

PUBLIC LAW 280 HYPOTHETICAL FOR ROADS AND HIGHWAYS

Background Facts:

The Wayhut Reservation is somewhere in Washington State.

All the land within the Wayhut Reservation is held in trust by the United States for the Wayhut Tribe or its members.

State Highway 280 runs through the Wayhut Reservation over a lawfully-established right-of-way.

The Wayhut Tribe has a civil and criminal court system and a traffic code.¹

The Incident:

On October 10, 2011, Wayhut Tribal members Tumwater and Lacey are in Lacey's car on State Highway 280 within the Wayhut Reservation.

Tumwater is driving, but he's only 14 years old and does not have a driver's license.²

Lacey is Tumwater's 21-year-old cousin. She has a driver's license but is letting Tumwater drive.³

Lacey has some methamphetamine in her possession.

Lacey's car has studded tires on it.⁴

Olympia, a non-Indian, has been drinking bourbon all day and is driving recklessly on State Highway 280 within the Wayhut Reservation. Olympia's car collides with the car driven by Tumwater. Tumwater, Lacey, and Olympia are seriously injured.

The Questions:

What court has jurisdiction over criminal prosecutions that might arise from this incident?

Who has authority to enforce civil infractions related to this incident?

What court has jurisdiction over private personal injury suits that might arise from this incident?

¹ A tribal member's tribal court convictions for traffic offenses count toward establishing the member as a habitual traffic offender under RCW 46.65.020. *Wheeler v. Dep't of Licensing*, 86 Wn. App. 83, 936 P.2d 17 (1997).

² Persons under the age of 16 are not eligible for Washington driver's licenses. RCW 46.20.031(1).

³ Under RCW 46.16A.520, it is a misdemeanor "for any person in whose name a vehicle is registered knowingly to permit another person to drive the vehicle when the other person is not authorized to do so under the laws of this state."

⁴ Under RCW 46.37.420(2), studded tires are not allowed on the highways until November 1. Under RCW 46.37.010(1)(c), it is an infraction for a vehicle owner to cause or knowingly permit a car to be driven on the highway with equipment that does not conform to RCW Chapter 46.37.

PUBLIC LAW 280 HYPOTHETICAL FOR ROADS AND HIGHWAYS
SCENARIO 1 – STATE HAS NO PUBLIC LAW 280 JURISDICTION WITHIN THE WAYHUT RESERVATION

| CRIME | JURISDICTION TO PROSECUTE CRIMES | | |
|--|---|--|---|
| | STATE COURT | TRIBAL COURT | FEDERAL COURT |
| Lacey (Indian) letting a child drive her car | NO <i>In re Denetclaw</i> , 320 P.2d 697 (Ariz. 1958) | YES (if tribal law prohibits the conduct) | YES 18 U.S.C. §§ 13, 1152 |
| Lacey (Indian) possessing meth | NO <i>White v. Schneekloth</i> , 56 Wn.2d 173 (1960) | YES (if tribal law prohibits the conduct) | YES 21 U.S.C. § 844 |
| Olympia (non-Indian) vehicular assault | NO <i>Williams v. United States</i> , 327 U.S. 711 (1946) | NO <i>Oliphant v. Suquamish Tribe</i> , 435 U.S. 191 (1978) | YES 18 U.S.C. §§ 13, 1152 |
| Olympia (non-Indian) DUI | YES RCW 46.61.502 <i>State v. Warner</i> , 379 P.2d 66 (N.M. 1963) | NO <i>Oliphant v. Suquamish Tribe</i> , 435 U.S. 191 (1978) | YES 18 U.S.C. §§ 13, 1152 <i>U.S. v. Billadeau</i> , 275 F.3d 692 (8 th Cir. 2001) |
| AUTHORITY TO ENFORCE NON-CRIMINAL REGULATIONS | | | |
| VIOLATION | STATE | TRIBAL COURT | FEDERAL COURT |
| Lacey (Indian) having studded tires on her car before November 1 | NO <i>Okla. Tax Comm'n v. Sac & Fox Nation</i> , 508 U.S. 114 (1993) | YES (if tribe has a studded tire law) | NO See <i>U.S. v. Carlson</i> , 900 F.2d 1346 (9 th Cir. 1990) |
| JURISDICTION OVER PRIVATE CIVIL LAWSUITS | | | |
| CAUSE OF ACTION | STATE COURT | TRIBAL COURT | FEDERAL COURT |
| Lacey & Tumwater (Indians) vs. Olympia (non-Indian) | YES <i>Three Affiliated Tribes v. Wold Eng'g</i> , 476 U.S. 877 (1986) | NO <i>Strate v. A-1 Contractors</i> , 520 U.S. 438 (1997) | NO |
| Olympia (non-Indian) vs. Lacey (Indian) | NO <i>Winer v. Penny Enters., Inc.</i> , 674 N.W.2d 9 (N.D. 2004) | YES <i>Smith v. Salish Kootenai Coll.</i> , 434 F.3d 1127 (9 th Cir. 2006) | NO |

