

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

Kronk-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*