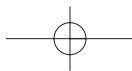
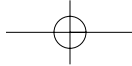




Tribal Governmental Gaming Law





*Carolina Academic Press
Law Casebook Series
Advisory Board*



Gary J. Simson, Chairman
Dean, Case Western Reserve University School of Law

Raj Bhala
University of Kansas School of Law

John C. Coffee, Jr.
Columbia University Law School

Randall Coyne
University of Oklahoma College of Law

John S. Dzienkowski
University of Texas School of Law

Paul Finkelman
Albany Law School

Robert M. Jarvis
*Shepard Broad Law Center
Nova Southeastern University*

Vincent R. Johnson
St. Mary's University School of Law

Michael A. Olivas
University of Houston Law Center

Kenneth Port
William Mitchell College of Law

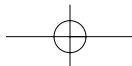
Michael P. Scharf
Case Western Reserve University School of Law

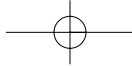
Peter M. Shane
*Michael E. Moritz College of Law
The Ohio State University*

Emily L. Sherwin
Cornell Law School

John F. Sutton, Jr.
Emeritus, University of Texas School of Law

David B. Wexler
*John E. Rogers College of Law
University of Arizona*





Tribal Governmental Gaming Law

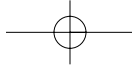
Cases and Materials

G. William Rice

ASSOCIATE PROFESSOR OF LAW
CO-DIRECTOR, NATIVE AMERICAN LAW CENTER
UNIVERSITY OF TULSA COLLEGE OF LAW

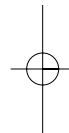
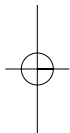
CAROLINA ACADEMIC PRESS

Durham, North Carolina



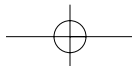
Copyright © 2006
G. William Rice
All rights Reserved.

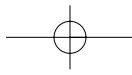
ISBN-10: 1-59460-208-5
ISBN-13: 978-1-59460-208-5
LCCN: 2006936991



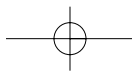
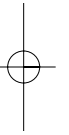
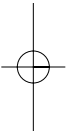
CAROLINA ACADEMIC PRESS
700 Kent Street
Durham, North Carolina 27701
Telephone: (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

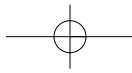
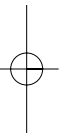
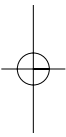
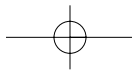
Printed in the United States of America.





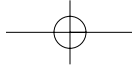
*To young warriors
who spend their lives promoting
Self-Determination for Indian Peoples
and earn the title "Elder."*





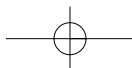
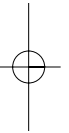
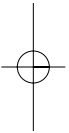
Summary of Contents

Some Past and Present Indian Tribal Governmental Gaming Facilities	xvii
Table of Cases	xxi
Preface	xxvii
Introduction and Glossary	xxix
Chapter One The Early Development of Indian Gaming	3
Chapter Two The Indian Gaming Regulatory Act	59
Part One: An Act of Compromise	71
Part Two: Legislative History	96
Part Three: Tribal Gaming Facilities as Tribal Entities	127
Chapter Three Management Contracts and Related Issues	131
Part One: Early Gaming Management Contracts	132
Part Two: The Problem of Managers and Consultants	155
Part Three: Managers against Managers	209
Chapter Four Class II or Class III	223
Part One: Of Grandfathers, Johnsons, and Artichokes	224
Part Two: Long Distance Gaming and the Internet	248
Part Three: Bingo Played in a Slot Box	257
Chapter Five Tribal-State Class III Gaming Compacts	311
Part One: The Compromise is Broken	311
Part Two: Good Faith Class III Compact Negotiations	335
Part Three: Miscellaneous Compact Issues	355
Chapter Six “Indian Land” and its Acquisition	379
Part One: Off Reservation Acquisition of “Indian Lands”	379
Part Two: Restored Tribes and Restoration of Lands	401
Part Three: Tribe vs. Tribe	414
Chapter Seven Miscellaneous Gaming Issues	425
Part One: Post IGRA State Attempts to Regulate and Tax	426
Part Two: Post IGRA Tribal Authorities	445
Part Three: NIGC Chairman’s Closing Orders and Other Enforcement	465
Part Four: Federal Criminal Sanctions	480
Part Five: Federal Taxation	493



SUMMARY OF CONTENTS

Part Six: Employee Suits	505
Part Seven: Public Relations	513
Appendix	523
Index	825



