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AMERICAN INDIAN LAW 584

Semester I, 2003-2004

UNM School of Law
Final Examination
Three Credits

Prof. Valencia-Weber
Thursday, December 18, 2003
9:00 a.m. to noon

INSTRUCTIONS

TIME ALLOWED FOR THIS CLOSED 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 answers that offer insightful or innovative approaches.

- 1 This exam is a closed book exam. No books, notes, or any materials may be used during the exam.**
- 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.

ALL PROBLEMS ARE BASED ON THE FOLLOWING SITUATION.

Questions 1 and 2 are required (each is worth 60 points).

Then you must choose either Question 3 or 4 (each is worth 60 points).

Recently the ABC tribe (ABC, Tribe), a federally recognized tribe, finally prevailed against the Department of Interior (DOI, Federal Government) in a lawsuit charging the DOI for failing in its trustee duty. The Federal Court found that DOI had not managed the ABC's timber operation in accord with the standards imposed by federal law. Consequently, the Court granted the remedy the Tribe requested: \$20 million for lost income and the cessation of any further timbering on ABC lands.

Under the option included in the Indian Trust Fund Management Reform Act of 1994 (Trust Act), the ABC seek to control their own trust funds. To exercise this provision of the Trust Act, a tribe must establish a trust management organization that meets requisite professional standards. Then the Tribe must reach an accord with DOI on the dollar value of the trust funds to be transferred. When these conditions are met, a tribe can assume control of its own trust funds.¹ The ABC Tribal Council has authorized the establishing of a proper trust management unit, but it will not be operative until sometime in 2004. Meanwhile, DOI; the ABC Chairman, Sam Buffalo; and Tribe's attorney have discussed the short-term placing of the judgment money from the timbering lawsuit in a trust account in DOI. When the ABC's trust office is fully established and operating, the trust funds can be immediately transferred. This arrangement would save the ABC the contracting and fees of a Wall Street type investment firm. One senior Tribal Council member, Joe Lone Horse, much involved in the protracted lawsuit, is not happy about this interim proposal. A respected leader, Lone Horse demands protection and assurances that the ABC will not be into another "loser deal" like the timber operation.

In stopping further timbering on their lands, the ABC decided to use their lands to return to a customary activity: breeding and selling Great horses. Historically, the ABC were known for their Great horses that had unusual strength, speed, and endurance. The horses were a primary factor in the ABC's military strength and in trade relations as Indians and non-Indians sought these horses. The ABCs started their breeding program five years ago and now plan to put several million from their timber judgment into accelerating their program for the Great Horse Project. Now the ABC offer recreational riding on the horses at the Tribe's resort and it is expanding into specialized training for individuals who want to learn the horsemanship for competitions. At the most recent Horse Fair in West Dakota, the state in which the ABC Tribe is located, the Tribe initially showed its Great horses. The horses and some ABC members who competed in the horsemanship contests made an impressive first showing, winning a number of the top prizes.

Since the Horse Fair, West Dakota (WD or State) has developed a West Nile virus outbreak. Over 50 cases have occurred with eight deaths among some elderly citizens and one child. A similar pattern has occurred in some neighboring states, following the first national outbreak of the virus in the northeast part of the U.S. The states free from the virus have embargoed any travel or trade in horses from states with outbreaks. In response to these events, the Governor declared an emergency and ordered that all horses in the state be vaccinated immediately. Some virus cases occurred among horses exhibited at the Horse Fair so the State ordered as highest priority that all horses exhibited at that event must be tested ASAP for the virus. Horses found to be carriers must be destroyed; all others must be vaccinated.

When the State inspectors asked to test the ABC's horses, the Tribe responded that it was already taking care of testing and vaccinating its own horses. In cooperation with the U.S. Department of Agriculture since the

¹ This option is a provision in the Indian Trust Management Reform Act of 1994. Assume for this exam that the ABC Tribe could meet the requirements to obtain control of any existing or future trust accounts.

During the Great Horse Project, the ABC hired professionals who manage and monitor the breeding. The breeding standards, including the veterinary medicine and care, were developed with a federal grant. To date, the ABC Tribe has refused entry to the reservation to the State's agents.

The Governor of WD is not happy about this situation. She feels that the State must assure the public that all necessary measures are being implemented as new cases of virus continue to arise. The Chair of the State's Veterinary Board stated that during the Horse Fair, the ABC Project included a "cultural" additive in the great horses' diet. State law allows only specific drugs and additives for competitive horses and prohibits all others. What the Project used is not on the permitted list. The Project was open about the diet regime. During the Horse Fair it explained to reporters that it was not "doping" horses. The diet included an ABC customary, non-toxic herb to protect the horses.

For this exam you must answer three questions.

Required Questions: 1 and 2.

Your Choice: Either Question 3 or 4.

You are the ABC Tribal Attorney. (Required; 60 points)

Chairman Sam Buffalo asks you to draft a concise memo he can use to respond to Council member Joe Lone Horse. IF the ABC make the interim arrangement with DOI for a trust account, what Federal responsibilities and ABC rights will exist? What could prevent a "loser deal" like the timber?

You are an assistant attorney for the Attorney General of West Dakota. (Required; 60 points)

The Governor called an emergency meeting on the West Nile virus and the ABC refusal to allow state agents on the ABC Tribe's land. Television commentators have urged the Governor to file an action in federal court against the ABC Tribe. Your supervisor asks you for a first draft of a concise memo on whether the state can lawfully enter on the ABC reservation to test their horses. The Governor has stated: "Some way must be found to assure the state's alarmed citizens on this matter."

Questions 3 and 4 are on the next page.

Choose One Question from Question 3 and 4. Each is worth 60 points.

These facts apply to both questions.

Max (a member of the Rio Tribe) and Bob (a non-Indian) are partners in a small horse breeding business. Almost half of their horses were destroyed when the State's inspectors found that the horses were West Nile virus carriers. The two were upset about this big financial loss, which is pushing them to bankruptcy. They became angrier when they heard the news that the ABC Tribe refused to allow the State to test the Tribe's horses. On Saturday evening they decided to investigate for themselves what the ABCs were doing, so they sneaked into a large stable of the ABC Great Horse Project. A stable manager found them and told Max and Bob they would be arrested. The manager blocked the stable exit. Max and Bob grabbed the manager and pushed him into some large metal equipment. The Tribal policemen arrived and, under a joint-use agreement, had Max and Bob removed and detained in the County jail. The stable manager is in the hospital, still unconscious on Monday morning.

The State Bar Service has referred Max and Bob to you, a new attorney.

On late Monday morning, you meet with them at the County Jail. Max and Bob ask the same questions:

"Can the Tribe arrest and prosecute me? What can happen if the stable manager does not regain consciousness?"

Choose Question 3 or 4 (each worth 60 points). State the number you chose with your answer.

Your answer to Max (60 points).

Your answer to Bob (60 points).

End of the exam. Enjoy the Holidays Thank you for being a lively class.