ILLINOIS LAW RE JURISDICTION
A PRIMER RE JURISDICTIONAL LAW AFFECTING FAMILY LAW CASES

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Executive Summary:

For a court to do anything, it needs two kinds of jurisdiction. Subject Matter Jurisdiction is the power of the court to do something (to adjudicate dispute). More specifically, it is the power of the court to enter an enforceable order. "Personal Jurisdiction" is the ability of the court to exercise the power as to a particular individual. As we know, a lack of personal jurisdiction does not deprive the court of its subject matter jurisdiction – only the ability to exercise the power of the court on individuals who have not been brought into court through service of summons or otherwise.

Preliminary Discussion:

The term "jurisdiction" is often mis-used in the contest of Illinois matrimonial cases. The following is a discussion from *Gitlin on Divorce: A Guide to Illinois Matrimonial Law* (Fourth Edition, 2016):

In the case of *In Re the Marriage of Kuyk*,[1] the appellate court, 2nd District, reversed the decision of the trial court and ruled that trial court had jurisdiction to entertain a petition to review maintenance despite the marital settlement agreement time for filing of such a petition having run. The appellate court stated, "…the parties invoke the concept of subject matter jurisdiction, which is the circuit court's inherent power to hear and decide a given case." In *Kuyk*, Justice Hutchinson provides an excellent summary of subject matter jurisdiction and how the term is misused in a variety of instances including family law courts:

> Jurisdiction is a loaded word and [it has been used in certain cases] incorrectly used to suggest that Illinois circuit courts derive their subject matter jurisdiction from statutes, such as the Marriage Act. Under that view, if a party failed to comply with a statutory prerequisite–say, a pleading requirement–that failure seemingly divested the court of jurisdiction to hear and decide the case altogether. (Citations omitted

[1] In Re the Marriage of Kuyk, 2015 IL App 2d 140733.

with case law containing this mistake).

> Under the state constitution of 1970, ... the circuit court is a court of original jurisdiction over general legal subject matter. See Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc., 199 Ill. 2d 325, 336 (2002) (citing Ill. Const. 1970, art. VI, § 9). Accordingly, because the circuit court's jurisdiction is of constitutional dimension, it cannot be constrained by a statute, or by a party's compliance with a statute, such as the Marriage Act. See Steinbrecher v. Steinbrecher, 197 Ill. 2d 514, 530 (2001) (stating that "a circuit court is a court of general jurisdiction, which need not look to the statute for its jurisdictional authority"). Both the supreme court and this court have expressed this principle in a variety of contexts. See, e.g., McCormick v. Robertson, 2015 IL 118230 (child custody); ***
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> The only prerequisite to the circuit court's subject matter jurisdiction "is whether the asserted claim, legally sufficient or not, was filed in the proper tribunal" (citation omitted) that is, whether it belongs to the class of cases generally heard in the circuit court (citation omitted). Here, undoubtedly, issues related to the parties' dissolution and postdecree maintenance were ordinary, justiciable matters for a circuit court to consider. Once Kimberly filed her petition, the trial court's subject matter jurisdiction was triggered and it possessed the authority to adjudicate her claims. See In re Luis R., 239 Ill. 2d at 304. Put differently, parties may, by agreement, revest the court with jurisdiction (citation omitted) but they may not divest the court of jurisdiction. Thus, even if maintenance had terminated ... or Kimberly's petition was barred by the MSA or insufficient under the Marriage Act, the court's subject matter jurisdiction–the power to hear the petition and render a decision on its merits–was not affected.

