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**Final Exam**Instructions

1. **READ THESE INSTRUCTIONS COMPLETELY. THEN FOLLOW THEM.**
2. Be certain that this exam consists of **SIXTEEN** pages, including this cover sheet.
3. Part One of this exam should be answered on the exam itself. On multiple choice questions, circle the letter preceding the single most correct answer for each question. If you feel that you must qualify or explain your answer, please do so in the space directly below the answer, in 25 words or less. Points may be deducted for wrong explanations.
4. Parts Two and Three should be answered in Blue Books. If using Blue Books, please write your exam number and the number of the Blue Book (e.g. "1 of 3") on each book. Please make any notes or outlines in your Blue Book(s), not on separate paper. Computer users should submit their notes and outlines with their electronic answer or attached to Part One of the exam.
5. **If you are writing, SKIP LINES. WRITE ON ONE SIDE OF THE PAGE.**
6. This is a limited open-book exam. You may consult your casebook, class handouts, any recommended text including Minzner (the book, not the Justice), and your own work product, such as class notes or outlines prepared by you or by a group in which you were an active participant. You may not consult outside references, commercial outlines or study guides, or materials prepared by other students without your material participation.
7. Place your exam number in the designated space on this cover sheet and on each Blue Book. Do not identify yourself in any other way.
8. You have four hours to complete this exam. You must stop writing and turn in your exam when instructed.

9. **Applicable Law:** Unless otherwise instructed, the governing jurisdiction presumes a fee simple absolute unless contrary intent is indicated. All future interests are alienable, devisable, and inheritable. Merger and the Destructibility of Contingent Remainders Doctrines are in effect as is the common law Rule Against Perpetuities. Statutory reform doctrines for the Rule have not been enacted, unless otherwise indicated. Assume that all named parties are alive and that the time is the present unless otherwise indicated.

The adverse possession statute of limitations for the jurisdiction reads: "Any action for recovery of personal property is barred after five years from the time the cause of action arose; any action for recovery of real property is barred after ten years from the time the cause of action arose. If, however, at the time the cause of action arose, the person entitled to bring the action was under the age of majority (18 years) or was of unsound mind or was imprisoned, that person, or any person claiming through that person, may bring the action within three years after the time the disability is removed."

10. **A Few Tips.** First, watch your time carefully. The times given before each section are recommended, corresponding to the amount each section will count. You need to give yourself time to answer each essay and complete the short-answers. Second, take time to outline and plan your answer. Third, unless the question indicates otherwise, apply general legal principles, addressing alternative approaches where applicable.

**Part II: Essay (one-third)**

In February 1995, Lilia Mondragón, a prominent Republican businesswoman from Tierra Amarilla (“TA”), New Mexico, went to a toymakers’ convention in Albuquerque and was inspired by the “bobblehead” dolls that she discovered there. The dolls, which combined images of famous sports figures with an ingenious mechanism to make the oversized heads bounce up and down, had not yet become hugely popular and Lilia was able to license the bobblehead technology from the patent holder for \$.50 per doll sold. While at the convention, Lilia also saw artist David Gonzales’ “Homies” figurines that had become controversial among some Latino political activists for the toys’ images of Hispanos from all walks of life, including some none-too-flattering representations. She talked to the “Homies” representative, but the company was not interested in licensing its product to any small-time local businesses.

*Reies Lopez Tijerina**Cesar Chavez*

On the way back to TA, Lilia had an inspiration and within a month, she had begun selling a new line of bobbleheads called “Homeboys 4 Justice.” Her initial production run used a local artist’s images of Cesar Chavez, Reies Lopez Tijerina, the Mexican-American land grant political activist who had been imprisoned following the famous “Courthouse Raid” in the late 1960’s, and Roberto Gonzales, a member of the radical Brown Berets who was killed in a shoot-out with Albuquerque police in the early 1970’s. To avoid any trouble, she decided to donate

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\$.10 per doll to organizations working to support the rights of heirs to the Spanish land grants. When Tijerina heard about the dolls, he was very pleased that his image was being used and he sent her a letter of congratulations saying that he hoped she sold millions. Later she ran into Charlie Gonzales, Roberto's only son, who had a similar reaction.

The toys sold well enough over the next few years to cover production cost, but Lilia was really too involved with her other projects to market them outside New Mexico. Then, in the fall of 2003, an MTV producer who was visiting Santa Fe, saw the toys and used them for a feature about the thirst for justice that was sweeping America's youth. Lilia was almost overwhelmed by the flood of orders and by Christmas she was selling over \$1 million worth of the toys every month, a rate which has continued ever since and which was truly amazing since none of the sales were outside New Mexico.

Unfortunately for Lilia (and to pervert a perfectly good Spanish *dicho*), "*no hay buena que mal no venga*," that is, roughly, "there's no good that doesn't bring bad with it." Early last month, Armando, Lilia's husband of 32 years, told her he wanted a divorce. A week later, she received a letter from an attorney representing the United Farm Workers' (UFW), the beneficiary of the estate of Cesar Chavez, demanding that she stop selling dolls with his image. A week after that, she received a letter from Patsy Tijerina who was divorced from her ex-husband, Reies, under New Mexico law in 2002. Patsy demanded that Lilia pay her a royalty for every doll sold. Next, Lilia got a call from Milagro Gonzales, Roberto's daughter, who told her that she wanted all profiteering from her father's death stopped. Finally, the company that first started the "Homies" craze called and said they were ready to allow her to use their "Homies" idea her but that if she didn't agree to their terms, they'd make her stop.

