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Exam No. _____

**584-001 Indian Law
Fall Semester 2005**

**UNM School of Law
Final Examination
Three Credits**

**Professor Valencia-Weber
Saturday, December 10, 2005
9:00 a.m.—12 noon (3 hours)**

**Examination Format
Essay Answers**

1. **Laptop** computer users: Start the Secureexam program entering your examination number, course name, professor's name, & date of examination. Click "proceed" to enter the program. Type START in the next window that is displayed but do NOT press the enter key until the proctor says to begin the exam.
2. **Bluebooks** for writing: write on every-other line and only on the front page of each sheet. On the front of bluebook record the class name, professor's name, date of exam, and your examination number. Make sure to number each bluebook in order. DO NOT WRITE YOUR NAME ON BLUEBOOKS.

A five-minute warning will be given prior to the conclusion of the examination. When time is called, stop immediately. If you are handwriting, lay down your pen & close bluebook immediately. If using a laptop, save & exit the program.

Go to the exam check-in table at the conclusion of the exam & fill out an examination receipt.

Professor's Instructions

TIME ALLOWED FOR THIS CLOSED EXAM: THREE (3) HOURS

TOTAL NUMBER OF POINTS: 200

THIS EXAM HAS THREE 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. **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.
3. **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.
4. **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.**

End of Professor's Instructions.

Exam begins on next page.

THE ABC HORSES AND RACE TRACK

Questions 1 and 2. You must answer both questions

After years of litigation, the ABC Tribe prevailed in its suit against the Federal Government for a wrongful taking of land that violated its treaty terms. In the judgment the Federal Government was ordered to return some 20,000 acres of land that were made public lands in the 19th century. The Claims Court also awarded \$25 million for land that is now in private non-Indian fee ownership and not recoverable. This judgment allowed the Tribe to buy more land and develop a new enterprise to breed quality quarter horses and to build a racetrack. ABC, a federally recognized tribe, is located in the West Dakota (W.D. or State), a state with extensive history in breeding these horses and as a center for racing them.

In the breeding program, the Tribe is receiving collaborative assistance and grants from the federal government. The federal and tribal breeding specialists have developed quality breeding stock and train ABC members in all technical aspects of raising and training the horses. Last June the ABC, for the first time, entered a small number of their horses in the highly regarded W.D. quarter horse show and auction. At this prestigious show the “mink and manure” set of wealthy individuals and enterprises bid for the horses awarded the top prizes for their racing and breeding potential. The Tribe took great pride as two of their newly introduced horses took top prizes and were highly bid for at the auction. Sitting in the ABC government building are photos of the ABC horses with their wealthy new owners from Texas in tuxedos and boots and their wives in fancy gowns and mink coats.¹

Concurrent with the horse-breeding program, the ABC hired a racetrack designer and construction company. The ABC track will be a state of the art facility that will outshine the out-of-date track run by W.D., which has suffered losses in state income and not been able to maintain its track at the standards of the trade. The ABC track will be built completely on the recovered ABC land, now in the last stage of being put into trust by the Secretary of Interior. The Tribe has established a racing commission that is developing the regulations to enforce the standards for the track that match or exceed those of the best racetracks in the U.S. There will be inspection and drug testing for horses to qualify for racing. An accounting firm with experience in racetrack operations is to train the tribal managers in financial management as well as the controls needed for an honest betting system for customers.

By September a West Nile outbreak occurred among some horses in W.D. Some had been obtained from the W.D. quarter horse show. The State Department of Agriculture issued an order that all horses included in shows, private and public sales in W.D. in the past six months must be tested by W.D. equine specialists. Because W.D.

¹ This type of event for prize cattle and horses occur in Texas. Just a fact, not parody.

must act quickly to trace where the West Nile outbreak, the State will certify some private specialists to test horses as W.D. does not have enough employed by the State. While it tried to train and certify more inspectors, the first three human cases of West Nile occurred, with one fatality. This human outbreak further alarmed W.D. and it notified the ABC Tribe that its horses would have to be tested by the State's inspectors. The Tribe responded that its own breeding specialists would take care of testing the ABC horses and that it did not need nor seek state help in this matter.

