

QUESTION 2 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I

The Apache Indian tribe started to build a hotel on its reservation lands within the city of Smithville, Michigan. Smithville city officials informed the tribe that the construction was not in compliance with local zoning ordinances. Tribal officials asserted that the tribe was in compliance, but if it was not, the construction of the hotel would not be subject to the ordinances because federal law granted it tribal immunity. The tribe declared that it would continue building as previously planned.

Having no other option, the city sued the tribe in a Michigan circuit court, alleging a nuisance resulting from violation of numerous city zoning ordinances. The city also asserted in the complaint that although the tribe was recognized pursuant to federal law, it could not utilize its tribal immunity under federal law and therefore was not exempt from the local zoning ordinances.

In light of the complaint's reference to its tribal immunity under federal law, the tribe removed the case to federal district court on the basis of federal question jurisdiction, which the city did not challenge. The parties engaged in more than a year of pretrial discovery, and, after a trial, the district court ruled that the tribe was in compliance with the ordinances and dismissed the case. The city appealed, arguing that the district court did not have subject matter jurisdiction over the complaint.

(1) Can the city, after trial and not having previously raised the issue, challenge on appeal the district court's jurisdiction, and (2) regardless of your answer to the first question, did the district court have jurisdiction over the complaint? Explain your answers.

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