Contents

Some Past and Present Indian Tribal Governmental Gaming Facilities	xvii
Table of Cases	xxi
Preface	xxvii
Introduction and Glossary	xxix
“Allotment”	xxix
“Allotment Policy”	xxx
“Citizenship Act of 1924”	xxx
“The Dawes Act”	xxxix
“Dependent Indian Community”	xxxix
“Federal Indian Law”	xxxix
“Federally recognized Tribe”	xxxix
“General Allotment Act”	xxxix
“Indian”	xxxix
“Indian Allotment”	xxxviii
“Indian Citizens”	xxxviii
“Indian Civil Rights Act”	xxxix
“Indian Country”	xxxix
“Indian Financing Act”	xli
“Indian Law”	xli
“Indian Removal Act”	xlii
“Indian Removal Policy”	xlii
“Indian Reorganization Act”	xliii
“Indian Reservation”	xliii
“Indian Self-Determination Act”	xliv
“Indian Self-Governance Act”	xliv
“Indian Tribe, Band, or Nation”	xliv
“Public Law No. 83-280”	xlvi
“Restricted Allotment”	xlvi
“Termination Policy”	xlvi
“Tribal Government”	xlvi
“Tribal Government Tax Status Act”	xlviii
“Trust Allotment”	xlviii
Chapter One The Early Development of Indian Gaming	3
U.S. v. Sosseur	4
Notes	7
U.S. v. Farris	7

Notes	16
Seminole Tribe of Florida v. Butterworth	17
Notes	22
The Barona Group of the Capitan Grande Band of Mission Indians v. Duffy	23
Notes	27
Langley v. Ryder	27
Notes	30
Iowa Tribe of Indians of Kansas and Nebraska v. Kansas	30
Notes	33
U.S. v. Dakota	33
Notes	37
Indian Country, U.S.A., Inc. v. Oklahoma Tax Commission	37
Notes	46
California v. Cabazon Band of Mission Indians	47
Notes	57
Chapter Two The Indian Gaming Regulatory Act	59
Note: Bringing Balance To Indian Gaming	59
Part One: An Act of Compromise	71
An Act to Regulate Gaming on Indian Lands	71
Sec. 1. Short Title	72
Sec. 2. "25 U.S.C. 2701" Findings	72
Sec. 3. "25 U.S.C. 2702" Declaration of Policy	72
Sec. 4. "25 U.S.C. 2703" Definitions	72
Sec. 5. "25 U.S.C. 2704" National Indian Gaming Commission	74
Sec. 6. "25 U.S.C. 2705" Powers of the Chairman	76
Sec. 7. "25 U.S.C. 2706" Powers of the Commission	76
Sec. 8. "25 U.S.C. 2707" Commission Staffing	77
Sec. 9. "25 U.S.C. 2708" Commission—Access to Information	78
Sec. 10. "25 U.S.C. 2709" Interim Authority to Regulate Gaming	78
Sec. 11. "25 U.S.C. 2710" Tribal Gaming Ordinances	78
Sec. 12. "25 U.S.C. 2711" Management Contracts	86
Sec. 13. "25 U.S.C. 2712" Review of Existing Ordinances and Contracts	88
Sec. 14. "25 U.S.C. 2713" Civil Penalties	89
Sec. 15. "25 U.S.C. 2714" Judicial Review	90
Sec. 16. "25 U.S.C. 2715" Subpoena and Deposition Authority	90
Sec. 17. "25 U.S.C. 2716" Investigative Powers	91
Sec. 18. "25 U.S.C. 2717" Commission Funding	91
25 U.S.C. §2717a. Availability of class II gaming activity fees to carry out duties of Commission	92
Sec. 19. "25 U.S.C. 2718" Authorization of Appropriations	92
Sec. 20. "25 U.S.C. 2719" Gaming on Lands Acquired after Enactment of this Act	92
Sec. 21. "25 U.S.C. 2720" Dissemination of Information	94
Sec. 22. "25 U.S.C. 2721" Severability	94
Sec. 23. Criminal Penalties	94
"Section 1166. Gambling in Indian country	94

