of the owner, yet, this being but a legal fiction, it yields whenever necessary for the purpose of justice that the actual situs of the thing should be examined. A nation within whose territory any personal property is actually situated has an entire dominion over it while therein, in any point of sovereignty and jurisdiction, as it has over immovable property situated there. Pullman's Palace-Car Co. v. Commonwealth of Pennsulvania, *supra.*

Personal property may have a situs of its own, independent of the owner's residence, even when employed in interstate or foreign commerce. Such property would be subject to the *lex rei sitae.* Dissent, Bradley, J., Id., Pullman's Palace-Car Co. case.

The maxim has been altered by modern decisions, so as to give place to the rule of *lex situs,* the law of the place where the property is kept and used. Ex p. Timmerman, 31 N. B. 5, 12, cited in 40 C. J. 1233, note 12(c) (5). It yields to the fact of actual control elsewhere. Liverpool & L. G. Ins. Co. v. Bd. of Assessors, 221 U. S. 346, 454, 31 S. Ct. 550, 553, 55 L. ed. 762, LRA 1915C 903;

The maxim does not apply where it will prejudice the citizens of the forum or when opposed to the spirit and policy of its legislation. It also yields in many cases when, for the purpose of justice and convenience, it is necessary that the law of the actual situs

of the property should govern, or it gives way to laws for attaching the estate of nonresidents, because such laws necessarily assume that property has a situs entirely distinct from the owner's domicil. 11 Am. Jur. 353.

For tax purposes it has been repeatedly held that personal property may be separated from its owner. He may be taxed on its account at the place where it is, altho not the place of his own domicil, and even if he is not a citizen or a resident of the state which imposes the tax. Lane Co. v. Oregon, 7 Wall. 71, 77; Railroad Co. v. Pennsylvania, 15 Wall. 300, 323, 324, 328; Railroad Co. v. Peniston, 18 Wall. 5, 29; Tappan v. Bank, 19 Wall. 490, 499; State Railroad Tax Cases, 92, 575, 607, 608; Brown v. Houston, 114 U. S. 622, 5 S. Ct. 1091; Coe v. Errol, 116 U. S. 517, 524, 6 S. Ct. 475; Marye v. Railroad Co. 127 U. S. 117, 123, 8 S. Ct. 1037, cited in Pullman's Palace-Car Co. v. Commonwealth of Pennsylvania, supra.

Why maxim was displaced by lex situs.—The maxim, according to Professor Beale, has proved to be a refuge for a judge in a hurry, confronted with a difficult situation. Indeed, like all maxims it serves celerity rather than soundness of thought. It has had a greater vogue than its authority or its usefulness deserves. If thought of with relation to tangibles, to which it has often been applied, it is almost grotesque. The picture of a horse or a library of books following the owner about him from place to place is not one which has legal connotations. From the beginning the incongruity of regarding tangibles or chattels located elsewhere as situated at the owner's domicil was evident. The maxim lost more of its force with each application. It may be confidently asserted that today the maxim has ceased to be effective in the case of tangibles. Beale, Treatise on the Conflict of Laws, supra, p. 979.

Professor Beale quotes the language of Lehman, J., in Hutchinson v. Ross, 262 N. Y. 381, 187 NE 65, 89 ALR 1007 that the maxim cannot always be carried to its logical conclusion. Practical considerations often stand in the way. Physical presence in one jurisdiction is a fact; the maxim is only a juristic formula which cannot destroy the fact.

It is not an exclusive rule of universal application nor does it transfer property into the foreign from the domestic jurisdiction. Colorado v. Harbeck, 232 N. Y. 71, 84, 133 NE 357. It is a fiction of law, having its origin in considerations of general convenience and public policy. It cannot be controlling where justice does not demand it. State Bd. of Assessors v. Comptoir National D'Escompte, 191 U. S. 388, 403, 404, 24 S. Ct. 109, 113.

When logic and policy of a state conflict with a fiction due to historical tradition, the fiction, according to Justice Holmes, must give way. Blackstone v. Miller, 188 U. S. 206, 23 S. Ct. 277, 47 L. ed. 439.

Maxim repudiated by supreme court.—The Philipine supreme court in a tax case involving intangibles ignored the civil code provision sanctioning the maxim. In Wells Fargo Bank & Union Trust Co. v. Collector of Internal Revenue, 40 OG, 8th supp. 159, the court upheld a Philippine inheritance tax on the transmission of shares in a Manila corporation owned by a decedent domiciled in California. The court, brushing aside the maxim which was cited in support of California's exclusive right to tax the transmission, noted that the maxim has been decried as a mere legal fiction and cannot limit the state's power to tax property within its jurisdiction nor be applied if to do so would result in inescapable and patent injustice. State Board of Assessors v. Comptoir National d'Escompte, supra; Safe Deposit & Trust Co. v. Virginia, 280 U. S. 83, 91-2.

The rule is broadly enunciated by Justice Laurel thus: The sovereign power may lay hands on any and all persons and property within its borders. The modern tendency in this regard is to make no distinction between mobility and immobility of property established by the time-honored principles of *lex rei sitae* and *mobilia sequuntur personam.* Asiatic Petroleum (P.I.) Ltd. v. Co. Quico, 40 OG, 6th supp. 133.

