

Question MEE 3 – July 2021 – Selected Answer 1

1) Personal Jurisdiction

The court's exercise of jurisdiction, on balance, did not violate her rights under the Constitution. The issue here is whether the woman had such minimum contacts with State A such that exercise of personal jurisdiction over her is fair. In assessing whether the court has personal jurisdiction over a party, the court must run a two part analysis. First, there must be a state statute, usually a long-arm statute, that authorizes the exercise of personal jurisdiction (PJ). Assuming there's a statute that authorizes PJ, the court then must run the constitutional analysis. That is, the court must discern whether the party has such minimum contacts with the forum state such that exercise of PJ over the party does not offend traditional notions of fair play and substantial justice. The constitutional analysis can be broken into 3 parts: (1) whether there is a contact with the forum state; (2) the relatedness of the contact with the litigation; and (2) whether exercise of PJ is fair.

Here, State A has a long-arm statute that authorizes PJ. Specifically, the statute states that the State may exercise PJ over a nonresident for purposes of determining paternity, child custody, and child support if "the individual engaged in sexual intercourse in this State and the child may have been conceived by that act of intercourse." Paternity may be established at "any time during the mother's pregnancy or within 21 years after the child's birth." The statute grants PJ over the woman, because the facts indicate that she was briefly in a relationship with the man in State A. She was certain that the man was the father, given that he was the only person that she had sexual intercourse with while she was living in State A. And because the child is under age 21, the man can still establish paternity. Thus, the statute grants PJ over the woman.

The constitutional analysis is more difficult. In analyzing whether there is a relevant contact, the court will assess whether the woman purposefully availed herself of the forum's law and whether it was foreseeable that she could get hauled into court there. Here, the woman did purposefully avail herself of the forum's laws because she lived in the state (albeit temporarily) for a job. Upon her getting pregnant, it is arguably foreseeable that she would get hauled into court to establish the custody and support rights to the child. Next, the court will assess the relatedness of the contact. That is, whether the court has specific jurisdiction or general jurisdiction over the woman. Specific jurisdiction exists where the claim arises from the contact with the forum state. General jurisdiction exists where the party is at home. A party is at home (an individual) where she is domiciled. The woman is domiciled in State B. Thus, the court does not have general jurisdiction. But, the claim (that is the existence of the child and the rights associated with the child) does arise from the woman's contacts with the forum state. Thus, because PJ would be based on specific jurisdiction, the court must consider whether exercise of PJ over the woman is fair. In assessing

whether it's fair, the court will consider: (1) the burden on the party (the party must show that she is at a severe disadvantage in litigating in the forum); (2) the interest of the forum state; and (3) the interest of the plaintiff. These factors weigh slightly in favor of exercising PJ because it's fair. State A has an interest in providing a court room for its citizen (man), and man has an interest in litigating in his home state. There are no facts indicating that woman would be in a severe disadvantage in litigating in State B. Thus, while the contact with the state was nearly 15 years ago, exercise of PJ over the woman was, on balance, appropriate.

2) Subject Matter Jurisdiction - Sole Custody

The State A court does not have subject matter jurisdiction to grant the man sole custody of daughter. The issue here is whether the court has jurisdiction over the custody case. Under UCCJEA, jurisdiction to enter in a child custody order must be proper. The usual test for jurisdiction over a child custody order is that the forum state must be the child's home state. The child's home state is either: (1) the state where the child has continuously resided with a parent for at least 6 months prior to the filing of the litigation; or (2) the state that was the child's home state, and now the child is absent but a parent remains in the home state.

Here, daughter resided with her mother in State B for about 14 years. After finding out that the man was her biological father, she told him she wanted to live with him in State A. She then, without her mother's permission, traveled to State A to live with her dad. She was only with her dad for 3 weeks prior to him filing the action. State A is not the child's home state, because she has only resided in state A for 3 weeks. State B, however, is her home state. She resided there for about 14 years of her life, and despite her leaving the state, her mother remains. Thus, because the state A court is not the child's home state, it cannot properly exercise jurisdiction over the custody dispute.

