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Exam No. _____

**584-002 Indian Law
Fall Semester 2006**

UNM School of Law

Professor Valencia-Weber Final Examination

Monday, December 11, 2005

Three Credits

9:00 a.m.—12:30 (3.5 hours)

**Examination Format
Essay Answers**

1. **Laptop** computer users: Start the Securexam 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 HOURS, 30 MINUTES (3.5 Hours) TOTAL NUMBER OF POINTS: 200

This exam is a CLOSED BOOK exam. No books, notes, or any materials may be used during the exam.

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.**

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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.

FISHING ON THE RIO

Questions 1 and 2. You must answer both questions.

Ten years ago West Dakota (W.D or State) closed the West Mountain recreation area and the Rio River within because of life endangering pollution in the river. The native fish species, unsafe for eating, were killed off while the entire area and the Rio were cleaned up. The Rio flows through the trust land of the ABC Tribe, which is federally recognized. The W.D. operations have been carried out on the state lands north and south of the adjoining ABC reservation. The State activated a 12 to 15 year clean up plan or until tests verified adequate cleaning was achieved. Then W.D. would re-introduce native fish and re-open the recreation area to the public. [Assume the action and standards could comply with EPA law requirements.]

In the past ten years the ABC Tribe has developed a luxurious resort whose casino and scenic golf course has generated income for building tribal infrastructure and health care facilities. The Tribe, concerned about the Rio, has done some cleaning of the river on the reservation and has monitored the water quality. Besides safety for residents of the ABC reservation, the Tribe has a long-term plan to expand the resort attractions with outdoor activities, including camping, hiking, and fishing in the undeveloped part of tribal land adjoining the Rio. These options would also improve the quality of life for members. In conjunction with the Federal Government, the Tribe has studied the river, designed a plan for fish breeding and restoration, and developed a licensing and regulation system. The Federal grants have been matched by tribal monies that provide the training of fish breeding specialists and, ultimately, of wildlife enforcement officers.

W.D. knew about the ABC's projected development, which seemed compatible with the State's plans until recently. The ABC Government announced that the water quality in the river had improved sufficiently that it projected the Tribe could start its fishing operation in two years, though the State has not yet certified that the Rio is safe for such activity. Moreover, the ABC and Federal specialists had decided to breed and stock the Rio with a non-native fish, the X Bass. The specialists claim that the X Bass is a relative of the W.D. native fish (it is native in a neighboring state), of similar quality to the W.D. native, yet likely to more successfully and rapidly naturalize in the restored river. The ABCs claim that this type of fishing and related recreation would add customers that are not attracted by gambling and golf. The ABC assert that additional income is needed for building homes for families on the reservation, housing with adequate water and sewer services.

The upset W.D. Governor met with the Attorney General, the Director of the State's Fish and Wildlife, and the Commissioner of State Lands. Governor George Richie is a lifetime avid outdoorsman who promised in his election campaign to restore the Rio River areas. He opened the meeting with a declaration that "The ABC's can't screw around with MY state, MY river and MY fish! The State controls the Rio and when and what happens on it. We can't risk our hard work and investment by allowing the ABC to jump start this way."

The Governor and key officials then listened to the State expert's report on the X Bass. In the past it had sporadic problems with parasite outbreaks, but that such problems have disappeared in the states where X Bass occur because of improved breeding and testing programs. This report did not assure the Governor. He directed his officials to "Get the Feds to make those ABCs shape up, respect the State's authority, make the ABC project fit the state's timelines and to forget about the X Bass." As he went out the door of the conference room, the Governor bellowed, "And tell the ABCs and the Feds that there will NOT be any f__g foreign fish in my state!" When the ABCs' Chairman heard about this meeting and the Governor's statements, the Chairman paused and then mused, "I guess we'll just have to tell him to bring it on."

The three state officials met again after the heated meeting with the Governor. After much discussion they decided to first educate the Governor about the basic law of authority or jurisdiction that applies to the State, the ABC Tribe, and the Federal Government/Department of Interior. This core group of officials wants to

set up a meeting with the representatives of all three governments to discuss the issues. Getting the Governor to consider all the litigation and non-litigation options cannot progress until Governor Richie knows the respective positions and legal status that each sovereign has.

Question 1. (60 points)

You are the new attorney hired in the Attorney General's Office to provide Indian law expertise. Your supervising attorney asks you to draft ASAP a memorandum that:

A. States the law that applies and W.D.'s authority in this situation.

B. Focuses on the strongest points the State can argue on its behalf, including the options, if any, for achieving the State's goals for restoring the Rio River area.

Your supervisor expects to review and appropriately revise your memo before it is sent to Governor Richie, who is on a fishing trip out of state.

Question 2. (60 points)

You are an attorney for the Department of Interior. Your supervising attorney has heard about the situation with the W.D. Governor and that the key W.D. officials will be asking for a meeting with Interior and the ABC Tribe's Officials. Your supervising attorney asks you to draft ASAP a memorandum that:

A. States the Federal/Interior role and authority in the ABC River project, and

B. Identifies and summarizes what the Tribe will argue that overlaps or is distinct from the Federal response.

Questions 3 and 4 (60 Points):

YOU MUST ANSWER ONE OF THESE

A Cattleman's Story

Russell Beans, a member of a federally recognized Lakota Band, retired from a Hollywood film career when he married the dazzling beauty, Bernice, a member of the ABC Tribe. They went to live on her family's tribal land that was assigned to her clan by the Tribe. Russell had ambitions to run a sizeable cattle-raising operation. Because Bernice's land could not support a large number of cattle, Russell and Bernice signed a lease with ABC Tribe to lease adjoining tribal trust land.

Before bringing in more cattle, Russell had to construct fencing. He asked his Hollywood buddy, Red Ryder (non-Indian), who is a very tough stunt man, if he would come and help. It was harder work to install fencing than either a movie actor or stunt man had expected. They had a deadline pushing at them as more cattle were due soon to be delivered. Both men were quite tired and becoming irritable at the unexpected problems that arose. Then Larry (ABC member) the neighbor to the newly leased land came by and told them the bad news: they had incorrectly installed the fence on Larry's land, not the leased land. Tired and impatient, Russell

and Red exchanged angry words with Larry, argued about the boundary, and somehow both of them pushed Larry to the ground.

Neighbor Larry fell on a rock pile and is now in the IHS hospital with a concussion and still unconscious. The ABC Tribal police arrested Russell and Red and placed them in the County Jail where the Tribe has a joint use agreement. The ABC prosecutor is preparing charges based on violations of tribal law and awaits the outcome for Larry. The ABC prosecutor has informed the Federal Attorney about the situation.

You are the newly hired Public Defender sent to interview Russell and Red. Decide which one you will interview first. What do you tell him?

CHOOSE AND ANSWER ONLY ONE QUESTION

Question 3: Russell (60 points):

Russell tells you: "The ABC Tribe can't arrest and prosecute me! I am not a tribal member! And why would the Feds have anything to do with this little misunderstanding? Now, please do your lawyer role and get me out of this mess."

Question 4: Red (60 points):

Red tells you: "The ABC Tribe can't arrest and prosecute me! I am not a tribal member! And why would the Feds have anything to do with this little misunderstanding? Now, please do your lawyer role and get me out of this mess."

End of Exam. Enjoy your break from school. Thanks for a lively class.