CONTENTS

xi

“Section 1167. Theft from gaming establishments on Indian lands	95
“Section 1168. Theft by officers or employees of gaming establishments on Indian lands	95
Sec. 24. Conforming Amendment	95
Part Two: Legislative History	96
INDIAN GAMING REGULATORY ACT	96
Part Three: Tribal Gaming Facilities as Tribal Entities	127
Allen v. Gold Country Casino	127
Chapter Three Management Contracts and Related Issues	131
Part One: Early Gaming Management Contracts	132
Wisconsin Winnebago Business Committee v. Koberstein	132
Notes	138
A. K. Management Company v. San Manuel Band of Mission Indians	138
Barona Group of the Capitan Grande Band of Mission Indians v. American Management & Amusement, Inc.	141
U.S. ex rel. The Citizen Band Potawatomi Indian Tribe of Oklahoma v. Enterprise Management Consultants, Inc.	148
Enterprise Management Consultants, Inc. v. U.S.	151
Notes	154
Part Two: The Problem of Managers and Consultants	155
The Eleventh Circuit:	155
Tamiami Partners, Ltd v. Miccosukee Tribe of Indians of Florida	155
Notes	158
Tamiami Partners, Ltd. v. Miccosukee Tribe of Indians of Florida	159
Notes	167
Tamiami Partners, Ltd. v. Miccosukee Tribe of Indians of Florida	167
The Tenth Circuit:	173
Bank of Oklahoma v. Muscogee (Creek) Nation	173
Notes	176
The Ninth Circuit:	177
American Vantage Companies, Inc. v. Table Mountain Rancheria	177
Notes	183
The Eighth Circuit:	184
Bruce H. Lien Company v. Three Affiliated Tribes	184
U.S. ex rel. Bernard v. Casino Magic Corp.	190
Notes	195
Turn Key Gaming Inc v. Oglala Sioux Tribe	195
Notes	198
The Seventh Circuit:	199
U.S. ex rel. Mosay v. Buffalo Brothers Management, Inc.	199
Notes	203
The Second Circuit:	203
Basil Cook Enterprises, Inc. v. St. Regis Mohawk Tribe	203
Notes	209
Part Three: Managers against Managers	209
Schmit v. International Finance Management Co.	209
Casino Resource Corporation v. Harrah’s Entertainment, Inc.	209

First American Kickapoo Operations, L.L.C. v. Multimedia Games, Inc.	213
Notes	221
Chapter Four Class II or Class III	223
Part One: Of Grandfathers, Johnsons, and Artichokes	224
U.S. v. Sisseton-Wahpeton Sioux Tribe	224
Citizen Band Potawatomi Indian Tribe of Oklahoma v. Green	233
Artichoke Joe's California Grand Casino v. Norton	235
Part Two: Long Distance Gaming and the Internet	248
State ex rel. Nixon v. Coeur d'Alene Tribe	248
AT & T Corporation v. Coeur d'Alene Tribe	251
Part Three: Bingo Played in a Slot Box	257
D.C. Circuit:	257
Cabazon Band of Mission Indians v. N.I.G.C.	257
Diamond Game Enterprises, Inc. v. Reno	260
Tenth Circuit:	264
U.S. v. 162 Megamania Gambling Devices	264
Notes	271
Seneca-Cayuga Tribe of Oklahoma v. N.I.G.C.	271
Ninth Circuit:	283
Spokane Indian Tribe v. U.S.	283
U.S. v. 103 Electronic Gambling Devices	286
Eighth Circuit:	295
Shakopee Mdewakanton Sioux Community v. Hope	295
U.S. v. Santee Sioux Tribe of Nebraska	297
Seventh Circuit:	303
Oneida Tribe of Indians of Wisconsin v. Wisconsin	303
Notes	307
Chapter Five Tribal-State Class III Gaming Compacts	311
Part One: The Compromise is Broken	311
Seminole Tribe of Florida v. Florida	311
Notes	320
Pueblo of Santa Ana v. Kelly	322
Notes	327
Jicarilla Apache Tribe v. Kelly	328
Notes	329
U.S. v. The Spokane Tribe of Indians	330
Part Two: Good Faith Class III Compact Negotiations	335
Cheyenne River Sioux Tribe v. South Dakota	335
Mashantucket Pequot Tribe v. Connecticut	339
Northern Arapaho Tribe v. Wyoming	343
Notes	348
In re Indian Gaming Related Cases	348
Notes	354
Part Three: Miscellaneous Compact Issues	355
Ysleta Del Sur Pueblo v. Texas	355
Notes	358

