

**REMEDIES FINAL EXAM
Sparrow Spring 2009**

****General Instructions****

IMPORTANT: By submitting your answers to this final exam, you acknowledge that you are bound by Pierce Law's Honor Code, and that any material that is plagiarized, even if negligently so, is a violation of the honor code.

- This is an open-book take-home exam.
- **This is an individual exam – do not collaborate or discuss this with anyone.**
- As negotiated in January, this examination is worth **10% of your grade** in the course.
- Lory Attalla reserved **Room 205 from 8:00 to 4:00** if you want to work at school.
- Lory is happy to email the exam to you – **please let her know IN ADVANCE.**
- If you live some distance from the law school, you can talk to Lory about emailing it in. **You must discuss this with her IN ADVANCE.**
- I will **not** answer any questions during the exam.
- Because some of your classmates may be taking the exam at a different time, **do not discuss the exam until you are authorized to do so. You are responsible** for ensuring that **no information** about this exam is heard or made known to any student who has not yet taken this exam and fully completed it.
- This exam has **6 pages** (including 2 for these directions). Be sure you have all of them.

Exam number identification only:

1. Use **only** your assigned **Exam Number** for this exam.
2. **Do not** use your name or Social Security Number anywhere.
3. **Do not** provide any identifying information anywhere on the exam.
4. **Providing any identifying information on or after the exam and before the exam is returned is a violation of the Pierce Law conduct code.**

Typeface, font, and format for questions:

1. All parts of this exam must be typed.
2. Put your exam number in the header of your exam document – on the right-hand side.
This ensures that your exam number is on each page.
3. Use 12-point Times New Roman type.
4. Double-space lines throughout.
5. 1" margins all around.

This exam consists of one fact pattern, followed by two questions (with sub-parts).

There are **no multiple choice** questions.

- **Question 1 (50 points)** 1250 words (5 pages maximum).
- **Question 2 (50 points)** 1250 words (5 pages maximum).
- The facts occur in the fictional US State of North Kansas.

"Tips" for taking this examination:

- Read the "call of the question" and the specific instructions first. Determine the specific relevant legal issues before reading through the entire fact pattern.
- **Map out or outline** your response. Often there will be multiple parts – elements, factors – that require you to address many different points. Having a sense of how many different points you need to address will help you allocate the time you spend on each.
- You know a lot about remedies. Remember that I can assess your knowledge and abilities only by what I see and can understand in your written responses; **EXPLICITLY show the steps in your reasoning.**

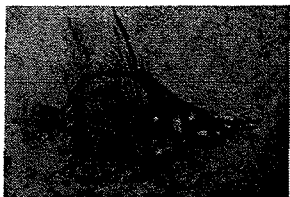
Relax, breathe, and do your best.

I believe that each one of you can be a successful lawyer!

It has been a true pleasure working with all of you.

Criteria for evaluating exam responses	
1. Identifies basic legal issues and ambiguities in legal issues	<input type="checkbox"/> Identifies major kinds of remedies available <input type="checkbox"/> Identifies which remedies are definitely available <input type="checkbox"/> Identifies which remedies <i>may</i> be available <input type="checkbox"/> Accurately uses terms recognized by legal sources
2. Uses law and reasoning	<input type="checkbox"/> For major kinds of remedies available, identifies and analyzes tests, rules and authorities <input type="checkbox"/> Explains basics about designing or measuring remedies <input type="checkbox"/> Explains other considerations in designing remedies, such as identifies weaknesses in the analysis
3. Applies facts from problem	<input type="checkbox"/> Identifies and applies key facts <input type="checkbox"/> Draws reasonable inferences from facts <input type="checkbox"/> Names assumed facts
4. Responsiveness to questions asked and organization	<input type="checkbox"/> Responds to assigned task <input type="checkbox"/> Organizes writing so easy to follow <input type="checkbox"/> Provides a coherent and accurate summary/conclusion at the beginning of each section <input type="checkbox"/> Uses headings and subheadings to help the reader follow content <input type="checkbox"/> Clear and precise prose

