

**University of Utah
College of Law
Examination Cover Sheet**

Student Examination Number:

**Law & the American Indian
Professor Skibine**

May 1- 5

Spring Semester 2000

8 Hour Take Home Exam

Pick up the exam between 8 - 8:30 and return 8 hours later.

General Take Home Exam Instructions:

- 1. Print your Examination Number, the title of the course and the instructor's name on the front of every page.**
- 2. Students must submit the examination questions with the answers.**
- 3. If the examination utilizes a computer answer sheet, print your Examination Number at the top of the front side of the computer answer sheet in the space provided. Complete the space marked "Identification Number" (on the back of the computer answer sheet) by filling in four zeros followed by your Examination Number. For example, if your Examination Number is 99999 fill in 000099999.**

THIS IS PROFESSOR SKIBINE'S 8 HOUR TAKE HOME EXAM ON FEDERAL INDIAN LAW. THERE ARE FOUR QUESTIONS (175 POINTS). I BELIEVE THAT THE EXAM CAN BE ADEQUATELY ANSWERED IN LESS THAN FOUR HOURS. THERE IS A LIMIT OF 20 DOUBLE SPACED TYPED PAGES FOR THE EXAM. YOU DO NOT HAVE TO TYPE ALTHOUGH IT IS RECOMMENDED. YOU ALSO SHOULD NOT FEEL COMPELLED TO PRODUCE TWENTY PAGES.

QUESTION NUMBER ONE: 55 POINTS.

Joe Skywater is not racially speaking an American Indian, but he was nevertheless adopted and enrolled into the Yankton Sioux Tribe and became an acknowledged tribal religious leader. On the way to a pow-wow in California, he was stopped by Billie Jack, a Wyoming state trooper (who is also cross-deputized as a Wind River tribal officer and a BIA police officer) for violating the state's posted speed limit on a state highway running through the Wind River Indian reservation. While issuing the ticket, the state trooper noticed the following items on the back seat of Joe's car: a bunch of turtle shells belonging to a kind of turtle on the Endangered Species List pursuant to the Endangered Species Act (ESA), a jar containing some Peyote, and some ancient Pueblo pottery usually found in Pueblo graves.

The trooper issued a state speeding ticket to Skywater. He also arrested Joe and brought him in front of a Wind River tribal court judge for transporting sacred funerary objects in violation of tribal criminal law. After Joe posted bail at the tribal court, Billie Jack brought him in front of a state magistrate on a charge of possessing peyote in violation of a state statute. The state law allows members of the Native American Church to use peyote in the practice their religion. Joe is not a member of that church but is considered a legitimate religious leader by Sioux practicing a traditional brand of Sioux religion which as it happens, does involve the occasional use of Peyote.

Finally Billy Jack referred Joe to the US attorney for any possible violations of the ESA and the Native American Graves Protection and Repatriation Act (NAGPRA).

Joe's tribe, the Yankton Sioux tribe, does have a treaty with the United States guaranteeing the right of tribal members to capture animals for religious purposes. Joe can prove that these turtle shells were used for religious purposes. The ESA's only reference to Indians in the text of the statute is a limited exception for Alaskan Natives (Indians, Aleuts, and Eskimos).

You are Skywater's attorney. What are the arguments you can raise in defending him against these 5 charges and their chance of success.

QUESTION NUMBER TWO: 35 POINTS

The United States holds a 600-acre allotment in trust for some members of the Yakima Indian Nation. With the approval of these members and the Secretary of the Interior, this land was leased to Crushstones Inc., a non-Indian corporation, for the purpose of mining rocks, gravel and other similar material. While digging for rocks and gravel, employees of the corporation discovered the almost complete skeleton of a rather huge dinosaur which was embedded in the land. The Corporation dug the bones up and is contemplating selling them to a museum for a substantial amount of money.

Eventually, the Indian allottees discovered what had happened. When they asked Crushstones Inc. to give back the bones, the Corporation responded that under its interpretation of the lease, it has the rights to any item found in the ground except for oil, gas, precious metals, or any man-made items.