PUBLIC LAW 280 HYPOTHETICAL FOR ROADS AND HIGHWAYS
SCENARIO 2 – STATE HAS PARTIAL PL 280 JURISDICTION WITHIN WAYHUT RESERVATION UNDER RCW 37.12.010

| JURISDICTION TO PROSECUTE CRIMES | | | |
|---|---|--|--|
| CRIME | STATE COURT | TRIBAL COURT | FEDERAL COURT |
| Lacey (Indian) letting a child drive her car | YES RCW 37.12.010(8), 46.16A.520 <i>State v. Yallup</i> , 160 Wn. App. 500 (2011) | YES (if tribal law prohibits the conduct) | YES 18 U.S.C. §§ 13, 1152 76 Fed. Reg. 29675 (2011) |
| Lacey (Indian) possessing meth | NO Not related to motor vehicles <i>State v. Pink</i> , 144 Wn. App. 945 (2008) | YES (if tribal law prohibits the conduct) | YES 21 U.S.C. § 844 |
| Olympia (non-Indian) vehicular assault | YES RCW 37.12.010(8) RCW 46.61.522 | NO <i>Oliphant v. Suquamish Tribe</i> , 435 U.S. 191 (1978) | YES 18 U.S.C. §§ 13, 1152 76 Fed. Reg. 29675 (2011) |
| Olympia (non-Indian) DUI | YES RCW 46.61.502 <i>See State v. Schmuck</i> , 121 Wn.2d 373 (1993) | NO <i>Oliphant v. Suquamish Tribe</i> , 435 U.S. 191 (1978) | YES 18 U.S.C. §§ 13, 1152 76 Fed. Reg. 29675 (2011) |
| AUTHORITY TO ENFORCE NON-CRIMINAL REGULATIONS | | | |
| VIOLATION | STATE | TRIBAL COURT | FEDERAL COURT |
| Lacey (Indian) having studded tires on her car before Nov. 1 (RCW 46.37.010 infraction) | NO <i>Cobville Tribes v. Washington</i> , 938 F.2d 146 (9 th Cir. 1991) | YES (if tribe has a studded tire law) | NO <i>See U.S. v. Carlson</i> , 900 F.2d 1346 (9 th Cir. 1990) |
| JURISDICTION OVER PRIVATE CIVIL LAWSUITS | | | |
| CAUSE OF ACTION | STATE COURT | TRIBAL COURT | FEDERAL COURT |
| Lacey & Tumwater (Indians) vs. Olympia (non-Indian) | YES <i>Three Affiliated Tribes v. Wold Eng'g.</i> 476 U.S. 877 (1986) | NO <i>Strate v. A-1 Contractors</i> , 520 U.S. 438 (1997) | NO <i>K2 Am. v. Roland Oil & Gas</i> , F.3d (9 th Cir. 2011) |
| Olympia (non-Indian) vs. Lacey (Indian) | YES <i>McCrea v. Denison</i> , 76 Wn. App. 395 (1994) | YES <i>Smith v. Salish Kootenai Coll.</i> , 434 F.3d 1127 (9 th Cir. 2006) | NO <i>K2 Am. v. Roland Oil & Gas</i> , F.3d (9 th Cir. 2011) |