Lilia was a little overwhelmed by all this and didn't respond to any of the calls and letters. A massive lawsuit ensued.

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You're the Rio Arriba County District Judge assigned to the consolidated case. You've done enough legal research to figure out that New Mexico courts have not yet considered any of the common law issues involved in the case and that any trademark or copyright violations are not before you for decision. How would you rule on the UFW's requests for damages and an injunction against selling the Cesar Chavez dolls, Patsy Tijerina's claim for past damages and future royalties, Milagro Gonzales' request for an injunction against selling images of her father, and Homies' request for damages and an injunction? If your answer depends on facts not in evidence here, specify what additional information you would want to have and how that would affect your ruling.

**Part III: Essay (one-third)**

It reminded Mary of the opening line from the only Dickens novel she had ever read, “It was the best of times, it was the worst of times.” On the up side, after three and a half years as an attorney for DNA People’s Legal Services, she no longer felt like she new nothing nor did she feel as much of an outsider as she had when she first arrived in Crownpoint, on the edge of the Navajo Nation, from her home in New Jersey. On the down side, she had been fighting the Church Rock uranium mine ever since her second week in the office, when one of the women who ran Eastern Diné Against Uranium Mining had stopped by to see the new attorney, and she had pretty much exhausted all the possible environmental laws that she once hoped would stop this latest environmental outrage against the Navajo.

But just when things looked bleakest, hope hung on. Mary was reading the *Gallup Independent* when a small article caught her eye. A non-profit organization called the San Juan Tewa, Inc. had filed a petition for federal acknowledgment of the San Juan Tewa as an Indian tribe. When she downloaded the petiton from their web-site, she learned that what they said was their land base of 160 acres included the 40 acres that was the site of the proposed uranium mine. Mary was excited as she walked down the hall to tell her boss she was going to drive over to Church Rock to learn some more.

After about a week of interviews, web-searches, and myriad phone calls, this is what Mary learned. It turns out that the San Juan Tewa were a splinter group that had split off from the Tewas who fled to Hopi to avoid the Reconquest following the Pueblo Revolt of 1680, when the Pueblos had chased the Spanish settlers to El Paso. The group’s leaders at the time had paid the Navajo headman who governed the region and the group had settled on the same land they were now claiming as their land base. There was oral history of the agreement they had

signed, but the document itself was long lost. According to what Mary could find out, the land had never been included in any treaty or purchase by the federal government.

Getu Mining, Inc. acquired its 40 acre site (the northwest quarter of the quarter section the San Juans claimed) in 1992 from the First National Bank of Gallup that had come up with title following the bankruptcy of the American Mining Co. American Mining had been holding the land for a potential coal mine since it acquired the property in fee from the Santa Fe R.R. in 1922 and traced its title back to a fee patent the railroad had received a few years earlier. 1<sup>st</sup> National had recently sold the remaining 120 acres of the quarter section to, you guessed it, San Juan Tewa, Inc.

Reading the San Juan petition, Mary learned that members of the tribe had pretty much moved off the 160 acre parcel to Gallup by the early 20<sup>th</sup> century, but they had used it for hunting, gathering herbs, and secret religious ceremonies since then. There were affidavits from three San Juan elders, Juan Chavez, Aurelia Abeyta, and Rudolfo Torres, that their families had taken turkeys and antelope on the land as well as gathering healing herbs from the many desert plants. During the big drought of the 1980's they had limited their take, worried that too much harvesting would damage the land.

Once Getu fenced its 40 acre site in 1993 and put up no trespassing signs, most of the hunting and gathering stopped there, but every once in a while, people would jump the fence and, of course, they continued to use the rest of the quarter section. The main reason people jumped the fence was to offer prayers at several rock shrines that had been used by the Anasazi even before they arrived. As much as Getu tried, it couldn't seem to stop folks from wandering onto its land to visit the shrines.

Having learned this, Mary was getting very excited. For one thing, Getu's mining site straddles the Chico Canyon wash and if its operations begin, its mining plan requires collecting

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the water that flows seasonally through the wash, supersaturating it with bicarbonate of soda, and injecting the solution underground. The injected water would then percolate throughout the uranium deposits beneath the entire quarter section of land claimed by the San Juan Tewas and be extracted again through wells drilled on Getu's 40 acre site. The extracted water would be processed to remove the uranium. There was scientific evidence to suggest that the process threatened the naturally occurring groundwater underlying the land in the region.

Mary's excitement came because she saw a new possibility for stopping the Getu mine. Write a memo analyzing the San Juan Tewas' property rights and whether those rights would be sufficient to stop the mine. If you do not feel that you have sufficient factual information, identify what additional information you need and how the nature of that information would affect your answer.

(END OF EXAMINATION)