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Examination No. _____
AMERICAN INDIAN LAW 584

Semester I, 2002-2003

UNM School of Law
Final Examination
Three Credits

Prof. Valencia-Weber
Wednesday, December 11, 2002
9:00 a.m. to noon

INSTRUCTIONS

TIME ALLOWED FOR THIS EXAM: THREE (3) HOURS

TOTAL NUMBER OF POINTS: 200

THIS EXAM HAS ONE PROBLEM WITH THREE (3) REQUIRED QUESTIONS. Clearly state the number of the question for each answer.

****YOU MUST ANSWER BOTH QUESTIONS 1 AND 2 (Each is worth 60 points)**

****YOU MUST ANSWER EITHER QUESTION 3 OR 4 (Each is worth 60 points)**

****20 POINTS: For a well-organized memo format, grammar, and writing style that strengthen the overall quality of the answer. Also, for thoughtful approaches that use the law in an insightful or innovative way.**

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 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 the law and apply to the facts. Insufficient use of facts and failure to relate them to the law will cost points.**
6. **Return this exam to the test monitor.**

End of Instructions.

Exam begins on next page.

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IMPORTANT: ALL PROBLEMS ARE BASED ON THE FOLLOWING SITUATION. Questions 1 and 2 are required (each worth 60 points). Then you must choose either Question 3 or 4 (each worth 60 points).

Four years ago, the ABC tribe (ABC, Tribe), a federally recognized tribe, prevailed against the state of West Dakota (State, W.D.) and Federal government on claims of land wrongfully taken. As a remedy, both the State and Federal governments returned some land to the ABC that was originally within the tribes homeland and then its federal reservation. Two treaties and two subsequent land cession agreements recognized the ABC title to these lands. The re-acquired lands are now in trust. Immediately the ABCs began restoring the land and invested the judgment money (for lands that were not returned) in economic development.

The former State land had primarily been a public area used for hunting that had fallen in disuse. The game, deer and elk, began to show signs of chronic wasting disease, a wildlife form of mad-cow disease and W.D. did not attempt to control the outbreak. Hunting organizations pressed the State to eradicate the diseased animals and control the breeding of safe animals. However, W.D. only warned hunters of the disease. The ABCs purchased all but one parcel of non-Indian fee land in the former State land that is now within the reservation boundaries.

In cooperation with the U.S. Fish and Wildlife Service (USFWS), an ABC program immediately began testing and tagging the wild life. Diseased animals were destroyed and breeders were selected from the healthiest animals. Professional wildlife specialists and field officers have been monitoring the program. The ABC and USFWS five-year program aims to restore the game so that the ABCs can operate hunting and fishing enterprises, with luxurious lodges and related facilities. Now, at the end of its third-year, the ABC and USFWS proudly announced that they have eliminated about 90% of the diseased game. They have successfully restored the wildlife population so that by year five they plan to allow hunting by any individual. These hunters would obtain an ABC license and comply with the regulations the ABC have comprehensively enacted.

Joe Sixpack owns the last non-Indian fee property within the former State land, now within the ABC reservation. He barely avoided bankruptcy after W.D. let the game decline. During the protracted lawsuit with the ABCs, State revenues plummeted and neither the legislature nor the governor was willing to invest money in land in contention. Sixpack is delighted to hear the ABC and USFWS announcement. He has developed his land as a private game farm. Upon completing a set of cabins for the hunters, Sixpack announces that he is now open to private hunters because "The 90% clean-up is good enough." Moreover, he will hire a technician to test any killed game for wasting disease, so no hunter will take home "bad meat." Sixpack states he has alerted the W.D. Fish and Wildlife Unit, which has stated it will enforce state hunting licenses and regulations.

The ABCs then announce that ABC law should control on Sixpack's land. He has benefited from the Tribe's project as the land contours allow the game to move between the Tribe's and Sixpack's land. The Tribe is still installing fencing and other controls

that will keep its herds contained within ABC lands. The Tribe argues it is too early to allow hunting with the health risks involved* and the small number of healthy game.

The land re-acquired from the Federal government was contiguous with the tribe's trust land and has now merged into one intact trust territory. The ABC and the USFWS have been restoring water quality and developed new fisheries in the waterways. With the new breeding programs, native fish species will be re-established in the five-year plan. ABC fish specialists now operate the program, which has achieved its third-year goal. It is anticipated that in year five fishing will be permitted in accord with the tribe's licensing and regulatory plan. The extensive ABC code for hunting and fishing was developed in cooperation with the USFWS to meet the standards of wildlife model codes.

You are the new attorney hired in the Department of Interior. Your supervising attorney comments that you have not been involved in any prior Interior dealings with the Tribe or the State and thus may be the best person for the following assignment. Your job is to describe in an objective manner the respective tribal and state perspectives, including their options in this situation. This memo will serve as base information Interior will then use as it determines what course of action Interior will take.

1. (60 points) Given the facts, can W.D. exercise jurisdiction over the ABC hunting and fishing enterprises?

2. (60 points) Given the facts, can ABC exercise jurisdiction over its hunting and fishing enterprises?

* It has not been established that chronic wasting disease, a form of mad cow disease, can be transmitted to human beings. However, scientists state that there is a strong basis for believing this can occur. For this exam assume, as do responsible governments, that the health risk is quite real.

Next page for Questions 3 and 4

CHOOSE QUESTION 3 OR 4 (60 points each). You are required to do one question.

To celebrate the restoration of an indigenous fish that is important in ABC culture (its name roughly translates as “bountiful blessing”), the ABCs held ceremonies and dances. The first day of ceremonies was closed, only members and invited guests were permitted.

On Saturday Sam Pegausett, a member of a recently recognized tribe in the Northeast, and his non-Indian friend, George Smith, rode their vintage Harleys to the entrance to ABC land. The tribal policeman told them the ceremonies were closed, but would be open the next day. Sam argued that he had traveled a long distance as part of recovering his indigenous heritage and at least he should be let in. When the two refused to leave, the officer threatened to call for backups. Sam and George then left and spent the evening at the Midnite Rodeo bar in a nearby city. They partied and got up late the next morning. When they arrived at the ABC dance site in the village, the best places for viewing were taken. To get a better view of the dancing, Sam and George went past some barriers with signs that warned that only kiva members could enter. They entered into a kiva where an elder was instructing some members. Alarmed kiva members alerted two tribal police men, including the officer Sam had encountered at the entrance on the first day. The officers ordered Sam and George to leave the ABC reservation immediately. Sam and George, argued that what happened was an accident and that they should be allowed to go back to the dance area. The argument escalated and ended up in Sam and George shoving and resisting the officers. Consequently, the elder and some kiva members, including some children, were knocked to the ground. The resulting injuries were slight. Pursuant to an ABC agreement with the State and Federal governments, the ABC police requested and had Sam and George removed to the county jail.

You are a legal services attorney meeting with Sam and George at the county jail on the next Monday morning. The ABC Tribe wants to charge them with disorderly conduct and violation of the tribal code protecting religious sites, with other charges possible.

Choose one:

3. (60 points) Sam asks you, “How can the ABC do this to me?”

4. (60 points) George asks you, “How can the ABC do this to me?”

End of Exam

Enjoy your holidays. Thanks for the good questions and discussions in class.