Economic Development in Indian Country
Spring 2019 - Mondays - 10:05 - Noon - Room 655

Professor Robert J. Miller
Sandra Day O’Connor College of Law at Arizona State University

“My idea of tribal economic development is that sovereignty is economic independence.”
Chairman Clifford Lyle Marshall, Hoopa Tribe (quoted in Robert J. Miller, Reservation
“Capitalism:” Economic Development in Indian Country 156 (2013)).

This course explores the legal, economic, and cultural issues involved with economic
development in Indian Country. These issues include the challenges and opportunities presented
by the unique legal status of tribal governments and Indian lands, the respective powers of tribal
nations and states to tax, tribal sovereign immunity, and the availability, or not, of capital, labor,
and consumers in Indian Country. The course also briefly examines tribal gaming.

Text: Robert J. Miller, Reservation “Capitalism:” Economic Development in Indian Country
(paperback University of Nebraska Press 2013); and handouts on Blackboard.

Requirements: Regular attendance and regular class participation. Grades will be based 25% on VOLUNTARY* class participation, and 75% on the four written assignments and negotiating session.
*(Voluntary participation means I want to call on volunteers. If no one volunteers, I will be forced to cold-call students. Thus, you all are mostly in charge of when, and how much, you will be called on.)

Students will be placed in teams of two, and given a 20+ page business proposal as a fact pattern,
and a 28 page tribal commercial code to use in drafting corporate Articles of Incorporation. One
of the members of each team will represent a tribe and one a private businessperson. (If you feel
the need to make up additional facts to complete the documents/negotiations, feel free to do so.
But teams need to agree on, and inform me, of any made-up facts.)

The teams will complete:

1. A two-hour, in-class, negotiating session during class 7, Feb. 25. I will move from table
to table to observe, AND GRADE, how each team is conducting their negotiation. Please
try to treat this session as seriously as if it were a real-world business negotiation.

2. Each team will submit to me by class 8, March 11, an agreed upon 1.) list of provisions
that need to be negotiated for the contract and for the Articles of Incorporation.

3. Each team will negotiate, draft, and submit their 2.) contract and 3.) Articles of
Incorporation to me by class 11, April 1. This work will be accomplished outside the
classroom. It will include multiple meetings in person, via emails, and telephone, and
probably multiple drafts of the proposed contract and Articles of Incorporation before the team reaches agreement on the final documents.

Each team member will, no doubt, share the same grade on these 3 activities. Everyone must give their absolute best effort to participate fully with their team partner/opposing attorney. (As in the real world, you will be in an adversarial relationship with your team member, but you HAVE to get the deal and the documents completed while you vigorously represent your client’s interests.)

4. Thereafter, each individual student will draft 4. a letter to their client explaining the proposed Articles of Incorporation and contract, and advising whether the client should sign them. These letters will be handed in to me by 11:59 p.m. on Monday April 22. Each student will be individually graded on this assignment.

The negotiating session and the 4 written assignments will equal 75% of your final grade. (Class participation equals the other 25% of your grade.)

If you want to review some materials on drafting contracts, check out these texts:
Scott Burnham, Drafting and Analyzing Contracts
Kenneth Adams, A Manual of Style for Contract Drafting
George Kuney, The Elements of Contract Drafting

Reading Assignments

1. Mon Jan 7
MILLER, 1-24; 27-29; 38-47
Harvard Project, Economic Development, chpt. 7

2. Mon Jan 14 – Current tribal economic activities & sovereign immunity
Umatilla Tribal org. chart
MILLER, 49-70
Harvard Project, chpt. 9, 159-71
Lewis v. Clarke (U.S. April 25, 2017)
Lewiston Golf (NY Ct. App. 2014). (Do not read the dissent)
Bay Mills
Kiowa

Mon Jan. 21 NO CLASS. School closed

3. Mon Jan 28 - Indian lands and assets
Mondou, Timber Harvesting
Mitchell
Royster, Conjunctive Management
Sly, Tribal Water Leases
Pommersheim, Land into Trust
Upstate Citizens for Equality v. United States
Fogarty, Starting a title plant
Tribal Tourism Toolkit (scan)

4. Mon Feb 4 - Commercial Codes & Corporate issues
Bruce King, The Model Tribal ... Act (Read pages 1-8)
Sue Woodrow, Secured Transaction Law
Compact between Crow Tribe and Montana
In re Blue Lake
Eberhard, Structuring Tribal Enterprises
Wolf, To Incorporate?
Flat Center Farms
Bernardi, State Corporations

5. Mon Feb 11 - Gaming & etc.
MILLER, 71-92
SBA, Section 8(a)
Grand Canyon Skywalk
Cornell & Kalt, Two Approaches to Economic Development

6. Mon Feb 18 – Housing and new ideas
Harvard Project, Housing, chpt. 14
Miller & Suagee, The New Indian Housing Act - (Read pages 1-9)
MILLER, 146-48
Navajo Housing Authority v. Betsoi
Marceau v. Blackfeet Housing Authority
Morgan, 49 Ariz. St. L.J. 115 (2016)

7. Mon Feb 25 - IN CLASS TEAM NEGOTIATIONS OF ARTICLES OF INCORPORATION AND CONTRACT.

SPRING BREAK

8. Mon Mar 11 – Each team to submit to Prof. Miller their list of items to be negotiated for the Articles of Incorporation and contract.

Investment in Indian Country & Municipal bonds
MILLER, Attracting Investments, 93-111, 148-49
Hernando de Soto, Hidden Architecture & Why Capitalism Bootstraps Banking
Small, Financing Native Nations
Gavin Clarkson, Capital and Finance Issues,
Wells Fargo Bank v. Lake of the Torches Econ. Dev. Corp.
9. Mon Mar 18 - Federal statutes & Tribal courts and bureaucracies
25 U.S.C. 81, 177, 324, 406-07, 415, 465
Gasplus, LLC
Incentive Payments
Kron-Warren, Hearth Act
Peabody Coal Co. v. Navajo Nation
Montana v. King
Cornell & Jorgenson, Tribal Administration
Missouri River Services v. Omaha Tribe

10. Mon Mar 25 - Individual Indian economic development
Miller, 113-34
Cornell et al, chapter 8
Meeks & Morris, Private Sector
Business Opportunities Cheyenne River Reservation
Buy Indian Act, 25 U.S.C. 47
Navajo Nation Business Opportunity Act & Competitive Sealed Bidding

11. Mon Apr 1 - ISDA - Submit final contract and Articles of Incorporation by this class.
Navajo Nation v. HHS
Hoopa Tribe v. Ryan
Johnson & Hamilton, Self-Governance
Cherokee Nation v. Leavitt
Two Forests under the Big Sky http://perc.org/articles/two-forests-under-big-sky-no-45
Reed v. Salazar

12. Mon Apr 8 – Taxation & Creating economies
Mescalero Apache Tribe
Merrion
Cotton Petroleum
Wagnon
Confederated Tribes of the Chehalis Reservation
Strandburg (2015)
Miller, 135-156

13. Mon Apr 15 - Potpourri & Cultural issues
Andrus v. Glover
Buy Indian Act & 2013 regulations (scan)
Galanda, Buy Indian
San Manuel Indian Bingo
McBride, Organized Labor Strategies
Miller, 156-64
Nash & Burke, Passing Title
Johnson, Just say no
Mika, Private Dollars, AND, Richland article, AND, Stewart, Native American Cultural Capital