

EXAMINERS' ANALYSIS OF QUESTION NO. 3

This question pertains to whether the Michigan trial court can exercise jurisdiction over SBFC. A personal jurisdiction analysis involves a two-fold inquiry: (1) do the defendant's acts fall within the applicable general or long-arm statute, and if they do, (2) does the exercise of jurisdiction over the defendant comport with the requirements of due process. *Green v Wilson*, 455 Mich 342, 347 (1997) (opinion by Kelly, J.), 357 (opinion by Weaver, J.)

General or Long-Arm Personal Jurisdiction: The grant of personal jurisdiction comes from legislative long-arm statutes that invest courts with the power to exercise personal jurisdiction. MCL 600.711 grants general personal jurisdiction over corporations, and states as follows:

"The existence of any of the following relationships between a corporation and the states shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise general personal jurisdiction over the corporation and to enable such courts to render personal judgments against the corporation.

"(1) Incorporation under the laws of this state.

"(2) Consent, to the extent authorized by the consent and subject to the limitations provided in section 745.

"(3) The carrying on of a continuous and systematic part of its general business within the state."

Under these facts, a Michigan court would not be able to exercise general personal jurisdiction against SBFC since it was not incorporated in Michigan, there is no evidence of consent by the corporate entity, and there is no evidence that SBFC carried on "a continuous and systematic part of its general business in Michigan. Indeed, the evidence shows that this was an isolated transaction and there is no suggestion that SBFC has conducted any other business within the state. As such, the question is whether there is personal jurisdiction under Michigan's long-arm statute.

Long-arm statutes establish the nature, character, and types of contacts that must exist for purposes of exercising personal jurisdiction. *Id.* at 348. Michigan's long-arm statute, MCL 600.715(1) and (5), authorizes the exercise of personal jurisdiction over a nonresident corporate defendant if any of the following relevant circumstances exist regarding the defendant:

(1) The transaction of any business within the state.

(2) Entering into a contract for services to be performed or for materials to be furnished in the state by the defendant.

There is a better argument under the long-arm statute that the Michigan court could exercise jurisdiction over SBFC, as the facts reveal that SBFC engaged in the "transaction of any business within the state," MCL 600.715(1), which can be satisfied by "the slightest act of business in Michigan." *Sifers v Horen*, 385 Mich 1956, 1989 n2 (1971). The entering into a contract with a Michigan resident, the signing and completion of the contract in Michigan, which resulted in the delivery of a product into the state by an employee of SBFC, satisfies this broad provision, especially when one considers the fact that the cause of action arose from the transaction. See *Evans Tempcon Inc v Index Industries Inc*, 778 F Supp 371, 374-375 (WD Mich, 1990) and *Salom Enterprises LLC v TS Trim Industries, Inc*, 464 F Supp 2d 676, 683-684 (ED Mich, 2006).

Can Personal Jurisdiction be constitutionally exercised? Even if a defendant's conduct places it within one of the sections of MCL 600.715, a Michigan court still may not exercise limited personal jurisdiction over the defendant unless doing so would not offend constitutional due process concerns. *Green, supra* at 350-351.

In *W H Froh, Inc v Domanski*, 252 Mich App 220, 226-227 (2002), quoting from *Mozdy v Lopez*, 197 Mich App 356, 359 (1992), the Court of Appeals explained the law governing this constitutional inquiry:

"The Due Process Clause of the Fourteenth Amendment limits the jurisdiction of state courts to enter judgments affecting the rights or interests of nonresident defendants. *Kulko v California Superior Court*, 436 US 84, 91; 98 S Ct 1690; 56 L Ed 2d 132 (1978). As a result, a valid judgment affecting a nonresident's rights or interests may only be entered by a court having personal jurisdiction over that defendant. *Int'l Shoe Co v Washington*, 326 US 310, 319; 66 S Ct 154; 90 L Ed 95 (1945). A court may acquire personal jurisdiction over a nonresident when the nonresident defendant's relationship with the forum is such that it is fair to require the defendant to appear before the court. *Id.*

