MID-TERM MULTIPLE CHOICE ANSWER KEY
April 24, 2015

1. The textual canon *ejusdem generis* is best described as:

    a. A tool to clarify the meaning of a broad catch-all term at the end of a list of more specific terms.

    b. Latin for "a thing is known by its companions."

    c. A maxim that draws on the common or shared aspects of other words listed in proximity with an unclear statutory term to help clarify that term's meaning.

    d. Latin for "of the same kind."

    e. A and D.

    f. B and C.

The correct answer is E. Remember that *ejusdem generis* applies when a general term (we called them "bucket terms" in class) occurs at the end of a list of specific items. For example, a court would likely apply *ejusdem* to determine whether a statute that included "apples, pears, bananas, grapes, or any type of fruit" would also cover tomatoes as within "any type of fruit". As a result, the correct answer is E because A correctly defines the concept and D spells out the literal Latin translation of the phrase.

Answers B, C and F apply more accurately to the concept of *noscitur a sociis,* which is a more general concept that applies to lists of more than two adjacent terms.

2. Which of the following rules are specific iterations of the general maxim *expressio unis est exclusion alterius*?

    a. When Congress specifies the particular method of compliance with a statutory command, it excludes other possible ways to comply.

    b. When Congress does not specify a mode of preemption for a statute, the courts can imply areas of preemption based on the substantive provisions of the statute.

    c. If Congress expressly requires proof of knowing conduct for one portion of a criminal offense, the court will extend that requirement to other portions of the same criminal offense because Congress expressly required it in the prior portion.

    d. A and C.

    e. All of the above.

The correct answer is A, which precisely defines the concept. *Exclusio* would expressly reject answer B's attempt to imply Congressional preemption that Congress did not expressly state, and it would also flatly bar answer C's extension of a knowledge requirement provided in one portion of the statute into another portion where Congress failed to mention knowledge. As a result, answers D and E (which incorporate incorrect responses from B or C) are also wrong.

3. After a string of particularly heinous and high-profile elder abuse incidents, Congress passes a law that bars any individual or corporation from obtaining a federal contract, license, or certification supported by federal funds (including Medicare) if they have any prior criminal convictions under federal or state law for mistreatment or abuse of elders in their care. Your client, a nursing home that entered into a plea agreement 10 years ago for an alleged abuse incident, finds itself facing shutdown immediately after the statute passes. What interpretative canon(s) would best apply to the statute to benefit your client?

    a. The presumption against preemption.

    b. The presumption against retroactivity.

    c. The rule of lenity.

    d. The federalism clear statement rule.

    e. A and D.

    f. All of the above.

The correct answer is B. The new law would expressly impose additional civil liability and penalties for entirely past actions, which would run squarely against the presumption against retroactive application (on the likely assumption that Congress did not expressly authorize retroactive application here). Answer A is incorrect because the question does not mention or identify any conflicting or similar state laws that might raise preemption concerns, and answer C is wrong because the rule of lenity only applies to criminal statutes (this law only bars violators from obtaining federal contracts or funding). The federalism clear statement rule listed in answer D would not apply because the federal statute does not compel or force the state to take any action that conflicts with state sovereign functions (the Congressional statute only bars violators from federal contracts or funding, not state funds or contracts).

4. A state statute, long forgotten and unused for over a century, states that "[i]t shall be lawful for the owner of any slave to manumit such slave by last will and testament, or by any such instrument in writing under his hand. . ." The statute was never repealed, and it simply defines a "slave" as "a person owned by another person."

When the owner of a pet chimpanzee sought to emancipate his animal through a formal personal written proclamation of manumission, the state court refused to enforce the instrument. Which doctrine of statutory construction best supports the judge's ruling?

a. The term "person" is a common law term with dynamic meanings, and recent advances in science and law have demonstrated that chimpanzees have mental faculties and experiences that can equal humans with brain defects whom the law nonetheless treats as "persons" with a corresponding fundamental right to freedom.

b. Construing the term "person" to include primates would lead to a facially obvious absurd result.

c. While the plain language of the statute might support manumission of primates, the common law meaning of "person" and current federal and state laws and policies have not yet evolved a clear consensus that such animals should enjoy rights as a legally cognizable person.

d. While the statute's language is arguably unclear, the original state legislature would not have authorized the manumission of primates – a fundamental and sweeping change in law – through such a simple ambiguity.

e. C and D.

f. None of the above.

The correct answer is E. Answer A, which strongly invokes *Bob Jones University* and sounds like a strong legal argument, unfortunately supports the other side (the question asks you for the doctrine of statutory construction that best supports the judge's ruling). Answer B is conclusory and offers little argument other than nakedly asserting that the result is "absurd", which isn't very persuasive. Answers C and D offer more nuanced and persuasive arguments to support the trial court's ruling, so answer E best captures both of those responses.

5. The Dictionary Act of 1871:

a. was struck down by the U.S. Supreme Court in 1938 as an unconstitutional incursion by Congress into the exercise of judicial power by Article III federal courts.

b. offers general definitions of terms commonly used by Congress in federal statutes, such as "oath", "vessel", "company" and "marriage."

c. is a Texas statute designed to guide interpretation by Texas courts in both civil and criminal cases.

d. expressly rejects the use of the rule of lenity in criminal cases.

e. none of the above.

The correct answer is B. The federal Dictionary Act offers definitions of general terms, and it does include the specific terms "oath," "vessel", "company" and "marriage." As we mentioned in class, it also attempts to define "person" to include unborn viable fetuses, although that controversial statutory construction remains largely ignored by the federal courts. Answer A is wrong because the U.S. Supreme Court has never struck down the Dictionary Act, and answer C is incorrect because the federal Dictionary Act is not a Texas statute. Answer D is erroneous because the federal Dictionary Act does not reject the rule of lenity in criminal cases (by contrast, the Texas Code Construction Act does).