

Each item is worth the number of points as indicated (total = 80 pts).

Write on your exam paper. Use only blue or black ink.

Scene: The Town of Collinsport, in the State of Frid, United States of America

Facts

Katarina and Jason were introduced by a mutual friend a week ago. Jason likes Katarina very much, but she is not interested in him (though she doesn't actually tell him so). They make arrangements to meet with a group of friends at a dance party at the Club Phut. Jason asks Katarina to dance and she agrees. Wilbur, a stranger to them both, sees Katarina dancing with Jason. Wilbur immediately becomes infatuated with Katarina. When she notices Wilbur staring at her, she bats her eyes and smiles at him, thinking nothing of it. Jason does not see her do this. Wilbur, emboldened by Katarina's apparent interest, rushes over and cuts in on the dance. Jason is upset and starts shouting at Wilbur. Wilbur turns to Jason with a raised fist, intending to punch him; but he trips on a loose floor board and bumps into Jason. As the two fall to the floor, Katarina disappears into the crowd. On her way out the door, she sees Greg; she introduces herself and they go off together, looking for another party. Meanwhile, Wilbur and Jason are fighting, rolling around on the floor, knocking over tables and chairs, throwing punches, kicking, biting, etc. By the time a Club bouncer pulls them apart, Wilbur and Jason have various cuts, bruises, and other injuries. No one else is injured; but the incident has ruined the evening: The Club has to refund everyone (except Wilbur and Jason) their money for door admission, drinks, etc.; and the place is a mess, with damaged furniture, broken glasses, and spilled drinks everywhere. The Club manager calls the Collinsport Police, who arrest Wilbur and Jason.

Part One: 10 points (5 items, 2 points each)

The State of Frid has a law, Public Safety Rule No. 18-1001, entitled “Public Disturbers Must Pay” (or “PDMP”). This law was enacted by the _____ branch, which has the authority to make new law by means of a formal written pronouncement of a general rule. PDMP is a _____, and part of the Frid Public Safety _____. Governor Bennett originally threatened to veto the law, but agreed to sign it after a few changes were made. This veto power shows how the _____ branch of government can have a share in legislative processes. It is an example of how, despite the Constitutional principle of _____, the boundaries between the functions of the governmental branches are not always clear.

Part Two: 17 points (4 items, points as indicated)

Wilbur and Jason are charged with violating PDMP. The text of PDMP provides in full:

Anyone who creates a riot, a Rolling Stones concert, or other offensive public commotion shall pay a fine of up to \$10,000 into the Frid Treasury. No one who creates such a commotion shall be allowed to attend public events without first demonstrating to a court of competent jurisdiction that he has reformed his wicked ways.

At the initial court hearing, Jason challenges the applicability of PDMP. He decides to rely on

The “literal” rule of statutory interpretation, which is also known as the [2 points] _____ approach. This approach can be described generally as follows: [5 points]

Jason points to the word “creates” in the text of PDMP, and argues that he did not “create” the incident at the Club Phut, because Wilbur started it by cutting in on his dance with Katarina.

Wilbur argues that he did not “create” the incident either, because it was Katarina who lured him across the room to begin with. Besides, Wilbur argues, it cannot be that PDMP was meant to apply only to those who fight in public; the drafters must have intended that the word “create” would also apply to those who goad others into fighting. This is an example of the “golden rule” of statutory interpretation, which can be described generally as follows: *[5 points]*

Judge Barnabas decides that both Wilbur and Jason will stand trial for violating PDMP, but also issues a bench warrant for Katarina’s arrest, saying that it appears she may have “created” the incident. Judge Barnabas’ statement is an example of how a court may use its power to _____ an enacted rule. Specifically, Judge Barnabas reasons that based on his own research, the “true purpose” of PDMP may well be to punish loose women who lure men into making fools of themselves in

public. He explains that he is using the “purposive” approach to statutory interpretation, which can be described generally as follows: *[5 points]*

Part Three: 33 points (9 items, points as indicated)

Katarina is arrested and appears in court. Wilbur and Jason attend the hearing. Burke, the Club Phut manager, also attends the hearing.

