

PATERNITY

	Conception Where?	Is CP a member of the tribe?	Does CP reside on the tribe's reservation?	Is NCP a member of the tribe?	Does NCP reside on the tribe's reservation ?	Court(s) with jurisdiction
1	On	Y	Y	Y	Y	Tribal
2	On	Y	Y	Y	N	Tribal
3	On	Y	Y	N	Y	Concurrent – T
4	On	Y	Y	N	N	Concurrent – S
5	On	Y	N	Y	Y	Tribal
6	On	Y	N	Y	N	Tribal
7	On	Y	N	N	Y	Concurrent – S
8	On	Y	N	N	N	Concurrent – S
9	On	N	Y	Y	Y	Tribal
10	On	N	Y	Y	N	Concurrent?
11	On	N	Y	N	Y	Concurrent – S
12	On	N	Y	N	N	Concurrent – S
13	On	N	N	Y	Y	Tribal
14	On	N	N	Y	N	Concurrent?
15	On	N	N	N	Y	Concurrent – S
16	On	N	N	N	N	State
17	Off	Y	Y	Y	Y	Tribal
18	Off	Y	Y	Y	N	Concurrent – S
19	Off	Y	Y	N	Y	Concurrent – T
20	Off	Y	Y	N	N	State
21	Off	Y	N	Y	Y	Concurrent – T
22	Off	Y	N	Y	N	Concurrent – S
23	Off	Y	N	N	Y	Concurrent – T
24	Off	Y	N	N	N	State
25	Off	N	Y	Y	Y	Concurrent – T
26	Off	N	Y	Y	N	Concurrent – S
27	Off	N	Y	N	Y	State
28	Off	N	Y	N	N	State
29	Off	N	N	Y	Y	State
30	Off	N	N	Y	N	State
31	Off	N	N	N	Y	State
32	Off	N	N	N	N	State

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1. Exclusive tribal jurisdiction.
2. This is the scenario presented in McKenzie County v. V.G., 392 N.W.2d 399 (N.D. 1986) and McKenzie County v. C.G., 633 N.W.2d 157 (N.D. 2001). Despite the alleged father's periodic residence off the reservation, the Supreme Court held in both cases that the location of conception and membership of the parents made this a "reservation affair." Exclusive tribal jurisdiction.
3. Reservation Indians have a right to bring claims against non-Indians in state court, even when those claims arise in Indian country. Three Affiliated Tribes I, 467 U.S. 138 (1984); State v. Zaman, 946 P.2d 459 (Ariz. 1997) (infringement test is not to be used as an offensive tool against Indians). However, since conception was on the reservation and both mother and alleged father reside on the reservation, the tribal court would also have jurisdiction. Concurrent jurisdiction.
4. Same as #3, except the tribe would have to exert long-arm jurisdiction over the nonresident alleged father. Concurrent jurisdiction.
5. This is the scenario presented in Interest of M.L.M., 529 N.W.2d 184 (N.D. 1995). With conception on reservation and both the mother and alleged father being members of the tribe, the exercise of state court jurisdiction would infringe on the tribe's authority over claims between its members for on-reservation activity. Exclusive tribal jurisdiction.
6. The fact the alleged father resides off the reservation makes this a closer question than #5, but the fact remains that tribes have authority over their members for on-reservation activity. Exclusive tribal jurisdiction.
7. Tribal jurisdiction is clear. A non-Indian may not use the infringement test against Indians. Concurrent jurisdiction.
8. Same as #7, except the tribe would have to exert long-arm jurisdiction over the nonresident alleged father. Exclusive state jurisdiction.
9. Tribal jurisdiction is clear. Because the mother is a non-Indian, it is a closer question whether state courts have jurisdiction. However, all relevant conduct occurred on the reservation and the alleged father is entitled to be governed by the tribe's laws. Exclusive tribal jurisdiction.
10. Tribal jurisdiction is clear. State court jurisdiction is possible, notwithstanding the alleged father's membership, because the mother is non-Indian and because the alleged father has chosen to live outside the reservation. Concurrent jurisdiction should be asserted.
11. Tribal jurisdiction is clear. State court would have jurisdiction because both mother and alleged father are non-Indian. Concurrent jurisdiction.
12. State court would have jurisdiction because a non-Indian may not use the infringement test against Indians. The tribe would have to exert long-arm jurisdiction over the nonresident alleged father. Concurrent jurisdiction.
13. All relevant conduct occurred on reservation and alleged father is entitled to be governed by the tribe's laws. Exclusive tribal jurisdiction.
14. As in #10, state court jurisdiction could be asserted because alleged father has chosen to live outside the reservation. The tribe may have jurisdiction because mother conceived the child on the reservation. Concurrent jurisdiction should be asserted.

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15. Tribe could have jurisdiction because both parents conceived child on the reservation. State court has jurisdiction because both parents are non-Indian. Concurrent jurisdiction.
16. Same as #15, except the tribe would likely lack jurisdiction over a nonresident nonmember. Exclusive state jurisdiction.
17. Indians going beyond reservation boundaries have generally been subject to state laws. However, despite conception off the reservation, the exercise of state court jurisdiction in a paternity action would determine a child's eligibility for membership. Exclusive tribal jurisdiction.
18. State courts must be available to Indians. An Indian who lives outside the boundaries of a reservation is subject to state laws. Membership of both parents in the tribe likely gives the tribe jurisdiction despite the location of conception. Concurrent jurisdiction.
19. State courts would have jurisdiction because a non-Indian may not use the infringement test against an Indian. The residence of both parents on the reservation likely gives tribal court jurisdiction as well. Concurrent jurisdiction.
20. This is the scenario presented in State v. B.B., 2013 ND 242, and one of the scenarios in Roe v. Doe, 2002 ND 136. State court has jurisdiction; tribal court lacks jurisdiction because the alleged father is not a member, does not reside on the reservation, and the conduct involved occurred off the reservation. Exclusive state jurisdiction.
21. An Indian may not use the reservation boundary as a shield for off-reservation conduct. In addition, state courts must be available to tribal members. It is likely the mother could invoke tribal jurisdiction as well. Concurrent jurisdiction.
22. Same as #21, only state court jurisdiction is more clear because the alleged father has chosen to live outside the reservation. Concurrent jurisdiction.
23. State courts have jurisdiction because the alleged father is not entitled to invoke the infringement test. It is likely the mother could invoke tribal jurisdiction as well. Concurrent jurisdiction.
24. State courts must be available to Indians. Alleged father has no reservation contacts and may not invoke infringement test against Indians. Exclusive state jurisdiction.
25. Indians may not use reservation boundaries as a shield for off-reservation conduct. It is likely the mother could invoke tribal jurisdiction as well. Concurrent jurisdiction.
26. Same as #25. Concurrent jurisdiction.
27. State court jurisdiction is clear. Tribal court jurisdiction is doubtful because neither party is an Indian. Exclusive state court jurisdiction.
28. Exclusive state jurisdiction.
29. State court jurisdiction is clear. Indians may not use reservation as a shield for off-reservation conduct. Exclusive state jurisdiction.
30. Same as #29. This is one of the scenarios in Roe v. Doe, 2002 ND 136. Exclusive state jurisdiction.
31. Infringement test may not be raised as a defense by a non-Indian. Exclusive state jurisdiction.
32. Exclusive state jurisdiction.

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