The Governor of W.D. called an emergency summit of the State's agencies, including the Departments of Health, Agriculture, and the State's Racing Commission. Some agencies are pushing that W.D. go to federal courts for an emergency order that forces the ABC to allow W.D. to test the ABC horses. One frustrated agency head asked, "Do we have to wait until another person dies in W.D. before we can know if the ABC horses are the source of the outbreak? After all, the ABC horses were the only horses from a new source that were in the Horse show in May?" The Head of the Racing Commission has worried for some time that the new ABC Track, when completed, will attract the patrons and betting money away from the State's facility. He suggested that the State use its regulatory power over racetracks and gambling to insist on testing the ABC horses now. Moreover, W.D. should insist that it has the power to regulate and tax the ABC racetrack when it becomes operational. The Governor of the W.D., a once promising baseball player, pushes for some patience in sorting out the game plan. "Can't afford to bite off too much in this game. What really matters to us right now? Maybe we can talk with the federal folks, who are working with the ABCs, to see if they can help us work this out."

After the summit, the Governor seeks two legal opinions. .

Answer both questions 1 and 2. Number your answers and the A and B parts.

Note the points for each question. Proportion your time accordingly.

Question 1 (60 Points)

You are the new Indian law specialist hired by the W.D. Attorney General. She asks you to prepare a draft of a memo for her to use to brief the Governor. The memo should succinctly state what power, if any, the State can invoke in federal court, so that

- (A) W.D. can immediately test the ABC horses and
- (B) in the future, W.D. can regulate and tax the ABC racetrack enterprise.

Question 2. (60 Points)

You are the new attorney at the Department of Interior. Your supervising attorney tells you that the Governor of W.D., a political buddy, wants a quick confidential review of the Memo prepared by the Attorney General of W.D. The Governor wants to stay on good terms with the tribes in W.D. The Governor wants to know:

- (A) "What problems lurk here with the ABC and Federal Governments if W.D. pushes for the immediate testing of the ABC horses and, possibly in the future, for trying to regulate and tax the racetrack?"

(B) "How can I avoid or minimize my troubles in dealing with this big West Nile virus crisis and deal with it ASAP?"

Questions 3 and 4

QUESTIONS 3 AND 4 (60 Points): YOU MUST ANSWER ONE OF THESE

On the High Road to Taos With Jim and Tim

Jim (a member of the Seneca Nation in New York) and his buddy, Tim (a non-Indian) left Taos after fulfilling a long time dream to experience the Great Taos Bike Rally. The Taos experience met their expectations for 24-hour fun with biker buddies and fantastic babes. On their super Harleys, they traveled south along a New Mexico (NM) state highway that follows the beautiful Rio Grande River. They were having a high time without chemical assistance. Seeing the sign for the Rio Pueblo they took that state highway so that they could cruise through the Pueblo and more or less salute the community that Jim regards as indigenous kinfolk. Though unfamiliar with the curving road, they entered the Rio Pueblo at a speed 25 miles faster than the posted limit. As they entered the Pueblo, Miss Yazzie the kindergarten teacher was taking her class across the highway. A school crossing guard was in the center of the highway, holding a stop sign, to assist them. Jim and Tim could not stop nor control their big Harleys. There was a major collision of people and motorcycles. The Rio Pueblo Police and EMS rapidly responded. The Police arrested Jim and Tim after showing them a special card and badge stating they were cross deputized as NM State Police officers. Jim and Tim are in the County Jail. Miss Yazzie and two children are in the hospital with serious injuries, one child still unconscious. The school guard and two other children sustained some injuries, but were released from the emergency room. The Federal Attorney has been notified and is monitoring what happens next.

It is the day after the accident. You are a newly hired public defender sent to interview Jim and Tim. Decide which one you will interview first.

CHOOSE AND ANSWER ONLY ONE QUESTION

Question 3: Jim (60 Points)

Jim asks, "What's going on here? What can the tribe, state, and feds do to me? Dude, they are all ganging up on me!"

Question 4: Tim (60 Points)

Tim asks, "What's going on here? What can the tribe, state, and feds do to me? Dude, they are all ganging up on me!"