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**INDIAN LAW
SPRING 2008
PROFESSOR ZUNI CRUZ**

Please place your exam number on all submitted materials.

Bluebook Instructions: Please write on every other line and only on one side of the page.

Laptop Submissions: Please double space and use 12pt.

Remember to read all instructions.

This exam is based on current events in Indian Country

Part One (50%)

An out-of-state Hog Farming Corporation plans to establish a hog farming operation within a Treaty Tribe's reservation lands.

The plan is opposed by the Tribe and several of the surrounding local farmers and landowners of lands near the proposed Hog farm due to health and environmental concerns. The Hog farm is completely surrounded by reservation lands. The farrowing operation (pig litter production) would house 3,350 hogs and produce 70,000 pigs a year, generate 13 jobs, and would add to the local economy.

The only road leading into the property is a road maintained by the Bureau of Indian Affairs (BIA), and was owned by the County when the BIA took over its maintenance.

In protest of the construction of the operation, a peaceful picket of the farm is held. 50-100 individuals attend including tribal members and nonmembers.

The local State Sheriff's Office and the State Highway Patrol respond to the notice of the gathering of protestors on the road leading into the Hog Farm. 40 State Highway Patrol vehicles are present.

9 individuals are arrested for obstructing a public highway by the Sheriff and released; one is charged with throwing an object. Hog farm operations are prohibited by several states, but not by the State in which Treaty Tribe's reservation was established. The Hog Farm has the necessary permits from the State. The County in which the Farm is located has no zoning ordinances.

You are called by the Indian Movement that organized the protest and asked to travel to the reservation to advise and assist the protest organizers and to meet with tribal attorneys about the arrests and the Tribe's action plan. The Tribal Court has issued an order for exclusion and removal of the hog farm developers, prohibiting work crews from crossing Tribal lands to get to the farm site. At this point it appears you will work with the protesters; but it is very important to sort out the legal position of the protestors and the Tribe for yourself.

Before you leave you prepare a thorough initial analysis and research plan for yourself and your Research Assistant. Because you are not sure exactly what you will be asked about in advising the protestors and in meetings with the Tribe you prepare a comprehensive analysis of the major legal issues raised by the proposed farm for the tribe, including:

Initial Analysis:

- the jurisdictional issues raised by the Sheriff's Office and State Highway Patrol's response,
- the jurisdictional issues raised by the arrest of Tribal Members and Non-Members, and any general issues which may be raised by the charges
- the Tribe's possible responses to the establishment of the Hog farm, and

Research Plan:

- a list of related issues you want your research assistant to review, analyze and summarize. (Your Research Assistant is new so you will have to be specific about why you need the item and specify what exactly the Research Assistant will need to focus on.)

Part Two (50%)

You have been invited to appear on an Award-winning Community/Public Access Channel's popular Current Issues Radio Talk Show. Your friend, who produces the show, has been impressed by your recent interest and knowledge of Indian Law and wants to help you obtain a clientele in this area of the law. She has arranged for a select group of influential Tribal leaders, Tribal attorneys and NGO Indian Advocacy Groups to view the program because she knows they are actively looking for new legal talent in various areas. You know that your legal analysis of the proposed topics must be balanced and thorough-because that is the hallmark of the program. [You have been told that you should begin with a crisp conclusion and then provide strong but brief arguments that support the proposition. You should plan to speak for about ten minutes on each subject which means no more than ten to fifteen sentences.] You also know that your friend has carefully selected topics that are of interest to those looking for legal talent, but that are somewhat controversial, in keeping with the provocative nature of the program. You want to be at your best, so you diligently prepare by carefully and objectively analyzing the specific legal issues that will be focused on each proposed topic provided by your friend.

1. **Cherokee Freedman Issue** – The Cherokee Nation has removed membership status from Cherokee Freedmen who cannot prove their direct descent from a Cherokee appearing on the Dawes Roll. Though the Cherokee Nation was required to give “citizenship” status, that is, “the same rights” to all Freedmen pursuant to an 1866 Treaty “as native Cherokees”, it has recently amended its Tribal Constitution to limit membership to direct descendants and to remove all Freedmen who cannot prove they have Cherokee blood. As a result, the Congressional Black Caucus is threatening to hold up all general Indian Legislation unless it includes a rider withholding federal funds from the Cherokee Nation for their stance on the Freedmen membership issue. It is hoped this tactic will place tremendous political pressure on the Cherokee Nation from other Indian Tribes to change their position, and if not, that other Tribes who need Congress to act on their various legislative initiatives will not resist the Rider.
 - a. What is the Cherokee Nation’s right to determine its own membership?
 - b. Does Congress have the ability to withhold funds from the Cherokee Nation for its decision not to include the Cherokee Freedmen without proof of Cherokee descent?
 - c. What claims might the Cherokee Freedman have?

2. **Native Hawaiian Rights** - A group of Native Hawaiians activists took over the Native Hawaiian Palace last week demanding more access to the historical site managed by the state. Their demands were met and they were granted amnesty for their take-over.
 - a. How do Native Hawaiians differ from American Indians?

3. **Amnesty International Report.** Amnesty International released a Report last fall, entitled "Maze of Injustice". One of the items reported was that 1 of 3 Indian women will experience rape in their lifetime. It was also revealed that there is a high rate of inter-racial violence experienced by native women, particularly by white male perpetrators. The focus of discussion will be on Indian Country. The Supreme Court has ruled that Indian Tribes do not have jurisdiction over non-Indian criminal offenders for crimes in Indian Country.
 - a. What is Indian Country?
 - b. Why don't tribes possess territorial jurisdiction of all offenders within the reservation?
 - c. Who has jurisdiction over non-Indian crimes in Indian Country?

4. **International Rights of Indigenous Peoples** - The Declaration on the Rights of Indigenous Peoples was adopted by the General Assembly of the United Nations in 2007. The United States, Canada, New Zealand and Australia voted against the adoption of the Declaration. The State of Maine's legislature recently voted to recognize the Declaration in 2008. Each nation state has a unique relationship with its indigenous population. The Declaration appears to be a move toward setting broad international norms and standards in respect to the relationship between nation states and indigenous peoples within the state.
 - a. Explain the United States' historical relationship with the Indigenous Peoples within its boundaries.