3) Subject Matter Jurisdiction - Child Support

The State A court may have jurisdiction over the child support dispute. The issue here is whether original jurisdiction in State A is proper. As a general matter, once paternity is established the father has rights to the child (i.e., to try to obtain custody and child support). Under the UIFSA, jurisdiction over a child support order is first court where a petition under UIFSA is filed. However, a second court may exercise jurisdiction if: (1) the other parent objected to jurisdiction; (2) filed another petition in a separate court before the time to answer the first expires; and (3) the other state is the child's home state.

Here, the first petition for child support was filed in State A. The woman objected to jurisdiction in State A, but there is no indication that she filed in State B. Because State A was where the first petition was filed, it has jurisdiction over the matter. However, as a separate matter, the father does not currently have custodial rights over

the child. And until the custody arrangement is settled, a court probably cannot determine the appropriate child support payments. Thus, while the court does have subject matter jurisdiction over the child support issue, it should probably decline to exercise its jurisdiction with respect to the issue.

Question MEE 3 – July 2021 – Selected Answer 2

1. State A's exercise of personal jurisdiction did not violate the woman's rights under the due process clause of the 14th amendment. At issue is whether the woman has purposefully availed herself to be subject to jurisdiction in State A. Generally the due process clause governs whether it would be constitutional for a court to have personal jurisdiction over a defendant. Through the 14th amendment, states have to follow these requirements like federal courts have to. In order to have personal jurisdiction over a defendant, the defendant must have sufficient minimum contacts in the state, the claim must arise from those contacts, and there must be material fairness in the exercising of jurisdiction. In order to have sufficient minimum contacts, the defendant must have purposefully availed him or herself to the state so that it would be foreseeable that there would be a suit there. Here, the woman lived temporarily in the state and had a relationship with the man. She had intercourse with him and had a baby with him in State A. The state A long arm statute permits this type of exercising of personal jurisdiction over a defendant when they had intercourse in the State and the child may have been conceived there. Here, the child was actually conceived there and she did not tell the man about the child she had but left in stead. It would be foreseeable that a claim could arise in State A as a result of having a child in that state and then not telling the father of the existence of that child. Here, the claim also arises from those contracts. The suit is to determine paternity, custody and child support. Those are all claims that relate to the contact of having a child in State A. Lastly, the exercise of personal jurisdiction is fair. Cases in which a court have determined there to not be fairness is when a company did not know that there products were being sold in that state and therefore unfair for them to be subject to jurisdiction. Here, it would not be unfair to subject the woman to personal jurisdiction when she conceived a baby in that state and now a paternity and custody claim arises from that conception.

2. The State A court does not have subject matter jurisdiction to award the man sole custody of the daughter and because of that does not have jurisdiction to award the man child support.

a. At issue is where the daughter is at home for purposes of subject matter jurisdiction. Generally, a court may be able to establish paternity without having subject matter jurisdiction over custody. For a court to have jurisdiction over a

custody claim we look to where the child is at home at the time of the claim. A child is at home where the child has been residing for the previous 6 months before the filing of the claim. Therefore, if a child moves, the state in which the child is at home remains the previous state for the next 6 months and the previous state has exclusive jurisdiction to determine custody. The reasoning is to prevent parents from essentially kidnapping kids and taking them to other states and having custody orders changed. Here, the daughter has been living with mom in State B most of her life. It was not until 3 weeks before the filing of the suit she moved to State A to live with her dad. It does not matter that she left voluntarily. Because she has not resided in State A for at least 6 months, the daughter is still at home in State B and State B has exclusive subject matter jurisdiction over a custody claim.

b. At issue is whether a court can grant child support to a parent that does not have custody. Generally, child support may be awarded to a parent that has sole custody of the child in order to help support the child while she is a minor. It is not permissible to grant child support to a parent that does not have custody of the child. Here, the court did not have jurisdiction to award custody to the father. Therefore until, the court in state A has awarded custody to the father then custody belongs to the mother. Therefore, the court in State A will not be able to require the woman to pay the man child support.

Question MEE 3 – July 2021 – Selected Answer 3

Personal Jurisdiction over Woman: The issue is whether a court may exercise personal jurisdiction over a person who lived in the state temporarily fifteen years ago. A court must have personal jurisdiction over a respondent in order to hear a case against them. Personal jurisdiction requires that both the requirements of a state's long-arm statute and the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution be satisfied.

