

MPT I Sample Answer #1

To: Charles Petrilla

From: Applicant

Date: July 29, 2008

Re: Bohmer Custody Case

1. FRANKLIN UCCJEA §16-102(7) ESTABLISHES THAT FRANKLIN WAS THE HOME-STATE JURISDICTION AT THE TIME OF FILING

A Franklin court has jurisdiction to make an initial child custody determination only if Franklin is the child's home-state on the date of the commencement of the proceeding, or was the home-state of the child within 6 months before the commencement of the proceeding and the child is absent from Franklin but a parent continues to live in Franklin. See UCCJEA §16-102(7); 16-201(a)(1). Franklin is considered the "home-state" of a child if the child has lived with a parent for at least 6 months immediately before the commencement of a child custody proceeding. When calculating the home-state requirement, any period of temporary absence of the child or parent(s) is considered part of and included in the relevant 6 month period. *Id.* An absence from Franklin is no longer "temporary" once the absent person has formed the intent to reside permanently in another state and is in fact doing so. *In re: Marriage of Mills.*

Applying the above standard, Franklin had home-state jurisdiction when Alex Bohmer filed for custody in Franklin District Court on 6-30-2008. On 12-1-07, Carrie, the Bohmer's child, went to visit her grandparents in the state of Columbia. Although she has remained there ever since, the original intention was for Carrie to just visit. Therefore, 12-1-07 cannot be used as the starting point for Carrie's permanent residence in Columbia. Instead, only when the intent for Carrie to remain permanently in Columbia does the 6 month time period begin. Furthermore, UCCJEA requires that the child live with a parent in the home-state for at least 6 months. Here, although Jessica Bohmer has remained in Columbia since 2-2-08, she did not decide to remain there permanently until approximately three months later. Therefore, the 6-month time period when Jessica and Carrie resided in Columbia began at the end of Feb. 2008. Since Franklin was Carrie's home-state within 6 months before Alex filed on 6-30-08 and Alex continues to live in Franklin, the Franklin court, pursuant to UCCJEA §16-201(a)(1) could properly exercise jurisdiction over an initial child custody determination even though Carrie was absent from the state at the time of filing.

2. JESSICA BOHMER IS LIKELY TO SUCCEED IF SHE FILES A MOTION TO DECLINE JURISDICTION UNDER THE UCCJEA'S INCONVENIENT FORUM PROVISION

Franklin UCCJEA §16-207 sets forth 6 specific factors to be considered by the court when determining whether it is an inconvenient forum and that a court of another state is a more appropriate forum. *In re: Marriage of Brickman and Young*. All of these factors must be considered although the court should give more weight to some when making its determination. If Jessica files a motion to decline jurisdiction under the inconvenient forum provision of the Franklin UCCJEA, the Franklin court, upon weighing these factors, is likely to grant her motion so that the proceedings may be filed in Columbia, a more appropriate forum.

The first factor to be considered, whether domestic violence has occurred and is likely to continue and which State could best protect the parties and the child, is given the most weight. When domestic violence has occurred, the issue is which forum can provide greater safety. In this case, Alex has abused Jessica since 2001, when she was still pregnant with Carrie. This abuse has continued until at least 5-30-06 and Alex, who owns a gun, has continued to make threats toward Jessica as late as this summer. These facts establish a history of abuse which is likely to continue, since Jessica has the support of her family in Columbia and is away from Alex's immediate reach, there is little doubt that Columbia is safer for her and Carrie. The second factor to be considered is the length of time the child has resided outside of the state. Here, Carrie has been outside Franklin for nearly 8 months. The facts that she is very young, barely 6 years old, and has made friends and been enrolled in school in Columbia supports the fact that this is a long enough time where Carrie has lost her connections with Franklin and formed new connections with Columbia. The third factor is the distance between the court in Franklin and the court in the state that would assume jurisdiction (Columbia). The drive between the two courts is about 1.5 hours each way. Although it is a shorter distance than that in *Brickman*, in both cases the noncustodial parent is at a better position to travel since they do not have to accommodate for child care. Also, in this case, the inconvenience to Alex is lessened by the shorter drive. The fourth factor considered is the relative financial circumstances of the parties. Here, Jessica makes approximately \$10,000 annually while Alex earns approximately \$55,000. This is a disparity very close to that found to weight in favor of transferring jurisdiction to the court of the lower earning spouse in *Brickman*. The fifth factor considered by the court is the traditional bases for determining venue and inquiries about the nature and location of the evidence required to resolve the pending litigation, including the child's testimony. Like in *Brickman*, the court to which the case would be transferred to is a more convenient forum for the child to testify. Additionally, although some of

the records involved may be located in Franklin these would be easily transported to Columbia. The last factor the Franklin court would weigh is the familiarity of the court of each state with the facts and issues in the pending litigation. Here, Franklin is more familiar since the restraining order was granted by it while Columbia's involvement was limited to issuing the marriage certificate. However, **Brickman** found that transfer was still warranted even when the Franklin court was substantially more involved. Upon weighing these 6 factors, giving special weight to safety, the case should be transferred to Columbia.