The next comments are most important for lawyers and judges in speaking and writing about subject matter jurisdiction in Illinois matrimonial cases:

> To the extent that Rice and similar cases discuss maintenance petitions in jurisdictional terms, and speak of the need to "reserve" jurisdiction over postdecree matters (see In re Marriage of Heller, 153 Ill. App. 3d 224 (1987); In re Marriage of Cannon, 132 Ill. App. 3d 821 (1985), rev'd on other grounds, 112 Ill. 2d 552 (1986); In re Marriage of Fairchild, 110 Ill. App. 3d 470 (1982)), those cases are vestiges of an outmoded view of jurisdiction and we decline to follow them. As discussed in those cases, the concept of reserving "jurisdiction" is best understood as the court placing the parties on notice that it intends to revisit certain postdecree issues down the line (like maintenance, child support, income calculations, asset valuations, etc.). We emphasize, however, that the form of that notice–whether the trial court says "jurisdiction" when it really means "issue"–or a lack of notice altogether is in no way jurisdictional. (Citation omitted).

> **The through line is that the circuit court will always have subject matter jurisdiction to address a party's postdecree petition, regardless of what the parties agreed to in their MSA**, because the circuit court is where postdissolution matters are heard. That does not mean that a postdecree petition necessarily has merit and will succeed. The petition might fail for any number of procedural or substantive reasons (e.g., it could be barred by the MSA). Or, the court might make any number of errors when it considers the petition and reaches its decision. **But those missteps would in no way divest the court of subject matter jurisdiction**. (Citation omitted).

This was well-stated, indeed. Keep that in mind when considering this summary.

I. **Personal Jurisdiction**:

A. **Within the State**: A court has personal jurisdiction over a person who has been served with a summons anywhere in the State of Illinois. 735 ILCS 5/2-209(b)(1).

B. **Long Arm Jurisdiction**: A court may have jurisdiction over someone who has been served outside the State of Illinois if that person committed an act that submits him to the jurisdiction of the Illinois Court. 735 ILCS 5/2-208 and 209. This is commonly called the Long Arm Statute.

1. The United States Supreme Court decided *Kulko vs. The Superior Court of California* (1978). 98 S.Ct. 1690, 436 US 84. In *Kulko*, the couple divorced in New York. The wife and the child moved to California and the father acquiesced to move. The mother then sought to determine child support in California against father. The U. S. Supreme Court held that the due process clause of the 14th Amendment to the United States Constitution operates as a limitation on the jurisdiction of state courts to enter judgements affecting rights or interests of non-resident defendants. A valid judgment imposing a personal obligation may only be entered by a court having personal jurisdiction over the defendant. The existence of personal jurisdiction depends upon the presence of reasonable notice to the defendant that an action has been brought and a sufficient connection between the defendant and the forum state to make it fair to require the defense of the action in the forum state. There was not a sufficient connection in this case and the California court did not have jurisdiction over Mr. Kulko.

2. Illinois appellate court decisions regarding **personal jurisdiction** include:

a. *Duncan vs. Duncan*, 94 Ill.App.3d 868, 419 N.E.2d 700, 50 Ill.Dec.592 (3rd Dist. 1981).

b. *IRMO Highsmith*, 111 Ill.2d 69, 94 Ill.Dec. 753, 488 N.E.2d 1000 (1986). (Sending children of whom one has custody into the forum state and giving custody to another without providing for their support, is tortious conduct sufficient to create *in personam* jurisdiction under the long arm statute.)

c. *IRMO Cody*, 636 N.E.2d 1114, 201 Ill.Dec.682 (5th Dist. 1994). (For the purpose of long arm statute *in personam* jurisdiction, the father does not commit a tortious act in Illinois by allowing the mother, who has custody of the children, to move to Illinois without complaining of the move or seeking the return of the children, while the father continues to support the children in Illinois.)