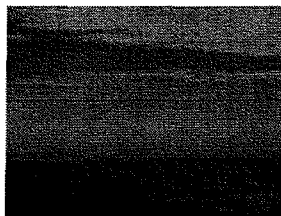
Question– Pawnee Nation v. Dana



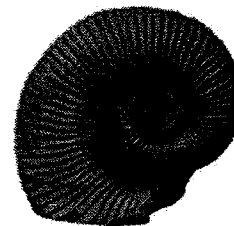
Fish Fossil



Saber-Tooth Tiger



North Kansas site



Mollusk Fossil

Dana, age 45, is a commercial real estate dealer and amateur fossil excavator. In 2005, she learned about the excavation of a 50 million year-old fish fossil in the state of North Kansas, which a private collector bought for \$3 million. Inspired by her love of fossils, the ability to harness new technology to locate fossils more precisely, and the prospect of financial gains, Dana studied everything she could about finding and extracting fossils.

Starting in March 2006, Dana signed a 5-year agreement to lease 100 acres of land in North Kansas from the Pawnee Nation (Pawnee). The Pawnee made similar leases on a regular basis, and the North Kansas Supreme Court has held these leases were valid. The lease did not provide for a fixed annual payment. Instead Dana agreed to pay 10% of the actual selling price of any fossils collected from the Pawnee property which Dana sold for a sum more than \$1,000. Dana agreed that she would pay the Pawnee 10% of the selling price within 30 days of when she received the purchase price. Under North Kansas law, fossils in the ground belong to the landowner unless the landowner has contracted for other ownership, as the Pawnee have with Dana under the terms of the lease.

Dana and a Pawnee representative walked the land Dana planned to lease. Given the remote and dry terrain of the 100-acre site, it was used for grazing livestock in the spring, and only in years where rains were plentiful.

Dana's two children, both in their twenties, offered to help her excavate the land. Together with occasional help from family and friends, they found a number of fossils — including ancient mollusks — that usually retailed for about \$100 when in good condition. They found these mollusks clustered in the middle of the 100-acre site; each year Dana found about 20 of these fossils in good condition. Dana gave these mollusks to those people who had most helped her excavating efforts. Throughout the site, Dana also found a number of relatively unimpressive small fossils of plants and fish, which had little value and would need considerable time and effort before they would be in good condition.

In June 2006, bordering the western edge of the leased property, Dana unearthed a few small bones that seemed to be from a kind of ancient large cat. Inch-by-inch she and her helpers used toothbrushes to brush away rock and dirt to get a better sense of what they were unearthing. Dana soon realized that she had uncovered a rare find, a well-preserved seemingly intact skeleton of an ancient ancestor of a saber tooth tiger. The chief curator of the North Kansas Museum of Science came to Dana's site and verified that she had found the oldest known relative of the ice-age saber-tooth tiger. The curator told her that if the skeleton were complete, its rarity and completeness would likely be worth several million dollars. Dana also realized that

the 100 acres she leased likely contained other intact tiger-related skeletons from the same era. Dana's excavating work did no damage to the leased land at any point.

Since she discovered "Tigger," as Dana named the fossil, Dana and her family and friends spent hundreds of hours painstakingly excavating it. They uncovered the rough outlines of Tigger's bones, leaving pieces of rock, gently removed bone-encased rock chunks from the ground, packed them in layers of paper, plastic wrap, and plaster, and then shipped them to a professional curator. The professional curator, Kerry Owen, lives hundreds of miles away and specializes in preparing ancient remains for display. Owen's estimated fee for preparing Tigger for display is \$300,000. Dana has already paid Owen \$100,000 in fees, and anticipates spending at least another \$200,000 to get Tigger ready for sale to a private buyer. In the process of excavating Tigger, Dana has also paid for materials used to excavate Tigger, as well as packaging and shipping Tigger's bones to Owen.

Dana's kids have posted images, texts and videos of Tigger on a website they created. Local and national media have picked up the stories since 2006, and other professional and amateur fossil lovers have been to the site. The curator Kerry Owen and the Pawnee Nation both have websites with links to images, text, and video clips of Tigger.

In March 2009, as Dana and her kids neared the final stages of excavating Tigger, the North Kansas Museum of Science indicated that it was willing to pay up to \$2.5 million for Tigger. In April 2009, the Pawnee Nation informed Dana that there was a problem and she needed to stop all work on Tigger immediately. Tigger, the Pawnee spokesperson said, was actually not on the land that Dana had leased, but on land next to it. Dana consulted a number of different maps and realized that the Pawnee were right—Tigger was just over the boundary line from her leased 100 acres. She admits that must have been unknowingly trespassing when she excavated Tigger.