The tribal allottees now want to compel Janet Reno and the U.S. Justice Department to sue the Corporation in an attempt to recover the bones. In case the court interprets the lease as giving possession of the bones to Crushstones, the allottees want to sue the United States for mismanagement of trust resources in approving a lease of the land allowing the non-Indian corporation to acquire the bones for almost nothing.

The Tribal Council has notified all concerned parties that it has taken the position that these bones constitute objects of cultural patrimony which belong to the tribe and cannot be sold or appropriated by anyone, including the tribal members on whose land the bones were found.

After "boning-up" on these issues, discuss the following:

- 1. Should the court hold that the lease does not give title to the bones to Crushstones, who would then own the bones?**
- 2. Can the tribal allottees force Janet Reno to litigate for the return of the bones?**
- 3. Is the U.S. financially liable to the allottees in the event the bones cannot be returned?**

QUESTION NUMBER THREE: 45 POINTS

Pursuant to the Indian Gaming Regulatory Act (IGRA), the Miccosukee Tribe of Florida was attempting to negotiate a class III gaming compact with the State of Florida. The State Governor insisted that he did not have to negotiate with the tribes over slot machines and banked card games such as Black Jack. The state does not allow banked card games but authorizes all sorts of lottery games, some of which are electro mechanical "instant" winner games which the tribe argued are functionally similar to slot machines.

Negotiations broke off and the tribe sued the state in federal district court pursuant to IGRA, claiming breach of good faith in the negotiations. After that law suit was dismissed because of the state's sovereign immunity, the Tribe filed an appeal but also asked the Secretary of the Interior to issue gaming procedures for Class III games. The state immediately filed another law suit asking the district court to declare that the Secretary lacked authority to issue these procedures. While that suit was pending and while the Secretary was pondering the tribe's request that he issue gaming procedures, the tribe went ahead and opened its casino which is a Las Vegas type of casino with all types of what IGRA refers to as class III games. The State and the US attorney have filed separate law suits requesting the court to shut down the casino.

You are a law professor and the tribal attorney, one of your former students, gives you a call asking you to appraise the validity of these four law suits. What do you tell him, besides what your fees are?

While the law suits were still pending, the tribal casino was making lots of money and the tribal council decided to issue a per capita distribution to all tribal members who are residents of the state of Florida.

Upon learning of the tribal per capita distribution plan, the non-Floridian tribal members brought a law suit in the nature of mandamus in federal court against the tribe, asking for the Court to issue an order mandating the tribe to include these tribal members in the distribution.

You are the Tribal attorney. What is your next move?

QUESTION NUMBER FOUR: 40 POINTS

The National Rifle Association (NRA) owns a large tract of land in fee within the Crow Indian reservation in Montana. The NRA has just decided to open a shooting range on that tract. The Crow tribe has notified the NRA that it needs a tribal license before it can open the range to the public. The NRA has leased a building located on the tract to two Crow tribal members for the purpose of operating a small restaurant.

The state of Montana has notified the NRA and the two tribal members that a state sales tax will have to be collected on anything sold at the shooting range including a tax on the admission tickets the NRA requires the patrons of the range to purchase and a tax on anything sold at the two tribal members' restaurant.

The NRA is arguing that it does not have to obtain a permit from the tribe. Both the (NRA and the two tribal members also think they are exempted from the state tax.

One day, as he was preparing to practice his shooting skills while at the range, Johnny Gothisgun who is a Crow tribal member, got hurt when a cartridge ejected from Willie Whites's rifle and connected with Johnny's right eye. Willie White is neither a tribal member nor an Indian. Gothisgun is suing White in Crow tribal court for negligent operation of the rifle. The suit alleges, among other things, that Willie discharged his, gun while he was to close to Johnny). Willie White claimed the tribal court has no jurisdiction over him and filed a case against the tribal court in federal court asking for an injunction against any further proceedings in tribal court.

Discuss the following:

- 1. Does the NRA have to obtain the tribal license?**
- 2. Can the state collect its sales tax from the NRA and the two tribal members?**
- 3. What is the federal court likely to do in the case of White v. Tribal Court?**