d. *IRMO Hoover*, 314 Ill.App.3d 707, 247 Ill.Dec. 429, 732 N.E.2d 145 (4th dist. 2000), (where the court did not have pre-divorce judgment personal jurisdiction, the post-judgment filing of a general appearance does not remedy the pre-judgment lack of *in personam* jurisdiction. In *Hoover*, the parties were married in Iowa. In 1993 the wife moved to Illinois and filed for divorce. The husband was personally served in Georgia, where he was then a resident. He did not appear or answer. In 1994, a default divorce judgment was entered and the court ordered that the husband would hold the wife harmless for debts in excess of $65,000 and entered judgment against the husband for $22,500 which represented property that the wife contributed to start the husband's business. The wife thereafter filed a citation notice which sought collection of the amounts due under the judgment. The husband's attorney filed a general appearance and two months later filed a motion to dismiss the citation on the grounds of lack of personal jurisdiction because Illinois was not the matrimonial domicile and he had not submitted to the jurisdiction of the Illinois courts. Two days after filing the motion to dismiss, the husband filed a special and limited appearance. The husband moved to vacate the judgment as to the property disposition. At the hearing on the various motions, the trial court struck the husband's special and limited appearance on the basis that the general appearance submitted by the husband subjected him to the personal jurisdiction of the court. The husband appealed. The issue on appeal was whether the husband's post-judgment general appearance waived his objection to personal pre-judgment

jurisdiction in Illinois. The appellate court reversed the trial court's order that retroactively applied the husband's general appearance as constituting his consent to personal jurisdiction. The opinion noted the distinction between a general appearance and special appearances as then set forth in section 2-301 of the Code of Civil Procedure.

3. Sections of 5/2-209 applicable to family lawyers are:

(5) With respect to actions for dissolution of marriage, declaration of invalidity or legal separation, maintaining a matrimonial domicile in Illinois at the time the cause of action arose or committing in Illinois an act giving rise to the cause of action.

(6) With respect to actions brought under the Illinois Parentage Act of 1984, as now or hereafter amended, or under the Illinois Parentage Act of 2015 on and after the effective date of that Act, the performance of an act of sexual intercourse within this State during the possible period of conception;

(8) The performance of sexual intercourse within this State which is claimed to have resulted in the conception of a child who resides in this State;

(9) The failure to support a child, spouse or former spouse who has continued to reside in this State since the person either formerly resided with them in this State or directed them to reside in this State *** See P.A. 99-85. Eff. 1/1/16.

C. There are different rules for personal jurisdiction under the Uniform Interstate Family Support Act. 750 ILCS 22/201. This is because the goal of the UIFSA was to define long arm jurisdiction as comprehensively as was possible, given the constitutional limits of the court in terms of personal jurisdiction. Under the UIFSA long arm jurisdiction can be obtained if the defendant resided with the child in Illinois, the defendant resided in Illinois and provided pre-natal expenses or support for the child, the child resides in Illinois as a result of the acts or directives of the defendant, the defendant engaged in sexual intercourse in Illinois and the child may have been conceived by that act, or any other basis consistent with the constitutions of Illinois or the United States are met.

D. **How to Object to Personal Jurisdiction – The Death of the Special and Limited Appearance**:

1. **735 ILCS 5/1-301 – Objecting to Personal Jurisdiction Overview**: The law regarding challenging personal jurisdiction was comprehensively changed effective January 1, 2000. See Keith Beyler's article, "The Death of Special Appearances" in the January *Illinois Bar Journal* (Vol 88, p. 30) as well as Edward S. Margolis Practice Tips in the June 2001 *Illinois Bar Journal* (Vol. 89, p. 317). In Beyer's IBJ article he concluded that the amended Section 2-301 made it less likely for lawyers to inadvertently waive their client's jurisdictional challenge.

2. **Combined Motion Objecting to Venue and Other Matters**: Subsection (a) allows the defendant to file a combined motion consisting of an objection to personal jurisdiction as well as other matters. The defendant must make an objection to personal jurisdiction via "a motion to dismiss" or a "motion to quash service of process." There is no limitation set forth in the amendment of the types of objections a defendant can raise in a combined motion, however, the combined motion "must be identified in the manner described in Section 2-619.1" of the Illinois Code of Civil Procedure.