Code commission has adopted an antiquated rule.—The code commission in proposing to subject movables to domiciliary law thought probably that it was adopting a progressive rule. As already shown, the rule had long been superseded by the *lex situs.* There was a marked shift from an artificial postulate of law, formulated for reasons of convenience, to the actualities of each case. Moran, J., Wells Fargo Bank case, supra. It is an instance where, according to Cardozo, the formula has no more correspondence with reality, where a crippling dogma has to be eliminated and a freer notion followed.

At least as far as tangibles or movable chattels are concerned, *lex situs* should be applied. Jurisdiction of the Philippines over all movables within its territory should be asserted. No valid reason exists why the Philippines should renounce jurisdiction over such movables in favor of a foreign state supposed to be the owner's domicil. On the other hand, it would be impracticable, if not impossible, for the Philippines to assert jurisdiction over movables owned by an alien domiciled in the Philippines but located abroad.

No general principles of law are better settled or more fundamental than that the legislative power of every state extends to all

property within its borders, and that only so far as the comity of that state allows can such property be affected by the law of any other state. Pullman's Palace-Car Co. v. Commonwealth of Pennsylvania, supra.

Intangibles present some difficulty because they have no actual situs. The maxim, says Professor Beale, is more graphic when confined to intangibles, especially to choses in action. Ordinary choses in action are of use only at the owner's place of business, if he is using them at his residence. That integration compares with the status of a tangible chattel. The chose in action is merely a power in the creditor; its place of exercise is where he is and uses it. If the chose in action is connected with the business, it is integrated there and should be regarded as having a situs there. Either case might be regarded as falling within the maxim. The law that governs is the law of the domicil of the owner, or, if the chose in action is employed in business, the law of the state of the situs of the business. Beale, Treatise on the Conflict of Laws, supra, pp. 7, 28, 979.

So the rule that mere choses in action follow and attach to the owner's domicil has been repeatedly maintained. Westinghouse Electric, etc. Co. v. Los Angeles Country, 188 Cal. 491, 493, 205 p. 1076, cited in 40 C. J. 1322, note 12(d); Blodgett v. Silberman, 274 U. S. 1, 48 S. Ct. 410, 72 L. ed. 749.

But even in the case of intangibles the maxim was disregarded. Wells Fargo Bank & Trust Co., case, supra; Buck v. Beach, 206 U. S. 392, 408, 27 S. Ct. 712, 51 L. ed. 1106; Liverpool, etc. Ins. Co. v. Lorelans Assesors, 221 U. S. 346, 354, 31 S. Ct. 550, 55 L. ed. 739.

Where the owner of intangibles confines his activity to the place of his domicil, it has been found convenient to substitute a rule for a reason, cf. New York ex rel. Cohn v. Graves, 300 U. S. 308, 313, 81 L. ed. 666, 670, 57 S. Ct. 466, 108 ALR 721; First Bank Stock Corp. v. Minnesota, 301 U. S. 24, 241, Ill. L. ed. 1061, 1065, 57 S. Ct. 677, 113 ALR 228, by saying that the intangibles are taxed at their situs and not elsewhere, or perhaps less artificially, by invoking the maxim *mobilia sequuntur personam*, Blodgett v. Silberman, supra; Baldwin v. Missouri, 281 U. S. 586, 74 L. ed. 1056, 50 S. Ct. 436, 72 ALR 1303, which means only that it is the identity or association of intangibles with the person of their owner at his domicil which gives jurisdiction to tax.

But when the taxpayer extends his activities with respect to his intangibles, so as to avail himself of the protection and benefit of the laws of another state, in such a way as to bring his person or property within the reach of the tax gatherer there, the reason

for a single place of taxation no longer obtains, and the rule is not even a workable substitute for the reasons which may exist in any particular case to support the constitutional power of each state concerned to tax. Curry v. McCanless, 307 U. S. 357, 370, 83 L. ed. 1339, 1349, cited in Wells Fargo Bank case, supra.

Professor Beale summarizes the rules for intangibles thus:

1) The situs of a chose in action is with the creditor (the owner), or less often at the owner's domicil on the old principle of *mobilia sequuntur personam*. This has been held in tax cases.

2) Often, the situs of a chose in action is held to be with the debtor. This has been so held in garnishment cases and for administration; it is not held for the purpose of taxation.

3) The true view would seem to be that a chose in action, not being corporeal, has no situs for any purpose.

Accepting the last view, a state can usually obtain jurisdiction over a chose in action only by having jurisdiction over all parties to it. Beale, Treatise on the Conflict of Laws, supra, pp. 7-8.

—RAMON C. AQUINO *

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* Assistant Professor, College of Law, University of the Philippines.

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THE AMERICAN ARISTOCRACY

"IN all free governments, of whatever form they may be, members of the legal profession will be found at the head of all parties... If I were asked where I place the American aristocracy, I should reply without hesitation, that it is not composed of the rich, who are united together by no common tie, but that it occupies the judicial bench and the bar."—DE TOCQUEVILLE, *Democracy in America.*