



**The University of New Mexico**

---

School of Law Library  
MSC11 6080  
1 University of New Mexico  
Albuquerque, NM 87131-0001  
Telephone (505) 277-0939  
FAX (505) 277-0068

This document was scanned pursuant to the express permission of its author and rights holder.

The purpose of scanning this document was to make it available to University of New Mexico law students to assist them in their preparation and study for Law School exams.

This document is the property of the University of New Mexico School of Law. Downloading and printing is restricted to UNM Law School students. Printing and file sharing outside of the UNM Law School is strictly prohibited.

**NOTICE: WARNING CONCERNING COPYRIGHT RESTRICTIONS**

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is no to be "used for any purpose other that private study, scholarship, or research." If the user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

Exam/Paper No. \_\_\_\_\_

## 501 INTRODUCTION TO CONSTITUTIONAL LAW

Semester I, 2003-2004

Final Examination/Paper  
UNM School of Law  
Three Credits

Professors Browde & Ellis  
December 17, 18, or 19 2003  
8:00 a.m. to 4:00 p.m.

### INSTRUCTIONS

This is a 1-day take-home examination/paper. You have no more than 8 hours to complete and return your answer.

The examination consists of two questions, both of which involve multiple lawsuits. Grading will be on the basis of the percentages allocated among the two questions thusly: Question 1 (60%); Question 2 (40%).

Please pick up your packet from Janet Cox's office on any one of the three days when the exam is offered (Dec. 17, 18, or 19) any time after 8:00 a.m., but before 8:45 a.m.

It shall be a violation of the Honor Code to consult with any other person about the subject of this course anytime after you have picked up your packet.

In preparing your answer you may consult the textbook, supplement, handouts, hornbooks, your notes, or any other materials you might find helpful. You may use a word processor, and are encouraged to do so, because typed/printed final products will be much appreciated.

Your answer may not exceed 3,600 words (approx. 14 typed pages). It may, of course, be shorter than that, and we are certain that an excellent exam can be written in fewer pages. You must count the words in your answer and write the total on the first page of your answer; you may do so by counting the words on a few representative pages, and multiplying the per/page average by the number of pages. (WordPerfect for Windows will do a count from "File, Document Info"; and MS Word does it from "Tools, Word Count.")

Be sure to put your exam number, the course number and name, and the instructor's name on each page of your answer. Also, please number each page of your answer.

Return your answer to Janet Cox's Office by 4:00 p.m. on the same day you pick up the packet.

[EXAMINATION BEGINS ON PAGE 2]

**QUESTION 1**

(60 %)

The American Mendacious Weasel was once on the verge of extinction. But the climate of the 21st Century brought about a resurgence of this remarkable critter in some areas, and this has led to a variety of legal controversies.

The weasel has thrived, in particular, in the northern plains States. In East Dakota, herds of wild weasels have overrun the agricultural areas, voraciously devouring that State's profitable crop of commercial ragweed. Responding to this agricultural devastation of a crop that accounts for 36% of the State's economy, the Legislature established a trapping season for the weasels, providing a bounty of \$100 for each weasel pelt presented by a trapper.

As this legislation was under consideration, local East Dakota trappers, 40% of whom are employed in the distressed ragweed industry, protested that out-of-state trappers could descend on the State, as their lobbyist expressed it, "like a herd of weasels," and collect a substantial portion of the bounty money. As a result, the legislation provided that out-of-state trappers could only obtain the trapping licenses after the conclusion of a period in which only East Dakotans could apply. In addition, while licenses for local trappers could be obtained without cost, out-of-state applicants would have to pay a license fee of \$10,000. (There was testimony before the Legislature from academic weasel experts that a proficient trapper would be likely to be able to bag, at most, 200 weasels.) The fees from out-of-state trappers were earmarked for subsidies to ragweed farmers.