Long-arm statute: The first prong of personal jurisdiction is established here. The State A law provides that personal jurisdiction is established for state law purposes over a nonresident for purposes of determining paternity, child custody, and child support if the "individual engaged in sexual intercourse in this State and the child may have been conceived by that act of intercourse." Based on the facts, it is undisputed that the woman had sexual intercourse in State A and conceived her daughter as a result. Thus, personal jurisdiction is established under State A's long-arm statute.

Due Process Analysis: The second prong of personal jurisdiction is likewise established. The U.S. Constitution requires that a person have "minimum contacts" with the

forum state in order to be sued there, such that traditional notions of fair play and substantial justice are not offended.

The first factor that is relevant here is contact. A person has "contact" with the forum state whenever they avail themselves of that state's resources and is foreseeable that she might be hailed into court there. Here, the woman availed herself of State A resources by living there for eight months. Even though it has been fifteen years and she only lived in State A temporarily, a court would probably find that contact is established because eight months is a substantial amount of time. Further, the woman gave birth to her daughter there. The daughter was conceived by a man who lived in State A. That the man might later hail the woman into court to assert parental rights is foreseeable.

The second factor of relevance is relatedness, where courts ask whether the issue for which the respondent is being hailed into court is related to the "contact" established in the first prong. Here, the respondent's contact with State A is directly related to the dispute. The dispute concerns her daughter, who was born in State A during the time and under the circumstances in which "contact" between the woman and State A arose. Thus, the court in State A has "special jurisdiction" over the woman.

Where special jurisdiction is established, meaning the plaintiff has minimum contacts with the forum state but does not live there (domiciled = general jurisdiction), then courts will also assess the fairness of litigating in the forum state. Fairness factors include the interests of the parties on both sides and the interests of the forum state. Here, two of the parties (daughter and scientist) are in State A already, and the court in State A has an interest in litigating the dispute because the daughter was born there and her father is domiciled there. Further, the woman has already made an appearance in State A in this case. Thus, the fairness prong is established.

Therefore, the court did not err in exercising personal jurisdiction over the woman.

Subject Matter Jurisdiction: Assuming State A properly exercised personal jurisdiction over the woman, and that the man's paternity is undisputed, the court has subject matter jurisdiction over the child support issue but not the custody issue. State courts have general jurisdiction, meaning they can hear most types of cases whether arising under state or federal law. However, there are strict rules governing jurisdiction of interstate disputes over child custody and child support, which aim to ensure children are protected.

Sole Custody: Jurisdiction over custody orders is governed by the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA). Under the UCCJEA, a court may assert jurisdiction over a custody dispute if the court is in the child's "home state." A child's home state is considered to be the state where the child has resided with a parent for at least six months prior to the proceedings. If the child has no home state, then the court may exercise jurisdiction over the custody issue only if the child has a significant connection with the state and there is substantial evidence of the child's well-being in the state. Under the Parental Kidnapping Protection Act (PKPA), a court is barred from hearing a custody issue unless there is no other court with jurisdiction as defined by the UCCJEA.

Here, the child's "home state" is considered to be State B because she lived there consistently with her mother up until the proceedings began. The man sued in State A only three weeks after the daughter's arrival, which is not enough time to establish home state status. Thus, the court does not have subject matter jurisdiction over this issue.

Child Support: Jurisdiction over child support orders does not require personal jurisdiction to be established on the part of any of the parties. Rather, child support orders are governed by UIFSA and a child support order may be entered by any court where the first UIFSA petition is filed. The court which enters the initial child support order has continuing but not exclusive jurisdiction. This means another court may notice the rendering court to modify the child support order and courts in other states may enforce the order by registration or direct enforcement.

Here, the court has personal jurisdiction over the woman as discussed. Even without establishing personal jurisdiction, however, the man could sue the woman in State A for child support. Note that on account of the man's wrongful conduct in allowing the daughter to stay in State A without the mother's permission, the court will likely decline to exercise jurisdiction anyway.