

# Early Bar Prep Session Three

# Question one

## 1. State A Has Jurisdiction. (25%)

State A has jurisdiction to award custody of Daughter to Grandparents. The controlling law is the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). Under the UCCJEA, a child has no “home state” if the child has not lived continuously in the same state for the preceding six months. In that case, a state may assert jurisdiction if (1) a child and at least one parent have a significant connection with the state other than mere physical presence; and (2) substantial evidence is available in that state relating to child custody issues. Here, Daughter has no home state because she has only lived in State B for four months. Because daughter does not have a home state, State A may assert jurisdiction only if the two conditions detailed above are met. (1) First, both Daughter and Mom have a significant connection with State A. Mom was married in State A, gave birth to Daughter in State A and up until four months ago, resided in state A. (2) Significant evidence regarding custody currently exists in State A because Daughter is currently in State A, as are Grandparents. Other evidence related to Daughter’s schooling, friendships and other personal relationships is also available in State A. Because there are both significant connections and substantial evidence in State A, State A may assert jurisdiction under the UCCJEA.

# Question Two

2. A court may deny a custody claim, regardless of the wishes of the child. (25%)

A court may deny Grandparents' petition over the express opposition of daughter. Although the wishes of an older child are relevant to a custody determination and are typically given great weight, they are not determinative. In this case, the court should listen and give weight to Daughter's stated preference to live with Grandparents. However, if the court believes that living with Grandparents is not in the best interests of Daughter, the court may ignore her preference and deny Grandparent's petition.

# Question Three

3. State A's statute is unconstitutional. (35%)

Because the State A statute gives no special weight to parent's determination as to the child's best interests, the statute is unconstitutional under *Troxel v. Granville*. In *Troxel*, the Supreme Court reasserted the fundamental right of parents to rear their children. The Court held that parents have a constitutional liberty interest in the care, custody and control of their own children. A state statute regarding custody must give weight to a parent's determination as to the custody, care and control of children. In this case, the State A statute does not require the court to give any special weight to a parent's determination of her child's best interest; in fact, it does not appear to require the court to give any weight at all to a parent's determination of a child's best interest. State A's statute only requires that the custody order "serves the child's best interest" without regard to parental wishes. It is possible to argue that the language of the State A statute that provides for serving the child's best interest encompasses the parent's determination as to the custody of the child. The best interests determination could certainly include parental decisions, but the statute does not require it. There is no explicit language to support the interpretation that consideration of parental wishes are considered.

Although the State A statute does restrict nonparent custody petitions to grandparents and additionally requires that the child have been abandoned or have a parent who has died, this should not alter the constitutional analysis. These facts are not relevant to the Supreme Court's reasoning in *Troxel*. State A's statute is unconstitutional because it does not give any weight to parental determinations.

# Done well

- Formatting – the majority mimicked the question's numbering and started with a conclusion.
- Using the facts; many fewer conclusory statements this time.

# For next time...

- Pay attention to the call of the question. Too many answers asserted that a custody determination would be unconstitutional. That was not the question.
  - Same issue with number 2. Don't make the question more than it is.
- Careful with statutory interpretation; the statute in the question is the fact that needs analysis in your answer.

# Working with rules

- Simple rules
  - If A, then B
  - Think strict liability
    - If you sell alcohol to a minor, you're guilty a crime. Doesn't matter if they presented fake ID or looked 40.
    - If answer filed within 20 days of service, answer is timely. If not filed within 20 days, not timely.
- Elemental Rules (most common)
  - Example: Battery
    - (1)intent, (2) touching, (3) touching must be harmful or offensive, and (4) must be done to another.
    - Make sure you know the rule for each element.
    - Elements often have sub-elements (i.e. what's harmful or offensive? Transferred intent?)
- Factor Rules
  - If A, B and C weighed together justify Z, then Z.
  - A, B and C are factors. Unlike elements, you need not satisfy each one, but weighed together they get you to Z.
  - Example: Material Breach in contract law. Consider (1) Extent to which injured party will be deprived of expectation, (2) Extent to which injured party can be adequately compensated (3) Extent to which party failing to perform will suffer forfeiture, (4) Likelihood party failing to perform will cure his failure, and (5) Extent to which behavior of party failing to perform comports with duty of good faith and fair dealing.

# Working with rules, cont.

- Rules with Exceptions
  - If A, then B, unless Z.
  - Look for “unless,” “except,” “but,” and “but if.”
  - Example: Recovery of Property taken via fraud – a person who has been induced by fraudulent misrepresentations to transfer title may recover the property UNLESS the person in possession was a bona-fide purchaser of the property.
  - Partners may not bind partnership without actual authority UNLESS an innocent third-party Vendor has reason to believe the partnership is bound.
- Alternative Rules
  - If A or B, then Z.
  - Look for “either” and “or.”
  - Example: Punitive damages may be awarded if the defendant exhibits fraud or malice.
  - A partner may violate his duty of loyalty to a partnership if he directly competes with the partnership. Duty is also violated if partner uses partnership property to gain profit and does not share that profit with the partnership.



# Today's Assignment

- When you make rule statements, tell me, in parentheses, what type of rule it is.