East Dakota is a State very much under the thrall of the privatizing spirit of the times and has given the exclusive franchise for issuing trapping licenses, collecting pelts, and distributing the proceeds of the license fees (minus a flat-fee 25% "administrative fee") to the East Dakota Ragweed Association (EDRA). EDRA is a profit-making corporation, chartered by State statute. Its Board of Directors consists of the Governor, Lieutenant Governor, Attorney General, and State Agriculture Commissioner plus three "worthy ragweed farmers" who cannot be State officials or employees but are to be selected by the Speaker of the State Legislature (which is unicameral). The Directors are entitled to compensation of \$1,000 for each Board meeting they attend, and that compensation is drawn from a fund amassed, not from the license fees, but from a separate account drawn from the proceeds of the sale of T-shirts, which have proven enormously popular with ragweed farmers, proclaiming "Weasel Hater and Proud Of It!"

By contrast, in the State of Wyotana (whose meteorological and political climate differs dramatically from its neighbor), abounds with voters who are weasel lovers. Some of these voters are animal activists who find the weasels to be "almost cute." Others have a commercial interest. There is a thriving domesticated weasel industry, with the animals being shorn (with very tiny shears) of their fur, which is then used in the manufacture of a particularly popular style of felt baseball cap, invariably worn backwards. The combination of these two interests led the Legislature to designate the weasel as the official State Varmint, and to prohibit any hunting or

trapping of the animal. Wyotana has also designated the weasel to represent the State on the obverse side of their official State quarter, which will be produced by the U.S. Mint next year.

But all is not well in Wyotana, where there has been an outbreak of the dreaded ankle-and-chin disease among the commercial herds of weasels in the State. The ailment, in addition to making the animals morose and introspective, also turns their fur to a hideous shade of chartreuse, rendering the fur commercially worthless. (The disease can also spread to humans, but the only effect on humans is that it reverses the effect of Botox treatment, requiring thousands of dollars of new treatment to restore the sufferer's youthful appearance.)

In response to this epidemic, Wyotana's Legislature enacted a quarantine, requiring all vehicles entering the State to be inspected to ensure that no infected weasels are on board. (The clever animals often hide themselves in the wheelwells of vehicles in order to travel to more compatible climates.) If any weasel, whatever its state of health, is discovered, the vehicle is impounded in order to subject it to an elaborate disinfecting process. Only when this process, which usually takes 72 hours, is completed may the owner of the vehicle continue on his or her planned journey. (All weasels found in the inspection process are seized by the State. Healthy weasels are released into a wildlife refuge, which is near the East Dakota border. Any infected weasel is placed in quarantine, with a veterinary form of Zoloft added to its Purina Weasel Chow, and allowed to live out its days in as much comfort as the State can provide.)

Alice, an avid trapper who lives in Wyotana, finds this whole situation tremendously frustrating. While trapping is a recreational activity for her, she also sells the pelts she collects, and those sales supplement her meager income as a corporate drone, constituting approximately 10% of her income. She has sued the State of Wyotana, claiming it has deprived her of the opportunity to trap weasels, which her complaint describes as a "God-given right and a privilege of citizenship." She has also sued the State of East Dakota and EDRA, complaining that it is unconstitutional to deny her the right to acquire a license on the same terms as local residents.

Dilbert is a trucker from East Dakota, whose 75-foot double-length rig was stopped at the Wyotana border inspection station and was found to have three healthy weasels nesting in a wheel well. He has sued Wyotana, claiming that during the mandatory quarantine period his truck's valuable load of ragweed had curdled, rendering it commercially worthless. He also claims that he has the right to kill the three weasels and collect the bounty back home in East Dakota. His lawsuit claims that the quarantine constitutes an unconstitutional burden on interstate commerce, and that both his load of ragweed and the three weasels have been taken from him by Wyotana without compensation.

Wally is an animal rights activist and weasel-lover from Wyotana, who has filed a suit against East Dakota, claiming that the statute is preempted by recent amendments to the Federal Endangered Species Act which make clear that the Act's purpose is also to insure that "previously endangered species survive in abundance." The federal district judge in

East Dakota dismissed his lawsuit for lack of standing, but also indicated her view that East Dakota's actions are not preempted by the new amendments.

