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NEW MEXICO BAR EXAMINATION
FEBRUARY 2011

QUESTION NO. 4

(Answer this Question in Book No. 4)

Defendant, an enrolled member of South Tribe, attended a birthday party for his best friend, an enrolled member of the East Tribe. The party was at his best friend's house on the East Tribe reservation. The East Tribe is a federally recognized Indian tribe, located in New Mexico. Late into the evening, a fight erupted between Defendant and Victim, a non-Indian. Defendant pulled out a knife and stabbed Victim several times.

Just after stabbing Victim, Defendant jumped into the passenger seat of another friend's car and they sped away through the reservation. They were soon stopped within the East Tribe reservation for speeding by a State Police Officer. The Officer found Defendant's bloody knife on the floor of the passenger side of the vehicle in plain view. The Officer arrested Defendant and he was held in the county jail pending an appearance before a judge.

Victim suffered significant knife wounds that will require long-term hospitalization.

The East Tribal Code provides for the misdemeanor crime of assault and battery. Under Federal law, assault with a dangerous weapon and assault resulting in serious bodily injury are felony crimes.

1. Does the East Tribal Court have jurisdiction to prosecute Defendant for assault and battery? Explain.
2. Would the initiation of a federal criminal case deprive the East Tribal Court of criminal jurisdiction? Explain.

4)

1. East Tribal Court's jurisdiction over Defendant for assault and battery: The East Tribal Court may have criminal jurisdiction over Defendant. "Member Indians" are persons who are recognized as members of the tribe either under tribal law or under the federal definition of Indian, while "non-member Indians" are recognized members of another tribe. "Non-Indians" include all other persons. "Indian country" includes reservations, allotments, and dependent Indian communities. Under the Indian Country Crimes Act, federal courts have concurrent jurisdiction with tribal courts over non-major crimes committed by an Indian against a non-Indian and over all major crimes committed by a non-Indian against an Indian. Under the Major Crimes Act, federal courts have concurrent jurisdiction with tribal courts over several enumerated major felonies. Tribal courts have exclusive jurisdiction over non-major crimes between Indians and for victimless crimes committed by Indians. Tribal courts have no criminal jurisdiction over non-Indians, regardless of where the crime is committed.

The first issue is where the crime occurred. The crime occurred on the East Reservation, which is the reservation land of a federally recognized Indian tribe. Therefore, the crime occurred in Indian country for the purposes of determining jurisdiction.

The next issue is whether the East Tribal Court has jurisdiction over the case. The treatment of non-member Indians by the courts is somewhat unclear, but they are often treated as non-Indians. Defendant is an enrolled member of South Tribe, but the crime occurred on the East Tribe reservation. Therefore, Defendant is considered a non-member Indian when being sued in the East Tribal Court. As noted above, the tribal court would have concurrent jurisdiction with the federal system under the Major Crimes Act if Defendant is charged as an Indian with a felony against a non-Indian such as assault with a deadly weapon and/or assault resulting in serious bodily injury. The tribal court would also have jurisdiction over Defendant if he were charged as an Indian with the misdemeanor crimes of assault and battery as defined by the East Tribal Code under the Indian Country Crimes Act. However, if Defendant is considered a non-Indian, the tribal court would not have jurisdiction over him at all.

2. Effect of initiation of a federal criminal case on the East Tribal Court's jurisdiction: The initiation of a federal case would have no effect on the tribal court's jurisdiction. Double jeopardy

is implicated when a person is criminally prosecuted twice by the same sovereign for the same crime. Indian tribes are considered sovereign nations and double jeopardy does not apply. Here, the tribe's ability to hear the case would not be affected by the federal case because the tribe is a separate sovereign.

In addition, the case might be removed to tribal court because of exhaustion. In general, a plaintiff must exhaust all remedies available in tribal court unless the tribal procedures would be futile or are intended solely to harass or deally the plaintiff.

END OF EXAM