3. **Waiver of Right to Object to Venue**: Subsection (a-5) sets forth the new rule regarding waiver. This amendment to Section 2-301 should help eliminate inadvertent waivers which sometime occurred when a party filed a motion or pleading simultaneously with a special appearance. Recently, I had a case where the opponent who was licensed to practice both in Illinois and Wisconsin filed a special and limited appearance and then a response to the petition for dissolution of marriage. There was no formal objection to venue filed. I was successful in urging that there had been a waiver because according to (a-5), "If the objecting party **files a responsive pleading or a motion** (other than a motion for an extension of time to answer or otherwise appear) prior to the filing of a motion in compliance with subsection (a), that party waives all objections to the court's jurisdiction over the party's person."

4. **Defending the Case After Losing the Objection to Personal Jurisdiction**: Subsection (b) continues the principle that an objection to personal jurisdiction is not a determination of the merits of the case and states that a "decision adverse to the objector does not prelude the objector from making any motion or defense which he or she might otherwise have made."

5. Subsection (c) is similar to the special appearance statute. It states, "Error in ruling against the objecting party on the objection is waived by the party's taking part in further proceedings unless the objection is on the

ground that the party is not amenable to process issued by a court of this State."

A case addressing the 2000 amendments is *IRMO Schmitt*, 321 Ill. App. 3d 360, 254 Ill. Dec. 484, 747 N.E.2d 524 (2nd Dist. 2001) (The filing of a substantive motion in the appellate court (motion to stay and order of the trial court) did not annul defendant's previously filed special and limited appearance. Under the amendment to special appearance statute a party may, after filing a special and limited appearance, file a motion or other responsive pleading without waiving the special appearance.)

II. **Subject Matter Jurisdiction:**

A. **Custody and Visitation / Allocation of Parental Responsibility**:

1. **IMDMA**: The Illinois Marriage and Dissolution of Marriage Act, 750 ILCS 5/601.2 and 5/607. Section 601.2 refers to Section 201 of the Uniform Child-Custody Jurisdiction and Enforcement Act.

A little used vehicle had been known as a petition for custody. It is now known as a "petition for allocation of parental responsibilities." It may be filed by a parent without a petition for divorce, etc., if it is filed within the county where the child resides. Illinois law provides for the filing a petition for "allocation of parental responsibilities" in the county in which the child is permanently resident or found, but only if he or she is not in the physical custody of one of his or her parents. (601(b)(3)). The concept of physical custody pursuant to case law means more than just a temporary separation or a voluntary placement. The leading case is of course the Supreme Court Peterson case.[2]

[2] See, *In re Custody of Peterson*, 112 Ill.2d 48, 491 N.E.2d 1150 (1986). For older cases not referred to in this outline see: *In re Custody of McCarthy*, 157 Ill.App.3d 377, 510 N.E.2d 555 (2d Dist. 1987); *IRMO Carey*, 188 Ill.App.3d 1040, 136 Ill.Dec. 518, 544 N.E.2d 1293 (2d Dist. 1989); IRMO Nicholas, 170 Ill.App. 3d 171, 524 N.E.2d 728 (3d Dist. 1988); *In re Lutgen*, 177 Ill.App. 3d 954, 532 N.E.2d 976 (2d Dist. 1988); *IRMO Santa Cruz*; 172 Ill.App. 3d 775, 527 N.E.2d 131 (2d Dist. 1988); *In re Person and Estate of Newsome*, 173 Ill.App. 3d 376, 527 N.E.2d 524 (4th Dist. 1988); *IRMO Gustafson*, 181 Ill.App. 3d 472, 130 Ill.Dec. 148, 536 N.E.2d 1359 (4th Dist. 1989); *Hanson v. McGowan*, 197 Ill.App. 3d 708, 144 Ill.Dec. 183, 555 N.E.2d 80 (2d Dist. 1990); *IRMO Lundak*, 248 Ill.App. 3d 683, 188 Ill.Dec. 595, 618 N.E.2d 1165 (5th Dist. 1993); *In re Custody of Butler*, 192 Ill.App. 3d 135, 139 Ill.Dec. 197, 548 N.E.2d 582 (1st Dist., 5th Div. 1989); *In re Person and Estate of Barnhart, a Minor*, 232 Ill.App. 3d 317, 174 Ill.Dec. 26, 597 N.E.2d 1238 (2d Dist. 1992); *IRMO Haslett*, 257 Ill.App. 3d 999, 195 Ill.Dec. 874, 629 N.E.2d 182 (5th Dist. 1994).

