

**FEBRUARY 2021 MICHIGAN BAR EXAMINATION  
EXAMINER'S ANALYSES**

**EXAMINER'S ANALYSIS OF QUESTION NO. 1**

A. Adams:

Process in civil actions must be served by a legally competent adult who is not a party. MCR 2.103(A). Rachel was not a party to the suit and, considering she was married and the facts do not state otherwise, she appears to be a legally competent adult. Further, as to the manner of the service, a summons and complaint are properly served on an individual by delivering them personally, or by sending them by registered or certified mail, return receipt requested and with delivery restricted to the individual. MCR 2.105(A)(1) and (2). Rachel clearly did not serve Adams in either manner, and thus she failed to properly serve Adams. Nor are there any facts to suggest that Rachel attempted substituted service on Adams. MCR 2.105(B).

B. Boston Bakery:

As to the manner of service on Boston Bakery, a summons and complaint may be properly served on a private corporation by personally serving a director of the corporation, and mailing by registered mail a copy of the summons and complaint to the principal office of the corporation. MCR 2.105(D)(2). Here, Rachel successfully served Boston Bakery by personally serving Hancock, a director of Boston Bakery, with the summons and complaint, and then mailing by registered mail another copy of the summons and complaint to Boston Bakery's principal office.

### C. Personal Jurisdiction:

"Before a court may obligate a party to comply with its orders, the court must have in personam jurisdiction over the party." *Oberlies v Searchmont Resort, Inc*, 246 Mich App 424, 427 (2001). "Jurisdiction over the person may be established by way of general personal jurisdiction or specific (limited) personal jurisdiction." *Electrolines, Inc v Prudential Assurance Co, Ltd*, 260 Mich App 144, 166 (2003).

#### 1. General Personal Jurisdiction

"The exercise of general jurisdiction is possible when a defendant's contacts with the forum state are of such nature and quality as to enable a court to adjudicate an action against the defendant, even when the claim at issue does not arise out of the contacts with the forum state." *Id.* A Michigan court can exercise general personal jurisdiction over a corporation if any of the following is true: (1) the corporation is incorporated under Michigan law, (2) the corporation consents to the court's exercise of jurisdiction over it (but such consent is "subject to the limitations provided in" MCL 600.745), or (3) the corporation "carr[ies] on . . . a continuous and systematic part of its general business within" Michigan. MCL 600.711; *Electrolines*, 260 Mich App at 166-167.

Here, Boston Bakery is neither a Michigan corporation nor do the facts bear any indication that it has consented to the circuit court's exercise of jurisdiction over it. Thus, the pertinent inquiry is whether Boston Bakery is subject to general personal jurisdiction because of "continuous and systematic" contacts with Michigan. It is not.

For a state court to exercise general personal jurisdiction over a foreign corporation on this basis, the corporation must have "affiliations with the State" that "are so continuous and systematic as to render [the foreign corporation] essentially at home in the forum State." *Daimler AG v Bauman*, 571 US 117, 127 (2014) (quotation marks and citations omitted). This inquiry "calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide. A corporation that operates in many places can scarcely be deemed at home in all of them." *Id.* at 139 n 20. It will be an "exceptional case" in which "a corporation's operations in a forum other than its formal place of incorporation or principal place of business m[ight] be so substantial and of such a nature as to render the corporation at home in that State." *Id.* at 139 n 19.

The facts show that Boston Bakery has engaged in no contacts with the State of Michigan, let alone any "continuous and systematic" ones required for a Michigan court to exercise jurisdiction over the bakery. No facts suggest that a Michigan court can exercise general personal jurisdiction over the bakery.

## 2. Specific Personal Jurisdiction

Nor does limited, specific jurisdiction provide a basis to exercise jurisdiction over Boston Bakery. "Specific jurisdiction, on the other hand, depends on an 'affiliatio[n] between the forum and the underlying controversy,' principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation. In contrast to general, all-purpose jurisdiction, specific jurisdiction is confined to adjudication of 'issues deriving from, or connected with, the very controversy that establishes jurisdiction.'" *Goodyear Dunlop Tires Operations v Brown*, 564 US 915, 919 (2011) (Citation omitted). As the Sixth Circuit stated, the due process test for specific personal jurisdiction entails the following:

First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant's activities there. Finally, the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable. [*Miller v AXA Winterthur Ins Co*, 694 F3d 675, 680 (CA 6, 2014), quoting *S Mach Co v Mohasco Indus, Inc*, 401 F2d 374, 381 (CA 6, 1968).]

A defendant has sufficient "minimum contacts" to support personal jurisdiction if the defendant "purposefully avails itself" of the privileges, benefits, and protections of the forum state, such that the defendant "should reasonably anticipate being haled into court there." *Burger King Corp v Rudzewicz*, 471 US 462, 474 (1985). The forum state "'does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State' and those products subsequently injure forum consumers." *Id.* at 473 (Citation omitted). Physical presence by the defendant in the forum state is not required for specific personal jurisdiction—rather, sufficient minimum contacts may exist when an out-of-state defendant "purposefully direct[s]"

activities at the forum state, and the litigation "arise[s] out of or relate[s]" to those activities. *Id.*, at 472.

Although Paul is now a Michigan resident, when he was employed by Boston Bakery he was a resident of Massachusetts. There was no known contact or connection to Michigan resulting from Paul's employment with Boston Bakery. Boston Bakery has not taken any action to avail itself of Michigan law, or otherwise acted commercially within that state. And, even if some sporadic Michigan residents did business at the bakery while visiting Boston, that would not be enough to constitutionally require Boston Bakery to defend itself in Michigan.