CONTENTS

xiii

Cabazon Band of Mission Indians v. Wilson	358
New York v. Oneida Indian Nation of N.Y.	368
Notes	371
Idaho v. Shoshone-Bannock Tribes	372
Chapter Six “Indian Land” and its Acquisition	379
Part One: Off Reservation Acquisition of “Indian Lands”	379
Keweenaw Bay Indian Community v. U.S.	380
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin v. U.S.	384
Notes	394
Carcieri v. Norton	396
Notes	397
Kansas v. U.S.	398
Part Two: Restored Tribes and Restoration of Lands	401
City of Roseville v. Norton	401
Taxpayers of Michigan Against Casinos v. Norton	409
Part Three: Tribe vs. Tribe	414
Sault Ste. Marie Tribe of Chippewa Indians v. U.S.	414
Notes	420
Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Norton	420
Chapter Seven Miscellaneous Gaming Issues	425
Part One: Post IGRA State Attempts to Regulate and Tax	426
United Keetoowah Band of Cherokee Indians v. Oklahoma	426
Cabazon Band of Mission Indians v. Wilson	432
Notes	437
Florida v. Seminole Tribe of Florida	437
Notes	444
Part Two: Post IGRA Tribal Authorities	445
U.S. ex rel. Morongo Band of Mission Indians v. Rose	445
Gaming Corporation of America v. Dorsey & Whitney	449
Notes	460
Lewis v. Norton	461
Part Three: NIGC Chairman’s Closing Orders and Other Enforcement	465
U.S. v. Santee Sioux Tribe of Nebraska	465
Notes	471
U.S. v. Santee Sioux Tribe of Nebraska	471
Notes	474
Colorado River Indian Tribes v. National Indian Gaming Commission	475
Part Four: Federal Criminal Sanctions	480
U.S. v. Cook	480
U.S. v. Funmaker	484
Notes	489
U.S. v. E.C. Investments, Inc.	489
Notes	492
Part Five: Federal Taxation	493
Chickasaw Nation v. U.S.	493

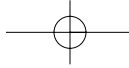
Notes	501
Campbell v. Commissioner of Internal Revenue	502
Campbell v. Commissioner of Internal Revenue	504
Part Six: Employee Suits	505
Hartman v. Kickapoo Tribe Gaming Commission	505
Chayoon v. Chao	508
Prescott v. Little Six, Inc.	509
Notes	512
Part Seven: Public Relations	513
Florida Paralegic, Association, Inc. v. Miccosukee Tribe of Indians	513
Notes	522
Appendix	523
National Indian Gaming Commission Office of the General Council	523
I. Game Classification Opinions	523
A. NOT GAMING:	523
All Star Fantasy Challenge Is Not Gambling	523
B. INSTANT SCRATCH OFF GAMES:	524
Cashpot instant scratch-off game qualifies as Class II game within Bingo halls and Class III elsewhere	524
Instant scratch off qualifies as a Class II game if played at same location as bingo or lotto; and Class III elsewhere.	525
C. PULL TABS:	526
Classic II Pull Tab System	526
OASIS ELECTRONIC PULL TAB NETWORK is an electronic facsimile of the game of pull tabs and therefore falls within Class III gaming	534
Tab Force Instant Pull Tab Validation System and Multi-Tab Pull Tab Game System are similar and are Class II games	535
Wildfire Pull Tab Dispenser System is a Class III gaming device	540
D. GAMES OF CHANCE	541
Challenger 9 is a game of chance and, therefore, a Class III gambling device	541
Phone Card Sweepstakes Machine	542
E. CARD GAMES:	546
Non-banked poker games are Class II card games	546
Card Tournaments are Class II in Oklahoma	548
Certain card games, Pai Gow, Pai Gow Poker, Pan 9 are not banked card games and may be Class II	554
Cherokee Blackjack	555
Citizen Potawatomi Blackjack	558
Comanche Blackjack	560
Dream Card Is A Class II Card Game	563
Eastern Shawnee Blackjack	565
Kickapoo Blackjack	567
Poker Club—non-banked card games are Class II card games in the State of New York	570
F. BINGO	574
Asian Bingo Is A Class II Card Game	574