Appealing Motion Denying Motion to Dismiss due to Lack of Standing – Request SCR 304(a) Finding: An interesting recent case *In Re D.J.E.*, 319 Ill. App. 3d 489, 253 Ill. Dec. 222, 744 N.E.2d 1286 (2d Dist. 2001), held that when non-parent custody petition per former §601(b)(2) is filed, order denying motion to dismiss for lack of standing is not final and appealable without Supreme Court 304(a) finding.

Incarcerated Parent and Standing: Other case law as to this jurisdictional element provides that it is not possible for incarcerated parent to be the physical custodian of his child. *In Re A.W.J.*, 316 Ill.App.3d 91, 249 Ill.Dec. 522, 736 N.E.2d 716 (2d Dist. 2000).

Voluntary Relinquishment Case Law: A case representative of the voluntary relinquishment line of cases is *IRMO Feig*, 296 Ill.App.3d 405, 230 Ill.Dec. 685, 694 N.E.2d 654 (3d Dist. 1998), where the appellate court held that grandparents had standing to intervene for custody of granddaughter when parents' actions evidenced voluntary relinquishment of physical custody: mother was often absent from the residence where she resided with the grandparents; father admitted he consented to grandparents having custody in mother's absence; and grandparents provided financial support, medical care, and physical care for grandchild for most of child's life. For a recent case taking the somewhat opposite position on relatively close facts, see: *IRMO Rrudsell*, 291 Ill.App.3d 626, 225 Ill.Dec. 736, 684 N.E.2d 421 (4th Dist. 1997), holding that the determination that parent does not have physical custody of child does not turn on possession, but it requires that the parent has voluntarily and indefinitely relinquished custody of the child. Voluntary relinquishment of physical custody should be examined in light of: (1) who was responsible for the care and welfare of the child before the initiation of the custody proceedings; (2) manner in which physical possession of the child was acquired; (3) the nature and duration of the possession.

How Much Visitation is Sufficient to Defeat Non-Parent Custody Petition?: Keep in mind that both parents must voluntarily relinquish custody of a child for a nonparent to have standing to seek custody. See *Franklin V. Devriendt*, 288 Ill.App.3d 651 (1st Dist., 1997). Furthermore, exercising visitation rights is sufficient to defeat third party custody proceeding. *Brumfield v. Yard*, 284 Ill.App.3d 950 (4th Dist. 1996). For a contrary case see *In Re Brownfield*, 283 Ill.App.3d 728 (4th Dist. 1996), holding that upon death of the custodial father, the child is not in the constructive custody of mother when the mother rarely visited the children and, as compared to the court's order, paid only token child support.

A fascinating case re custody jurisdiction which is likely not good law is *IRMO Slayton*, 292 Ill.App.3d 379 (4th Dist. 1997). *Slayton* held that the parents of a child waived their constitutional objection to a presumed father's visitation with the child by failing to raise the objection until closing arguments at a custody hearing. It is dubious that this is good law in light of the Illinois Supreme Court case law re grandparent visitation but what is noteworthy is to keep in mind that this Constitutional objection was waived.

2. **The Uniform Child Custody Jurisdiction and Enforcement Act**: The UCCJEA provides limited immunity provisions:

> (750 ILCS 36/109)
> Sec. 109. **Appearance And Limited Immunity.**
> (a) A party to a child-custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child-custody determination, is not subject to personal jurisdiction in this State for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.
> (b) A person who is subject to personal jurisdiction in this State on a basis other than physical presence is not immune from service of process in this State. A party present in this State who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.
> (c) The immunity granted by subsection (a) does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this Act committed by an individual while present in this State.

