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Examination No. _____

AMERICAN INDIAN LAW 584

Semester I, 2000-2001

UNM School of Law
Final Examination
Three Credits

Prof. Valencia-Weber
Thursday, December 7, 2000
9:00 a.m. to 12:15 p.m.

INSTRUCTIONS

Time allowed on this exam: 3 hours, 15 minutes.

Use the 15 minutes for planning and making a brief outline or checklist.

TOTAL NUMBER OF POINTS: 200

THIS EXAM HAS ONE QUESTION WITH THREE (3) SUBPARTS. YOU MUST ANSWER ALL THREE (3) SUBPARTS. EACH IS WORTH 60 POINTS.

20 POINTS: For a well-organized memo format, grammar, and writing style that increases the overall quality of the answer. Also, for thoughtful approaches that use the law in an insightful or innovative way. Cast your bread upon the waters, your slice may come back as a sandwich.

1. **This exam is an open book exam.** You may consult only the casebook and any student prepared materials. No commercial products.
2. **Writing Instructions.** For blue books, please SKIP A LINE between each written line. If you can remember, write on the page on the right side, leaving the left side for your additions, corrections. If typing, please double space.
3. **Think and plan before you write. Potential credit for an outline or prepare a checklist for each answer.** If the outline or checklist for the problem is handed in with your answers, it could improve your grade if it shows specific knowledge of the problem's issues that you were unable to draft in your answer.
4. **Use the law studied in this class.** While you may have knowledge from other courses whose subject matter relates to Indian Law, your primary analysis and discussion should be based on the law studied in this course.
5. **Use the facts of the problem and analyze, that is, state/identify the law and apply to the facts. Not doing so will cost points.**
6. **Return this exam to the test monitor.**

End of Instructions

[Exam begins on next page]

THE ABC LAND SURVEY

After years of litigation, the ABC Pueblo obtained a federal court order mandating that the Department of Interior (Interior) re-survey the 10,000 acres that the Pueblo claims. The ABC is a federally recognized tribe in West Dakota (W.D./State). The Pueblos claim is based on occupancy predating the arrival of Europeans and the United States (U.S./Federal) recognized the ABC title. In 1859 the U.S. made a mistake in surveying the ABC land. Despite the ABCs continued demands for a corrected survey and over the Pueblo's protests, public and private land patents were issued on the acreage. Some ten years ago the ABC began this litigation, provoked by another Interior decision to deny a proper survey.

After the federal court order, Interior was designated to negotiate for a land settlement with W.D., in which the Federal Government supports the Pueblo. The Federal support arises because, among other reasons, the Pueblo has consistently offered to quit-claim on all the privately held property. These private owners would get clear titles and remain governed by the respective state entities. The public recreation sites would remain open, but would be governed and managed by the Pueblo in accord with its stewardship principles.

The ABCs have maintained during the litigation that the Pueblo would not develop the land, but protect and restore it. Placing the land in federal trust is part of the ABC plan. A primary concern is the quality of the land, especially since there are sacred sites there. Some land has suffered from overuse of the public recreation offered by the State. Some water sources were contaminated and landmarks were defaced by users who refused to stay on the designated public areas.

Additionally, in an adjoining area in trust for the Pueblo, Interior has managed a timber harvesting operation pursuant to federal authority. The ABCs are especially concerned about losses in this area that is contiguous with the contested land. Timber revenue has declined despite a surge in the timber market fueled by new home building. Moreover, evaluations by independent forestry experts (hired by the Pueblo) found that the timber leases were used by contractors who improperly harvested. It is not clear if the land as well as the future growth of trees can recover from the erosion and water quality losses documented by the forestry experts.

State officials held a conference to discuss the W.D. response to the court order. A homeowners' organization (formed in the contested land) and some state officials argue that the state's interests justify not negotiating with the Pueblo and Federal Governments. These advocates fear the loss of some 200 acres of recreation facilities and open space, or their deterioration if the ABCs recover the land. Since the 1900s W.D. has exercised ownership and developed recreational trails and park facilities. On some projects, federal grants underwrote the costs. The State regulated and collected user fees. State taxes on the private landowners paid for essential services.

Some officials argue that the millions invested by the State in building facilities, maintaining them, and providing safety through regulation and services should prevent the 200 acres from going into tribal hands. These advocates claim, for instance, that without the State there is no means to comprehensively prosecute crimes and protect the users and adjoining

residents. Moreover, the State should argue that, after more than 100 years, it is too late now for the Pueblo to make a viable claim for any land. At minimum, even if the ABCs recover this recreational section of land, these officials argue it should remain under State jurisdiction.

The remaining and largest public land holdings in the contested 10,000 acres site belong to Interior. It initially opposed the Pueblo, but has now allied itself with the ABCs and leads the Federal response. The report from the forestry experts hired by the Pueblo aroused some concern within Interior. Within Interior the discussions have reconciled the departmental viewpoints.

Two issues lurk as Interior drafts the Federal response. The National Forest Service, in the Department of Agriculture, is pressing that undeveloped timberlands be excised from any land settlement with the Pueblo and be reserved for the National Forest. This forested site is on Interior's holdings on the contested land. A Forest Service officer stated the Indians do not deserve this forest treasure, which, if transferred, could create revenue for the federal government. Then, a U.S. Senator from W.D. (a leader in congressional appropriations) communicated to the Secretary of Interior that he expects the W.D. claims to land and jurisdiction to be fairly treated. The Secretary promptly responded that it would not be otherwise under the applicable law.

You are a member of a taskforce of Interior attorneys charged with drafting a statement for Interior that articulates the Federal position. Your first draft must:

1. Explain the nature of the federal relationship with the Pueblo, using the 10,000 acre land claim to demonstrate basic Indian law principles (60 points);
2. Explain how this relationship affects the Forestry request that timberlands be excised and reserved from any land settlement with the Pueblo (60 points); and
3. Explain how Interior will interpret and apply the law to the W.D. claims of title and jurisdiction over the 200 recreational acres (60 points).

Use a number or heading to identify each answer.

Note: This problem is based on real events, some from the developments in the case of Sandia Pueblo's claim to 10,000 acres, from the base to the crest of the Sandia Mountains. **You should respond to the facts as constructed in this problem.** However, for your interests in Indian law, you should stay tuned to what happens next in the Sandia matter.

END OF EXAM