"It is fair to require a defendant to appear before the court when the defendant possesses 'minimum contacts' with the forum. A defendant must 'have certain minimum contacts with [the forum] such that maintenance of the suit does not offend ''traditional notions of fair play and substantial justice.''" *Int'l Shoe Co* at 316. Whether sufficient minimum contacts exist between a defendant and Michigan to support exercising limited personal jurisdiction is

determined by applying a three-pronged test:

"First, the defendant must have purposefully availed himself of the privilege of conducting activities in Michigan, thus invoking the benefits and protections of this state's laws. Second, the cause of action must arise from the defendant's activities in the state. Third, the defendant's activities must be substantially connected with Michigan to make the exercise of jurisdiction over the defendant reasonable."

Here, the answer most consistent with Michigan case law is that the Michigan court could not exercise personal jurisdiction over SBFC consistent with the Due Process Clause of the 14th Amendment because SBFC did not have sufficient minimum contacts with Michigan.

Applying this three-part test, the applicant should first discuss whether SBFC "purposefully availed" itself of the privilege of conducting business in Michigan. When the defendant's contact with the forum state is based on a contract with one of its citizens, then the purposeful availment analysis requires an assessment of that contractual relationship. In *Burger King Corp v Rudzewicz*, 471 US 462, the Supreme Court held that "an individual's contract with an out-of-state party alone [will not] automatically establish sufficient minimum contacts in the other party's home forum." Instead, in such cases, the Court "recognizes that a 'contract' is 'ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction,' and [i]t is these factors - prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing - that must be evaluated in determining whether the defendant purposefully established minimum contacts within the forum." 471 US 462, 478. See also, *L T Elsey & Son, Inc v American Engineering Fabrics, Inc*, 191 Mich App 146, 147-148 (1991). In doing so, facts that should be cited for concluding there is purposeful availment include: that the Florida defendant decided to take advantage of an opportunity to do business in Michigan; that the defendant agreed to the terms of a contract with the Michigan plaintiff and physically entered into Michigan to meet with the plaintiff; that while in Michigan, the defendant executed the contract with the plaintiff and physically transferred the boat to the plaintiff, thus completing the contract in Michigan.

In support of a finding of no purposeful availment, an applicant should argue that SBFC did not "purposefully avail" itself of the privilege of conducting business in Michigan because this was an isolated transaction. SBFC never before nor after

entered into any transactions in Michigan, did no advertising in the state, and did not reach out to a resident to engage in business. And, the SBFC president only came to Michigan because he was here on vacation, not to conduct business. Under this limited scenario, exercising personal jurisdiction over SBFC would be unconstitutional. *Gooley v Jefferson Beach Marina, Inc*, 177 Mich App 26 (1989).

Considering the second part of the test, it is clear that the cause of action arose from SBFC's activities in Michigan. With respect to the third part of the test, however, the applicant should argue that SBFC's activities are not substantially connected to Michigan. Again, except for this one transaction, SBFC has no involvement with Michigan, either in person (sales agents, boat shows, advertising, etc.) nor through contracts with other individuals or boat companies. This one transaction does not suffice to permissibly exercise jurisdiction over SBFC consistent with due process. However, it could also be argued that the facts that SBFC had never before nor after entered into any transactions in Michigan, did no advertising in the state, and did not initiate the business transaction are not determinative, as case law establishes that specific personal jurisdiction can be based on a single transaction or item of activity if the cause of action arose from that isolated transaction or activity, as long as the defendant can reasonably anticipate being haled into a Michigan court as a result of that contact. See e.g., *McGee v International Life Ins Co*, 355 US 220, 223; 78 S Ct 199, 201; 2 L Ed 2d 223 (1957), cited with approval in *Khalaf v Bankers & Shippers Ins Co*, 404 Mich 134, 146, n 11 (1978).

The grader should keep in mind that because an opposite conclusion is reasonable, the analysis is more important than the ultimate result.