All three lawsuits have been dismissed by the Federal District Courts in which they were filed, and the plaintiffs have appealed to the Twelfth Circuit, which conveniently includes both East Dakota and Wyotana.

**You are a law clerk to Judge Scott Adams of the Twelfth Circuit, who has asked you to prepare a memorandum analyzing the constitutional issues and making recommendations for the disposition of the appeals.**

## **QUESTION 2**

(40%)

Congress has recently passed and the President has signed the Native Name Restoration Act of 2003 (NNRA). Its essential provisions are as follows:

### Section 1. Congressional findings.

- a. America is one Land of many people and many cultures, and most important to our national diversity is respect for the importance of Native Peoples and native cultures to our national heritage.
- b. A deplorable development in our recent past has been the naming of athletic teams after Native American Tribes as well as other depictions of Native American People, often without consulting the relevant Native American community.
- c. All athletic team names, which make reference to Native American Tribes or Native American People are deeply disrespectful of Native Tribes and Peoples and contribute to the deprivation of civil rights and derogation of tribal sovereignty.
- d. The poverty rate among Native American communities is among the highest in the nation, and a principle source of that poverty is the discrimination against Native Americans by public entities and private citizens. This prejudice is reinforced by stereotypes promoted by the sometimes crude naming of athletic teams and the use of derogatory symbols, thus those athletic team practices contribute substantially to the poverty of our Native American communities.

### Section 2. Substantive Provision

- a. No college or other institution of higher education shall utilize any name or symbol associated with a Native American Tribe or with Native American People.

b. It shall be a federal misdemeanor punishable by 30 days in jail and the loss of the right to attend any college sporting event for two seasons, for any individual to wear college or university insignia associated with a Native American Tribe or with Native American People.

c. The Superintendent of Public Instruction of each State must certify to the federal Secretary of Education that the wearing of such insignia is punishable under the criminal law of the State. Failure to provide such state certification shall result in a 35% diminution in the federal funding otherwise provided to that State for primary and secondary education.

d. Any unsold existing merchandise bearing such insignia must be destroyed.

In the State of Oklasas, the name of the Kansahoma Tribe has a history of special significance to the State and its people. In the early days of new settlements in what would become the State, an agreement was reached whereby the name of the Tribe would be prominently associated in perpetuity with the first public university established by the settlers. Acknowledgement of that agreement was part of the negotiations which cleared the last obstacle to Statehood. As time progressed the sports teams of the state university were proudly named "The Noble Kansahomans. Over the years the university's teams have been highly successful in football, basketball and lacrosse, such that they now have a national following coupled with an inevitable national market for team apparel and paraphernalia, which is now rivaled only by Notre Dame.

The economic consequences to the university are significant. Indeed, the athletic department revenues support the entire library system for the university. The athletic department of the school, with the approval of the State Superintendent of Public Instruction, had contracted with Kansahoman Independent Wholesalers, Inc. (KIWI), a private Delaware corporation that handles all of those sales under an exclusive contract with the university, and currently has in its warehouse, \$1,000,000 worth of merchandise. Studies also show that 20% of the tourists from other states were drawn to visit Oklasas by their devotion to "the Noble Kansahoman."

In the wake of the federal law, KIWI received a letter from the State Superintendent canceling the contract between the university and KIWI, and ordering KIWI to destroy all existing merchandise. The letter notes that the State no longer has any obligation to KIWI.

The State has now sued the appropriate federal officials challenging the entire federal act, and KIWI has sued the State for breach of contract, demanding money damages. Both cases are filed in the same federal district court; they have been consolidated; and both are ripe for resolution.

**You are the law clerk to the state Attorney General. She has asked that you evaluate the strength of the State's position in both law suits. Explain fully.**

[END OF EXAMINATION]