WISCONSIN STATE INDIAN LAW CASE LAW: A JURISDICTIONAL SURVEY OF CRIMINAL AND CIVIL CASES UNDER PUBLIC LAW 280

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Oneida Tribe of Indians v. Wisconsin, 518 F. Supp. 712 (D. Wis., 1981)

- State bingo laws are civil/ regulatory, not criminal/prohibitory
- "Statutes passed for the benefit of dependent tribes ... are to be liberally construed, doubtful expressions being resolved in favor of the Indians" *Id* at 720 (quoting Bryan v. Itasca County, 426 U.S. at 392, 96 S. Ct. at 2112)
- Conclusion consistent with federal Indian policy encouraging tribal self-government

State v. Webster, 114 Wis. 2d 418 (Wis., 1983)

- No state traffic jurisdiction on Menominee Reservation
- Tribe has traffic regulations
- State jurisdiction would interfere with tribal self-government
- Overturns **Tucker.** Highway easement does not imply jurisdiction to regulate

County of Vilas v. Chapman, 122 Wis. 2d 211 (Wis., 1985) [J. Mohr, reversed on appeal, but upheld by Wis.S.Ct.].

- State has jurisdiction over non-criminal traffic ordinances on Lac du Flambeau Reservation because the Tribe has no laws in this area
- P.L. 280's silence on civil/regulatory laws is not a federal preemption of state jurisdiction
- If the Tribe enacts such laws and uses them, the balance tips in favor of tribal jurisdiction
- There are two jurisdictional barriers states must overcome:
  (1) Federal preemption
  (2) Infringement upon the right of the Tribe to establish and maintain tribal self government

Jacobs v. Jacobs, 138 Wis. 2d 19 (Wis. Ct. App., 1987) [Affirming J. Grover]

- Parties' home was located on Stockbridge-Munsee tribal land
- Divorce orders wife to pay one-half of the value of the house to husband
- Trial court did not change title to land
- Enforcement by contempt procedures, not liens
- Tribal court did not alienate, encumber or tax Indian property
- Application of state domestic relations laws was not preempted by federal law (classic P.L. 280 civil jurisdiction)
- The application of state domestic relations law did not interfere with tribal self-government because the tribe had no domestic relations code or court.

State v. Big John, 432 N.W.2d 576 (Wis., 1988) [reversing J. Kinney and Wis. Ct. of Appeals]

- Lac du Flambeau members fishing off Reservation in ceded territory with boats registered under tribal registration, but without state registration
- Trial court holds that requiring state registration infringed on Tribe's right of tribal self-government and treaty rights
- Appellate court affirms
- Wisconsin Supreme Court reverses, holding that:
  (a) There is a national uniform boat registration system administered through the Coast Guard for which there is no applicable tribal exemption
  (b) Because the question concerns **off-Reservation** activity, the tribal right of self-governance is not infringed
- The state interests at stake were sufficient to justify the assertion of state authority

State v. St. Germaine, 442 N.W.2d 53 (Wis. Ct. App., 1989)

- Driving After Revocation and Operating While Intoxicated (subsequent offenses) are criminal under Wisconsin law (jail sentence for offense)
- But must go through the Cabazon analysis of prohibitory/regulatory (does this act violate the state's public policy?). Trial court and appellate court answered "Yes."
- Court rejects argument that offense is merely regulatory and not prohibitory, even if criminal penalties attach
- Must also determine criminality by examining whether the conduct at issue violates the state's public policy. Here, driving after revocation was defined as criminal not only by Wisconsin statutes but also by the state policy and purpose behind the prohibition.
- Tribe may continue to enforce its traffic laws

St. Germaine v. Chapman, 505 N.W.2d 450 (Wis. Ct. App., 1993)

- State issued domestic abuse injunction (both Petitioner and Respondent were tribal members, living on Reservation)
- Tribe had domestic abuse ordinance (similar to State's) and a court to enforce ordinance
- Court must conduct preemption inquiry:
  (1) Is there a federal preemption of state jurisdiction?
  (2) Would state jurisdiction infringe on rights of tribe to establish and maintain tribal government?
- Domestic relations are classic P.L. 280 jurisdiction. Therefore, there is no federal preemption
- BUT here fact pattern is ideal for P.L. 280 jurisdiction: the tribal court had a virtually identical domestic abuse ordinance in place at the time of the husband's misconduct; the conduct occurred on the Indian reservation; both parties were Indian, and there was a tribal court to enforce it. Therefore, the tribe has an interest and the balance tips in favor of tribal jurisdiction.
- State jurisdiction over on-reservation activities of tribes is preempted if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the

state interests at stake are sufficient to justify the assertion of state authority." State v. Big John, 146 Wis. 2d 741, 748, 432 N.W.2d 576, 579-80 (1988). "The inquiry is to proceed in light of traditional notions of Indian sovereignty and the congressional goal of encouraging tribal self-sufficiency and economic development." Id. " St. Germaine at 871.

State ex rel. Lykins v. Steinhorst, 197 Wis. 2d 875 (Wis. Ct. App. 1995)

- A law is prohibitory in nature if its intent is to prohibit acts the state believes may be detrimental to the health and safety of its citizens. The state may enforce prohibitory laws on Indian lands.
- If the law is one that is essentially regulatory—one intended to regulate acts that the state permits in certain restricted circumstances—it is a "civil regulatory" law and may not be enforce on Indian lands.
- Held that Wisconsin's extradition laws are criminal prohibitory and applied to an Apache tribal member arrested in Ho Chunk Nation on trust land.

State v. Burgess (In re Burgess), 665 N.W.2d 124 (Wis., 2003)

- Defendant argued that because he is a tribal member and committed the underlying sexual offense on a Reservation, the trial court did not have jurisdiction to conduct a sexual offense hearing
- The Wisconsin Supreme Court held that the trial court did have jurisdiction since the sexual offense was prohibited, not merely regulated. Therefore the State of Wisconsin had jurisdiction pursuant to P.L. 280

Teague v. Bad River Band of the Lake Superior Tribe of Chippewa Indians, 665 N.W.2d 899 (Wis., 2003)

- Teague brought an action in state court against the Bad River Band alleging breach of employment contracts. Soon after, while the case was pending, Bad River Band filed action in the tribal court to have the employment contracts declared null and void
- The tribal court reached judgment first, ruling against Teague and declaring the contract invalid
- Bad River petitioned the state to give full faith and credit the tribal judgment. The state refused
- Subsequently, the state court found for Teague, awarding him $400,000
- Bad River appealed the state's judgment; the appellate court reversed
- Teague appealed to the WI Supreme Court
- The Wisconsin Supreme Court ordered a judicial conference between the state court judge and the tribal court judge ("comity conference")
- No agreement was reached and the case returned to the Wisconsin Supreme Court
- The court held:
  (1) Jurisdiction must be allocated according to principles of "comity;" namely, sovereigns will afford each other mutual respect when resolving jurisdictional conflicts
  (2) After developing a list of thirteen factors ("Teague Protocol") and performing a balancing test, the Court concluded that Bad River had a stronger interest in exercising jurisdiction over the dispute

- NOTE: The “Teague Protocol” is included in Chapter VIII, Section G