First, Katarina argues that since the title of PDMP refers to “Disturbers,” it cannot apply to her, since she did not “disturb” anyone; all she did was dance and bat her eyes and smile. Wilbur and Jason both object; each insists that he was indeed “disturbed” by Katarina’s conduct. Judge Barnabas ignores Wilbur and Jason, but rejects Katarina’s argument anyway, because: *[2 points]*

_____ are not controlling.

Next, Katarina argues that even assuming she “created” the fight between Wilbur and Jason, the fight is not subject to PDMP, because the rule refers to “a riot, a Rolling Stones concert, or other offensive public commotion.” She argues that a riot or a Rolling Stones concert necessarily involves obnoxious noise as its main element, whereas a fight can be rather quiet. She relies on the maxim *ejusdem generis*, which translates into *[2 points]*

_____ ,

and which can be explained generally as follows: *[5 points]*

In opposition, Burke argues that the term “offensive public commotion” is ambiguous, and so the court should rely on the maxim *noscitur a sociis* to construe it. This maxim, which translates into: [2 points]

_____ ,
can be explained generally as follows: [5 points]

Specifically, in this situation, Burke urges the court to apply *noscitur a sociis* to the term “offensive public commotion” as follows: [5 points]

Finally, pointing to the PDMP phrase “he has reformed his wicked ways,” Katarina argues that since “she” and “her” are not used, the maxim *expressio unius est exclusio alterius* should control. This maxim, which translates into: [2 points]

can be explained generally as follows: *[5 points]*

At this point, Burke states that, based on PDMP, he wants the court to order Katarina to pay for the damage to the Club, since neither Wilbur nor Jason has any money. He argues that his claim is authorized by PDMP, even though the rule refers only to payment of a “fine . . . into the Frid Treasury,” because the rule is “remedial.” This means generally: *[5 points]*

Part Four: 10 points (5 items, 2 points each)

Burke now presents the Club Phut claims in more detail. Noting that the State of Frid adheres to the old common law forms of action, he first argues that since Katarina, Wilbur, and Jason have all refused to pay for any repairs or replacements of the Club’s damaged furniture and broken glasses, they should be subject to the following form of action:

Next, Burke argues that since Wilbur took one of the few unbroken glasses with him when he left the Club, and has refused to return it despite Burke’s demands, he should be subject to one or more of the following forms of action:

Next, Burke argues that since Katarina, Wilbur, and Jason are responsible for all manner of indirect and consequential injuries to the premises of Club Phut itself, they should be subject to the following form of action:

Finally, Burke argues that the moment Wilbur and Jason started fighting, they lost whatever right or permission they might have had to remain on the premises, and so should be subject to the following form of action:

Wilbur, by now losing his grip on rationality, takes up Burke’s general line of argument and claims that since Katarina implicitly promised him a dance when she batted her eyes and smiled at him, she should have to pay him the value of the dance that he did not get. This claim might fall under the following form of action:

Part Four: 10 points (5 items, 2 points each)

Wilbur wants to sue Katarina because he feels the entire chain of events is all her fault. He goes to the office of Leona the Lawyer and says he wants to file a civil complaint. Leona explains that Wilbur should start out in the trial court of general jurisdiction. Since Frid uses the same naming conventions as the State of California, this would be the Frid _____ Court. Wilbur asks why this level of court is not called the _____ Court, as it is in the State of New York, or the _____ Court, as it is in federal system. Leona says she does not know, but it does not matter. She does explain that if Wilbur loses at trial and also on appeal, and then wants to take his case to the highest court in the State of Frid, he will have to file a petition for _____. The high court is not obligated to consider the case, because it has discretionary control over its own _____. Wilbur decides it is all too much trouble, and leaves Leona’s office in a huff.