See the Gitlin Law Firm's separate outline regarding the UJCCJEA.

3. **The Adoption Act**: Once an adoption is filed, the court is to hold a hearing to determine "whether there is available suitable temporary custodial care for a child sought to be adopted." 750 ILCS 50/13A(b).

"In the event a judgment order for adoption is vacated or a petition for adoption is denied, the Court shall promptly conduct a hearing as to the temporary and permanent custody of the minor child who is the subject of the proceedings, pursuant to Part VI of the Illinois Marriage and Dissolution of Marriage Act. The parties to said proceedings shall be the petitioners to the adoption proceedings, the minor child, any biological parents whose parental rights have not been terminated and other parties

who have been granted leave to intervene in the proceedings." 750 ILCS 50/20. This is the reaction of the Illinois Legislature to the decision of the Illinois Supreme Court that is commonly known as the Baby Richard case.

4. **The Illinois Parentage Act of 2015**: Sec. 802 provides:

(a) *** The judgment **shall** contain or explicitly reserve provisions concerning any duty and amount of **child support** and **may** contain provisions concerning the **custody** and guardianship of the child, **parenting time privileges with the child**, and the furnishing of bond or other security for the payment of the judgment, **which the court shall determine in accordance with the relevant factors set forth in the Illinois Marriage and Dissolution of Marriage Act** and any other applicable law of this State, to guide the court in a finding in the best interests of the child. In determining **custody, joint custody, removal**, [Note: these terms no longer are a part of the IMDMA] parenting time, parenting time interference, support for a non-minor disabled child, educational expenses for a non-minor child, and related post-judgment issues, the court shall apply the relevant standards of the **Illinois Marriage and Dissolution of Marriage Act**. Specifically, in determining the amount of a child support award, the court shall use the guidelines and standards set forth in subsection (a) of Section 505 and in Section 505.2 of the Illinois Marriage and Dissolution of Marriage Act. The court shall order all child support payments, determined in accordance with such guidelines, to commence with the date summons is served. The level of current periodic support payments shall not be reduced because of payments set for the period prior to the date of entry of the support order. There are a host of what I consider issues involving the Illinois Parentage Act of 2016 (Parentage Act) and the power of the court to act based upon the language of the statute. These include issues relating to relocation of the children, etc.

5. **The Illinois Domestic Violence Act**: The IDVA gives the Court power to award the physical care and possession of a minor child in order to protect the minor from abuse, neglect or unwarranted separation from a person who has been the child's primary caretaker or to otherwise protect the well-being of the child. 750 ILCS 60/214(b)(5). Pursuant to (6), the Court has the power to award **temporary legal custody**. Pursuant to (7), the Court has the power to award, restrict or deny visitation. "The Court shall not be limited by the standards set forth in Section 607.1 of the Illinois Marriage and Dissolution of Marriage Act." Keep in mind that the court under the IDVA does not have jurisdiction to award temporary legal custody under an emergency order of protection. And the language regarding "custody", etc., partially remains despite the fact that "custody"

is no longer a creature of the Illinois Marriage and Dissolution of Marriage Act.

B. **Child Support**:

1. **750 ILCS 16 (Non-Support Punishment Act)**: The offense of failure to support is set forth in 750 ILCS 16/15. As to jurisdiction, there is the provision within this Act to provide for support where there has been no prior support order. See 750 ILCS 16/20. It provides that the court is to use the standards of Section 505 and Section 505.2 of the IMDMA.

3. **750 ILCS 22/100, *et seq.* Uniform Interstate Family Support Act**: The Court in this State has subject matter jurisdiction to enforce support orders of other states and to modify them in certain circumstances. The most important and perhaps confusing section of this statues is 750 ILCS 22/205. Only one court at any time can have continuing exclusive jurisdiction over a child support order. Illinois may not modify the support order of another state which has continuing exclusive jurisdiction over a child support order.