CONTENTS

xv

Cadillac Jack Triple Threat Bingo is a Class II Game	576
Evergreen Bingo is a Class III game	587
Mystery Bingo	589
Mystery Bingo Change 1	606
Mystery Bingo Change 2	612
National Indian Bingo Game Classification Opinion	615
NOVA Gaming Bingo System	621
Reel Time Bingo	633
Rocket Bingo Ante up Game is a Class II game	642
Rocket Bingo Classics Bingo game is a Class II game	645
Shooter Bingo is a Class III game” (Overturning August 3, 1994 Opinion)	648
Wild Ball Bingo (electronic version) is a Class II game	650
G. OTHER CLASS II AND CLASS III GAMES DISTINGUISHED	657
Action Jack Qualifies As A Class II Game	657
Double Hand High-Low is a Class II game in the State of Arizona?	659
Jack Attack is a Class II Game	661
Maverick 21 is a Class II game	663
Reel Time Bingo Version 2.0	664
Rocket FastPlay is a Class II Game	665
Re: Game Classification Opinion for a gaming device known as “Break the Bank”	678
Eurotek Designs USA, Inc.	683
Re: Electronic Game Cards, classification opinion “Lima”	684
RE: Game Classification Request—Lotrec I and Lotrec II	689
RE: MegaNanza and Similar Games	691
RE: MegaNanza and Similar Games	692
Re: Shoalwater Bay Indian Tribe’s Application for Grandfathered Blackjack	699
Re: The Little Traverse Bay Bands of Odawa Indians’ Application for Grandfathered Card Games	703
Re: WIN Sports Betting Game	706
II. Indian Lands	708
Memorandum Of Understanding Between The National Indian Gaming Commission And The Department Of The Interior	708
Whether gaming may take place on lands taken into trust after October 17,1988, by the Mechoopda Indian Tribe of the Chico Rancheria	709
Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians v. Babbitt	720
NIGC Determination on California Land Purchased by the Picayune Tribe in 1996	730
NIGC Determination on the Status of the Turtle Creek Casino	733
NIGC Response to the Delaware Tribe of Oklahoma	751
NIGC Response to the Inquiry From the Lac du Flambeau Band of Lake Superior Chippewa Indians	752
NIGC Response to the Submission by the Organized Village of Kake	754
NIGC Response to the United Keetoowah Band of Cherokee Indians	755

Paskenta Band of Nomlaki Indians—determination of lands in Tehama County under Section 20 of IGRA	759
Status of the Picayune Rancheria Lands	764
Status of Proposed Gaming Lands of Delaware Tribe of Western Oklahoma	770
Trust Acquisition for the Huron Potawatomi, Inc.	775
United Auburn Indian Community—Determination under 25 U.S.C. §2719(b)(1)(B)(iii)	778
Whether gaming may take place on lands taken into trust after October 17, 1988, by Bear River Band of Rohnerville Rancheria	781
Tribal jurisdiction over gaming on fee land at White Earth Reservation	793
Buena Vista Rancheria of Me-Wuk Indians Land Determination	802
Osage Reservation Letter	811
The Johnson Act	816
15 U.S.C. 1171–1178	816
15 U.S.C. §1171. Definitions	816
15 U.S.C. §1172. Transportation Of Gambling Devices As Unlawful	817
15 U.S.C. §1173. Registration Of Manufacturers And Dealers	818
15 U.S.C. §1174. Labeling And Marking Of Shipping Packages	820
15 U.S.C. §1175. Specific Jurisdictions Within Which Manufacturing, Repairing, Selling, Possessing ETC, Prohibited; Exceptions	820
15 U.S.C. §1176. Penalties	822
15 U.S.C. §1177. Confiscation Of Gambling Devices And Means Of Transportation; Laws Governing	822
15 U.S.C. §1178. Nonapplicability Of Chapter To Certain Machines And Devices	822
Index	825



Some Past and Present Indian Tribal Governmental Gaming Facilities

(Listed Alphabetically by State)

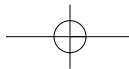
Alabama: Creek Bingo Palace

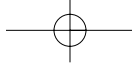
Alaska: Native Village Barrow Pulltab, Tlingit-Haida Community Center

Arizona: Apache Gold Casino, Blue Water Casino, Bucky's Casino, Casino Arizona, Casino of the Sun, Cliff Castle Casino, Cocopah Bingo & Casino, Desert Diamond Casino, Fort McDowell Casino, Gila River Lone Butte Casino, Gila River Vee Quiva Casino, Gila River Wildhorse Casino, Golden Has:sañ Casino, Harrah's Ak-Chin Casino, Hon-Dah Casino, Mazatzal Casino, Paradise Casino, Pipe Springs Casino, Spirit Mountain Casino, Yavapai Gaming Casino