PUBLIC LAW 280 HYPOTHETICAL FOR ROADS AND HIGHWAYS
SCENARIO 3 – STATE HAS FULL PL 280 JURISDICTION WITHIN THE WAYHUT RESERVATION BY TRIBAL CONSENT

| CRIME | JURISDICTION TO PROSECUTE CRIMES | | | FEDERAL COURT |
|---|--|--|--|--|
| | STATE COURT | TRIBAL COURT | FEDERAL COURT | |
| Lacey (Indian) letting a child drive her car | YES RCW 46.16A.520 | YES (if tribal law prohibits the conduct) | YES 18 U.S.C. §§ 13, 1152 76 Fed. Reg. 29675 (2011) | YES 18 U.S.C. §§ 13, 1152 76 Fed. Reg. 29675 (2011) |
| Lacey (Indian) possessing meth | YES RCW 69.50.4013 | YES (if tribal law prohibits the conduct) | YES 21 U.S.C. § 844 | YES 21 U.S.C. § 844 |
| Olympia (non-Indian) vehicular assault | YES RCW 46.61.522 | NO <i>Oliphant v. Suquamish Tribe</i> , 435 U.S. 191 (1978) | YES 18 U.S.C. §§ 13, 1152 76 Fed. Reg. 29675 (2011) | YES 18 U.S.C. §§ 13, 1152 76 Fed. Reg. 29675 (2011) |
| Olympia (non-Indian) DUI | YES RCW 46.61.502 | NO <i>Oliphant v. Suquamish Tribe</i> , 435 U.S. 191 (1978) | YES 18 U.S.C. §§ 13, 1152 76 Fed. Reg. 29675 (2011) | YES 18 U.S.C. §§ 13, 1152 76 Fed. Reg. 29675 (2011) |
| AUTHORITY TO ENFORCE NON-CRIMINAL REGULATIONS | | | | |
| VIOLATION | STATE | TRIBAL COURT | FEDERAL COURT | FEDERAL COURT |
| Lacey (Indian) having studded tires on her car before Nov. 1 (RCW 46.37.010 infraction) | NO <i>Colville Tribes v. Washington</i> , 938 F.2d 146 (9 th Cir. 1991) | YES (if tribe has a studded tire law) | NO <i>See U.S. v. Carlson</i> , 900 F.2d 1346 (9 th Cir. 1990) | NO <i>See U.S. v. Carlson</i> , 900 F.2d 1346 (9 th Cir. 1990) |
| JURISDICTION OVER PRIVATE CIVIL LAWSUITS | | | | |
| CAUSE OF ACTION | STATE COURT | TRIBAL COURT | FEDERAL COURT | FEDERAL COURT |
| Lacey & Tumwater (Indians) vs. Olympia (non-Indian) | YES <i>Three Affiliated Tribes v. Wold Eng'g</i> , 476 U.S. 877 (1986) | NO <i>Strate v. A-1 Contractors</i> , 520 U.S. 438 (1997) | NO <i>K2 Am. v. Roland Oil & Gas</i> , F.3d (9 th Cir. 2011) | NO <i>K2 Am. v. Roland Oil & Gas</i> , F.3d (9 th Cir. 2011) |
| Olympia (non-Indian) vs. Lacey (Indian) | YES <i>McCrea v. Denison</i> , 76 Wn. App. 395 (1994) | YES <i>Smith v. Salish Kootenai Coll.</i> , 434 F.3d 1127 (9 th Cir. 2006) | NO <i>K2 Am. v. Roland Oil & Gas</i> , F.3d (9 th Cir. 2011) | NO <i>K2 Am. v. Roland Oil & Gas</i> , F.3d (9 th Cir. 2011) |