4. **750 ILCS 45/14 Parentage Act Provisions as to Support**: The Illinois Parentage Act of 2015 gives the Court power to set child support in parentage cases. The Court is to refer to the Section 505 guidelines.

5. **IDVA**: The Illinois Domestic Violence Act gives the Court the power to set child support. 750 ILCS 60/214(b)(12). The standards of the Illinois Marriage and Dissolution of Marriage Act shall govern.

6. **Juvenile Court Act**: The Juvenile Act gives the Court power to set support. However, the Court is not bound by the standards of IMDMA but the standards of the Children and Family Services Act. 20ILCS 505/9.1. There are rules in Title 89 of the Illinois Administrative Code, Part 352 and Section 352.4.

   The Juvenile Court section is 705 ILCS 405-23(5) for neglected, abused or dependent minors. Identical language relating to minors requiring authoritative intervention is also found in 705 ILCS 405/3-24(5). For addicted minors an identical section is in 405/4-21(5). An identical section for delinquent minors is in 705 ILCS 405/5-23(5).

7. **$100 Per Day Penalties For Failure to Withhold**: See the separate outline regarding $100 per day penalties for failure to withhold income for support.

C. **Maintenance**:

1. **Dissolution of Marriage**: 750 ILCS 5/504.

2. **Legal Separations**: 750 ILCS 5/402(a).

D. **Division of Property**:

1. **750 ICLS 5/503, Pension Code and QILDROs** : One critical piece of the legislation as to the authority of the case in this regard is the authority of the case to enter a QILDRO in a case where a person fails to consent. Because there was a perception that there was a constitutional limitation on the power of a family law court to allocate a person's pension benefits covered under the Illinois Pension Code, there were provisions set forth in Section 503 of the IMDMA which provide now: "For purposes of distribution of property pursuant to this Section, all pension benefits (including pension benefits under the Illinois Pension Code, defined benefit plans, defined contribution plans and accounts, individual retirement accounts, and non-qualified plans) acquired by or participated in by either spouse after the marriage and before a judgment of dissolution of marriage or legal separation or declaration of invalidity of the marriage are presumed to be marital property.

***Menken* Case Re Failure to Execute Consent as Limitation on Court's Power**: A case which brings up the nature of the limitation on the divorce court's power in this regard is *IRMO Menken*, (2nd Dist., 2002). The *Menken* court reviewed the use of what is referred to as the triangular approach in cases of this sort, i.e,. ordering the participant to pay over the amounts received to the former spouse. One problem with this approach besides the enforcement issue is the issue of taxation which greatly complicates matters.

Power of Divorce Court as to Third Party Actions Involving Other Parties Re UCC Claimed Violations: An interesting recent case in this regard is *IRMO Devick*, 315 Ill. App. 3d 908, 248 Ill. Dec. 833, 735 N.E.2d 153, (2d Dist. 2000), holding that subject matter jurisdiction exists for trial court's authority in domestic relations case to order stock to be issued without restriction to one spouse even though the cause of action refers to Uniform Commercial Code violations. A significant quote as to jurisdiction states: "t]he allocation of judicial responsibilities to various divisions of a circuit court does not impose barriers to jurisdiction but rather reflects a concern for administrative convenience." The opinion explains that the trial court may hear any matter that is justiciable in

nature. Although the IMDMA does not contain a provision for third party claims, the appellate court emphasized that the Code of Civil Procedure does. Thus, the trial court's equity power extends to third-party actions (joining the corporation that issued stock as a third party beneficiary). The appellate court held that because the stock interest was acquired during marriage, it was subject to disposition by the domestic relations court.

E. **Injunctive Relief**:

1. 750 ILCS 5/50(a)(2).

2. 735 ILCS 5/11-101 and 11-102.

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