MPT I Sample Answer #2

TO: Charles Petrilla

FROM: Applicant

RE: Jessica Bohmer/Interstate Custody Case

This memorandum addresses the jurisdiction issues in the Jessica Bohmer case.

1. Which state was the "home-state" jurisdiction under the UCCJEA at the time of filing?

The state of Franklin was probably Carrie's "home-state" for jurisdictional purposes at the time Alex Bohmer filed his child custody petition. The Franklin UCCJEA grants jurisdiction to "a court of this State" where Franklin is either "the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent continues to live in this state." (Franklin UCCJEA 16-201(a)(1)) Home state is defined under the UCCJEA, section 16-102(7), as the "State in which a child lived with a parent for at least six consecutive months immediately before the commencement of child custody proceeding." Franklin was Carrie's home state within six months before the commencement of the proceeding **and** Alex Bohmer continues to live in Franklin, thus Franklin can properly claim jurisdiction as Carrie's home state. Whether the absence was temporary or not is irrelevant but under Mills it was not a temporary absence.

It appears that Carrie had lived in Columbia for just under five months at the time Alex Bohmer filed his petition, thus Columbia was not Carrie's "home state" under the UCCJEA, unless the "more appropriate forum" section (16-201(a)(2)) applies, which is addressed below.

2. Since Franklin will likely have subject matter jurisdiction over the matter, the likelihood of success of a Motion to Decline Jurisdiction is paramount. According to In re Marriage of Brickman and Young, a Franklin court, applying UCCJEA section 16-207, **may** "decline to exercise jurisdiction over child custody proceedings when the court determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum in which to make the child custody determination." The permissive nature of the inconvenient forum statute aside, the issue is governed by six specific statutory factors, which are addressed individually with reference to the specific facts of Jessica Bohmer's situation below. For purposes of analyzing the relevance of the factors, the Brickman court notes that some facts weigh more heavily than others, but **all** factors must be considered by the court.

Whether domestic violence has occurred and is likely to continue in the future and which State could best protect the parties and the child is the most important factor to be considered. The fact that Alex Bohmer has a history of committing acts of violence against Jessica Bohmer, which can be shown both by testimony and the civil protection order, weighs heavily in favor of holding the custody hearing in Columbia. Brickman directs the court to consider "whether the parties are located in different states **because** one party is the victim of domestic violence," which in this instance seems to be the case. Whether Jessica decided to stay in Columbia for reasons other than Alex's propensity to violence is probably not as important as the fact that she left the state because of a specific instance of violence coupled with a pattern of previous violence. The courts of Franklin also recognize that domestic violence is a high recidivist crime, and thus explicitly authorize their courts to decline jurisdiction in favor of proceedings in another state to protect the child and the party fleeing the violence. Alex Bohmer might try to offer evidence of his having sought psychological counseling as a "mitigating" factor here, but the weight of the evidence will still likely come down in Jessica's (and Columbia's) favor.

The length of time Carrie has resided outside Franklin is about 22 months in total. The court will certainly consider the fact that Carrie has significant family connections in Columbia, but because Franklin has been Carrie's residence for a solid majority of her life, this factor probably weighs in favor of Franklin retaining jurisdiction.

The distance between the courts, the third factor in this case, is apparently a 1.5 hour drive, which does not appear to impose a substantial burden on either party. The Brickman court appears to endorse a position that the non-custodial parent is generally in a better position to travel, however, so this factor may weigh in favor of Columbia's jurisdiction.

The fourth factor, relative financial circumstances, weighs heavily in Jessica and Columbia's favor. Jessica's ability to adequately protect her interests (and Carrie's interests) may be seriously affected by requiring her to travel back and forth to Franklin with limited financial resources.

The fifth factor concerns the traditional bases for determining venue, including the nature and location of evidence. Much of the testimony in this case will come from Jessica and her family, and Carrie, and any records of Carrie's education, etc. in Franklin are easily transported.

The final factor is the familiarity of the court with the case. The fact that the Franklin court issued the prior protection order weighs in favor of the Franklin court's exercise of jurisdiction. Brickman indicates that the Franklin courts will give consideration to an out of state court's ability to familiarize itself with the litigation, and further that unless the out of state court appears to be an "inappropriate" forum, this factor is not dispositive.

Considering all the statutory factors and the precedential weight given to them in prior Franklin case law, it appears to be highly likely that the Motion to Decline Jurisdiction will succeed. If Franklin does, in fact, grant the eventual motion, it will be necessary for Jessica Bohmer to file for custody hearings in Columbia as soon as possible.

MPT 1 Sample Answer #3

TO: Charles Petrilla

FROM: Applicant

RE: Bohmer/Interstate Custody Case

First, you wanted to know whether Franklin or Columbia was the home-state jurisdiction under the Franklin Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) at the time of filing of the current custody case in Franklin. I believe that Franklin will have home state jurisdiction under Franklin's UCCJEA.