California: Agua Caliente Casino, Alturas Casino, Augustine Casino, Barona Casino, Black Bart Casino, Black Oak Casino, Blue Lake Casino, Cache Creek Indian Bingo & Casino, Cahuilla Creek Casino, Casino Morongo, Casino Pauma, Cher-Ae Heights Bingo & Casino, Chicken Ranch Casino, Chukchansi Gold Resort & Casino, Chumash Casino, Colusa Indian Bingo & Casino, Coyote Valley Shodakai Casino, Diamond Mountain Casino, Eagle Mountain Casino, Elk Valley Casino, Fantasy Springs Casino, Feather Falls Casino, Gold Country Casino, Golden Acorn Casino, Harrahs Rincon Casino & Resort, Havasu Landing Casino, Hopland Shkawah Casino & Bingo, Jackson Indian Casino, Konocti Vista Casino, Lucky 7 Casino, Lucky Bear Casino, Mono Wind Casino, Paiute Palace Casino, Pala Casino, Palace Indian Gaming Center, Paradise Casino California, Pechanga Entertainment Center, Pit River Casino, Red Fox Casino, River Rock Casino, Robinson Rancheria Resort & Casino, Rolling Hills Casino, San Manuel Indian Casino, Soboba Casino, Spa Casino, Spotlight 29 Casino, Sycuan Casino, Table Mountain Casino & Bingo, Thunder Valley Casino, Twin Pine Casino, Valley View Casino Viejas Bingo & Turf Club, Win-River Casino

Colorado: Sky Ute Casino & Lodge, Ute Mountain Casino





INDIAN TRIBAL GOVERNMENTAL GAMING FACILITIES

Connecticut: Foxwoods Resorts Casino, Mohegan Sun Casino



Florida: Brighton Seminole Bingo & Gaming, Miccosukee Indian Gaming, Seminole Indian Casino, Seminole Bingo Gaming Center, Seminole Indian Casino



Idaho: Clearwater River Casino, Coeur d'Alene Tribal Bingo & Casino, It'Se-Ye Bingo & Casino, Kootenai River Inn & Casino, Shoshone-Bannock High Stakes Casino,



Iowa: Casino Omaha, Meskwaki Casino, Winnavegas Casino



Kansas: Golden Eagle Casino, Iowa of Kansas Tribal Casino, Prairie Band Casino & Bingo, Sac & Fox Casino,



Louisiana: Cypress Bayou Casino, Grand Casino Coushatta, Grand Casino Avoyelles



Maine: Penobscot Bingo



Michigan: Bays Mills Resort & Casino, Chip-In's Island Resort & Casino, Firekeepers Casino, Four Winds Casino Resort, Kewadin Casinos-Hessel, Kewadin Casinos-Manistique Kewadin Casinos-Sault Ste. Marie, Kewadin Casinos-St. Ignace, Kings Club Casino, Lac Vieux Desert Casino, Leelanau Sands Casino, Little River Casino Resort, Ojibwa Casino Resort, Ojibwa Casino II, Soaring Eagle Casino & Bingo, Turtle Creek Casino, Victories Casino and Hotel



Minnesota: Black Bear Casino, Firefly Creek Casino, Fond Du Luth Casino, Fortune Bay Casino, Golden Eagle Bingo Lodge, Grand Casino Hinckley, Grand Casino Mille Lacs, Grand Portage Lodge & Casino, Jackpot Junction Casino Hotel, Lake of the Woods Casino Bingo, Mystic Lake Casino Hotel, Northern Lights Casino, Palace Bingo Casino & Hotel, Red Lake Casino Bingo, River Road Casino, Shooting Star Casino, Treasure Island Casino



Mississippi: Silver Star Hotel & Casino



Missouri: Border Town Bingo



Montana: 4C'S Cafe Casino, Blackfeet Bingo, Ft. Belknap Bingo Entertainment, Little Big Horn Casino, Northern Cheyenne Casino, Silverwolf Casino



Nevada: Avi Hotel & Casino, Moapa Band Tribal Enterprise Casino



INDIAN TRIBAL GOVERNMENTAL GAMING FACILITIES

xix

New Mexico: Apache Nugget Casino, Camel Rock Casino, Casino Apache, Casino Sandia, Cities of Gold Casino, Dancing Eagle Casino, Inn of the Mountain Gods, Isleta Gaming Palace, Laguna Casino & Travel Center, Ohkay Casino, Taos Slot Room, San Felipe's Casino Hollywood, Santa Ana Star Casino, Sky City Casino, Tesuque Pueblo Bingo

New York: Mohawk Bingo Palace, Turning Stone Casino

North Dakota: Dakota Magic Casino, Four Bears Casino & Lodge, Prairie Knights Casino & Lodge, Spirit Lake Casino