Assume that Dana innocently and legitimately relied upon representations that she was on her leased area when she discovered Tigger. Dana admits that she innocently trespassed on Pawnee land. Dana wants to keep working on Tigger, retain possession and control of the pieces she has excavated, and complete the project, ending in selling Tigger to the North Kansas Museum of Science or other bidder who will make Tigger available for public display.

The Pawnee feel wronged by Dana. They claim that Tigger was on their property and all parts of Tigger, excavated and unexcavated, belong to them and should be returned to them. Tigger does not have significance as a sacred relic; the Pawnee are interested in completing the excavation and selling Tigger to the highest bidder, including wealthy individuals who want Tigger for private personal collections. The Pawnee plan to use sales from Tigger to bolster Pawnee education and healthcare services.

Points to consider:

- Assume, unless given otherwise, that there are no additional applicable relevant laws, ordinances, or statutes other than those studied which would change the analysis.
- Assume the material written is accurate and reliable.
- Assume all claims, defenses and counterclaims are within relevant statutes of limitation.
- Assume that all remedies are governed by US law.
- Do not** include an analysis of punitive damages.
- Do not** include an analysis of attorneys' fees.
- Do not** include an analysis of present value, taxes, or interest.
- Use law, facts and policy in answering the questions below. Policy arguments do not need to be made for each point. Instead, apply policy to the overall analysis or to one of the more ambiguous elements.
- Scoring these essays** is similar to scoring on the team assessments and essays from previous years. Identifying legal issues and applying specific facts to legal principles – showing the analysis to the reader – is most important. **About 5% of the grade** is on policy. **Around 10% of the grade** will be based on writing and organization. Because of the word/page limits, focus your analysis on the areas with the greatest ambiguity.

Question 1 (50 points) 1250 words maximum – 5 pages:

The Pawnee have asked you to advise them of their possible remedies against Dana if she does not stop work on Tigger or return Tigger's bones to them. The Pawnee are not interested in seeking a TRO, but do want to know **about at least 4 other realistic options** so they can best decide how to proceed. Using law, facts, and policy:

- Prepare a memo identifying **the best equitable and legal remedies** you would recommend that they pursue against Dana. Identify the **4 best remedies** in total, using any combination of equitable and legal remedies. For example, you might decide that the best ways the Pawnee could achieve their goals is to pursue 2 equitable and 2 legal remedies **OR** to pursue 3 equitable and 1 legal remedy **OR** pursue 1 equitable and 3 legal, etc.
- Organize your analysis by **starting with the remedies the Pawnee are most likely to get, and ending with the remedies the Pawnee are least likely to get**. While analyzing the different remedies, explain the reasons for their relative likelihood of success.
- For any equitable remedies, specify the details of the equitable relief and the basis for that relief.
- For any legal remedies, explain what the Pawnee would be entitled to and how you arrived at those figures.
- **For all 4 remedies**, identify which remedies are mutually exclusive.

Question 2 (50 points) 1250 words maximum – 5 pages:

Assume that no conflicts prevent you from representing Dana. Advise her about her possible realistic responses — **defenses and counterclaims** — against the Pawnee claims for equitable and legal remedies, that would allow her to pursue her goals. Using law, facts, and policy:

- Prepare a memo identifying at least **4 specific arguments** that Dana could make to prevent or limit Pawnee claims, or make a claim of her own.
- Organize your analysis by **starting with the defenses and counterclaims that are most likely to help Dana** achieve her goals and ending with the defenses or counterclaims which are least likely to help Dana. While analyzing the different defenses and counterclaims, explain the reasons for their relative likelihood of success.
- For equitable claims and defenses, identify specifically how Dana could use these to prevent or limit Pawnee claims, or to support her own claim.
- For legal claims and defenses, identify specifically how Dana could use these to prevent or limit Pawnee claims, or to support her own claim, explaining how you arrived at any figures.
- **For all 4 defenses and counterclaims**, identify which are mutually exclusive.