Section 16-201(1) says that a state will have jurisdiction if it "is the home state of the child on the date of the commencement of the proceedings, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent continues to live in this state." Section 16-102 defines home state as "the state in which a child lived with a parent for at least six consecutive months immediately before the commencement of a child custody proceeding." It also states that "a period of temporary absence of any of the mentioned persons is part of the period."

Carrie has been in Columbia with her grandparents since December 1, 2007, meaning that she had lived in Columbia for 7 consecutive months before the custody proceeding was filed on June 30, 2008. However, she has not lived with a parent that whole time. Before that she had lived in Franklin with her parents for two and a half years, since June 2004.

When Carrie came to Columbia in December 2007, she came with the intent to stay there temporarily. The Mills case said that intent is significant in whether absence from a state is temporary and that absence is no longer temporary once an intent to reside elsewhere permanently has been formed. In this case, Jessica came to Columbia on February 2, 2008, but she did not form the intent for her and Carrie to stay there permanently until three weeks later, on February 23, 2008. Therefore, Carrie can be considered having resided in Franklin until February 23, 2008.

Carrie's permanent residence transferred on February 23rd instead of in December 2007 when she first came to Columbia, less than six months before the custody proceeding was filed. She is currently absent from the state because she resides in Columbia now. Carrie's father, Alex, continues to live in Franklin. Therefore, under section 16-201(1), Franklin has UCCJEA jurisdiction because Franklin was Carrie's home state within six months before the proceeding, she is absent from Franklin now, and her father continues to live there.

Second: Whether a motion to decline jurisdiction under the Inconvenient Forum provision will be successful.

Discussion:

A motion to decline for inconvenient forum is likely to be successful. In determining whether another state should exercise jurisdiction, a court considers the following factors: (1) Whether domestic violence has occurred and is likely to continue in the future, and which state could best protect the parties and the child, (2) length of time the child has resided outside Franklin, (3) distance between the court in Franklin and the state that would assume jurisdiction, (4) relative financial circumstances of parties, (5) nature and location of evidence required to resolve pending litigation, including testimony of child and (6) familiarity of court of each state with the facts and issues in pending litigation.

While some factors weigh more heavily than others, all factors must be considered by the court. The first factor is extremely important and tends to have a lot of weight on the court's ultimate decision. In the case In re: Marriage of Brickman and Young, the Franklin Supreme Court held that when a court finds that domestic violence has occurred or that a party has fled the state to avoid further violence, this factor should be given greater weight than any other individual factor when determining jurisdictional issues under the UCCJEA. In that case, the father was abusive during wife's pregnancy, exhibited obsessive and controlling behavior, perpetrated serious injuries on her, and made no showing that his potential for future violence had ended. Several of these facts exist in the case at bar. When Jessica was pregnant, Alex was physically and emotionally abusive. He pushed her down stairs, slapped her, and tried to choke her. These are serious injuries that should be sufficient to warrant grave concern. The worst incident on Jessica's birthday was so harmful that Jessica almost lost consciousness. In addition to the abusive behavior, his letter also shows signs of obsessive and controlling behavior. Here, he's threatening to make her sorry for leaving. This may be used to show that it is likely that the violence will continue. The fact that he signed up for therapy and is seeking to resolve matters without resorting to abuse may be used by Alex to show he has changed, but since we don't know if he attended therapy or have the therapist's notes, we could possibly still prevail.

As stated in the first issue, the child has spent a majority of her life in Franklin. Some evidence that may help us on the second factor is the fact that Carrie is enrolled in school, Jessica's parents are in Columbia, and since Carrie has witnessed Alex be abusive to her mother, her sense of well-being and security is better in Columbia. Alex may argue that her friends, school, and community contacts are in Franklin making it the more convenient state. This factor could go either way.

The third factor, distance between courts, may also help Jessica. Columbia is an hour and a half away and as the custodial parent, Jessica would have to bring Carrie or arrange for her care. Although Alex may argue that the distance is not very long, unlike the eight hours in the Young case, it nonetheless creates a transportation inconvenience.

The fourth factor also weighs in favor of transfer to Columbia jurisdiction. In the Young case, the husband made over \$41,000 in comparison to the wife's \$6,500 income. This was enough for the court to conclude that the wife's choice of Columbia should be granted. In this case, Jessica makes \$10,000 in comparison to Alex's \$55,000. Considering that she would have a lot more expense if also asked to travel, this should lean toward Columbia exercising jurisdiction.

The fifth factor, location of evidence, is debatable. This factor examines where the parties are located, Carrie's health and child records, witnesses, etc. Since Carrie has lived in Franklin most of her life, her records are still there. Although the parties, Jessica and Carrie, are in Columbia, Alex may bring a successful argument that the pertinent evidence outside of location of parties weighs in favor of Franklin.

Additionally, other factors like the location of the protective order, marriage license, and other litigation concerning marriage (6th factor) favor Franklin courts. However, Franklin may conclude similar to the holding in Young, that Columbia will have an opportunity to become familiar with case by virtue of Jessica applying for legal services in Columbia.

Conclusion: Weighing all these factors and giving additional weight to the first factor, like the Franklin Supreme Court, Franklin Court will likely transfer jurisdiction to Columbia.