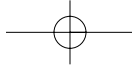
Oklahoma: 7 Clan Paradise Casino, Black Gold Casino, Blue Star Gaming and Casino, BorderTown Bingo & Casino, Bristow Indian Bingo, Checotah Indian Community Bingo, Cherokee Casino, Cherokee Casino Fort Gibson, Cherokee Casino Tahlequah, Cherokee Nation Bingo Roland, Cherokee Nation Bingo West Siloam Springs, Chisholm Trail Casino, Choctaw Casino Broken Bow, Choctaw Casino Durant, Choctaw Casino Grant, Choctaw Casino Idabel, Choctaw Casino Springtown, Choctaw Gaming Center McAlester, Choctaw Gaming Center—Pocola, Cimarron Bingo Casino, Comanche Nation Games, Comanche Red River Casino, Creek Nation Casino Tulsa, Creek Nation Muskogee Bingo, Creek Nation Okemah Casino, Creek Nation Okmulgee Bingo, Eufaula Indian Community Bingo, Fire Lake Casino, Fort Sill Apache Casino, Gold Mountain Casino, Gold River Casino, Goldsby Gaming Center, Grand Lake Casino, Kaw Nation Casino, Kickapoo Casino McLoud, Kiowa Bingo, Lucky Star Casino Clinton, Lucky Star Casino Concho, Lucky Turtle Casino, Madill Gaming Center, Million Dollar Elm Casino Sand Springs, Million Dollar Elm Casino Tulsa, Mystic Winds Casino, Mystic Winds Casino, Newcastle Gaming Center, Osage Nation Hominy Casino, Osage Nation Pawhuska Casino, Pawnee Nation Casino & Trading Post, Quapaw Casino, Rivermist Casino, Sac & Fox Casino, Stables Casino, Sulphur Gaming Center and Chickasaw Lodge, Texoma Gaming Center, Thlopthlocco Tribal Town Gaming Center and Casino, Thunderbird Casino, Tonkawa Tribal Bingo, Treasure Valley Casino, United Keetoowah Casino, Washita Gaming Center, WinStar Casino,

Oregon: Chinook Winds Casino & Convention Center, Kah-Nee-Ta High Desert Resort & Casino, Kla-Mo-Ya Casino, Seven Feathers Hotel & Casino Resort, Spirit Mountain Casino, The Mill Casino & Hotel, The Old Camp Casino, Three Rivers Casino, Wildhorse Resort & Casino

South Dakota: Dakota Connection Casino, Dakota Sioux Casino, Golden Buffalo Casino, Grand River Casino, Lode Star Casino, Prairie Wind Casino, Rosebud Casino, Royal River Casino & Bingo

Texas: Kickapoo Lucky Eagle Casino, Speaking Rock Casino

Washington: 7 Cedars Casino, Chewelah Casino, Clear Water Casino, Coulee Dam Casino, Emerald Queen Casino, Little Creek Casino Resort, Lucky Dog Casino, Lucky Eagle Casino, Makah Tribal Bingo, Mill Bay Casino, Muckleshoot Indian Casino, Nook-



xx

INDIAN TRIBAL GOVERNMENTAL GAMING FACILITIES

sack River Casino, Northern Quest Casino, Okanogan Bingo Casino, Quinault Beach Resort & Casino, Skagit Valley Casino, Swinomish Northern Lights Casino, The Point Casino, Tulalip Casino, Two Rivers Casino & Resort, Yakama Nation Legends Casino



Wisconsin: Bad River Casino, Dejope Bingo, Grindstone Casino, Ho-Chunk Casino Bingo, Hole in the Wall Casino, Isle Vista Casino, Lake of the Torches Resort Casino, LCO Casino, Majestic Pines Casino Bingo, Menominee Casino Bingo Hotel, Mole Lake Casino, Northern Lights Casino, Mohican North Star Casino Bingo, Oneida Bingo Casino, Potawatomi Bingo Casino, Rainbow Bingo Casino, St. Croix Casino Hotel Whitetail Crossing



Wyoming: Arapaho Casino

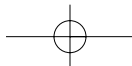
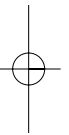
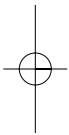


Table of Cases

The principal cases are in **bold type**. Other cases referred to in the case notes, questions, and problems are in Roman type. References are to page numbers.

Cases cited only within principal cases and other quoted materials are not included in this table. Principal cases have been edited without noting deleted portions, renumbering of original footnotes, and similar editorial changes.

- A. K. Management Company v. San Manuel Band of Mission Indians**, 789 F.2d 785 (9th Cir., 1986) 138, 143, 151, 432.
- Allen v. Gold Country Casino**, __ F.3d __, No. 05-15332 (Slip Op.) (September 29, 2006) 127.
- American Vantage Companies, Inc. v. Table Mountain Rancheria**, 292 F.3d 1091 (9th Cir., 2002) 128, 177.
- Artichoke Joe's California Grand Casino v. Norton**, 353 F.3d 712 (9th Cir., 2003) 68, 235, 364.
- AT & T Corporation v. Coeur D'Alene Tribe**, 295 F.3d 899 (9th Cir., 2002) 251.
- Baird v. Norton**, 266 F.3d 408 (6th Cir. 2001) 329
- Bank of Oklahoma v. Muscogee (Creek) Nation**, 972 F.2d 1166 (10th Cir., 1992) 173
- Barona Group of the Capitan Grande Band of Mission Indians v. American Management & Amusement, Inc.**, 840 F.2d 1394 (9th Cir., 1987) 141, 150, 200.
- Barta v. Oglala Sioux Tribe**, 259 F.2d 553 (8th Cir. 1958) xlvii.
- Basil Cook Enterprises, Inc. v. St. Regis Mohawk Tribe**, 117 F.3d 61 (2nd Cir., 1997) 203
- Bates v. Clark**, 95 U.S. 204 (1887) xxxix–xl.
- Bishop Paiute Tribe v. County of Inyo**, 291 F.3d 549 (9th Cir. 2002) 444.
- Bruce H. Lien Company v. Three Affiliated Tribes**, 93 F.3d 1412 (8th Cir., 1996) 184, 195, 211.
- Buster v. Wright**, 135 F. 947 (8th Cir. 1905) appeal dism. 203 U.S. 599 (1906) xlvii.
- C & L Enterprises v. Citizen Band Potawatomi Indian Tribe**, 532 U.S. 411 (2001) 129, 177, 508
- Cabazon Band of Mission Indians v. N.I.G.C.**, 14 F.3d 633 (D.C. Cir., 1994) 257, 260, 262, 270, 276. 279, 292–93, 299, 301–02, 475, 528, 530, 537, 540, 621, 680–81, 687, 697.
- Cabazon Band of Mission Indians v. Wilson**, 124 F.3d 1050 (9th Cir., 1997) 358, 439
- Cabazon Band of Mission Indians v. Wilson**, 37 F.3d 430 (9th Cir., 1994) 359–360, 432, 452
- California v. Cabazon Band of Mission Indians**, 480 U.S. 202 (1987) 47, 60–61, 65–66, 68, 96, 126, 231, 250, 316, 330, 335, 341, 345, 359, 386, 430, 433, 435, 448, 455, 475, 490, 724, 742, 747
- Campbell v. Commissioner of Internal Revenue**, (No. 01-2338) (8th Cir. Feb 20, 2002) (Unpublished) 504.
- Campbell v. Commissioner of Internal Revenue**, 164 F.3d 1140 (8th Cir., 1999) 502, 504
- Carciari v. Norton**, 398 F.3d 22 (1st Cir., 2005) 396.
- Cardin v. De La Cruz**, 671 F.2d 363 (9th Cir. 1982) cert. den. (1982) xlvii.
- Carter v. Carter Coal Co.**, 298 U.S. 238 (1936) 390, 394
- Casino Resource Corporation v. Harrah's Entertainment, Inc.**, 243 F.3d 435 (8th Cir., 2001) 190, 209
- Chayoon v. Chao**, 355 F.3d 141 (2nd Cir., 2004) 508.

- Cherokee Inter-marriage Cases, 203 U.S. 76 (1906) xxxvi.
- Cherokee Nation v. Georgia, 30 U.S. 1 (1831) xxx, xlv, 16, 59, 174, 456, 474, 488, 516.
- Cherokee Nation v. Journeycake 155 U.S. 196 (1894) xxxvi.
- Cheyenne River Sioux Tribe v. South Dakota**, 3 F.3d 273 (8th Cir., 1993) 66, 241, 315, 335, 345, 455, 471, 713, 786.
- Cheyenne-Arapaho Tribes v Oklahoma, 618 F.2d 665 (10th Cir. 1980) 7, 39, 427-428, 431
- Chickasaw Nation v. U.S., 208 F.3d 871 (10th Cir., 2000) 280, 494, 501.
- Chickasaw Nation v. U.S.**, 534 U.S. 84 (2001) 534 U.S. 84 (2001), 280, 425, 493.
- Choctaw Nation v. Oklahoma, 397 U.S. 620 (1970) xliii, 542, 758, 774.
- Citizen Band Potawatomi Indian Tribe of Oklahoma v. Green**, 995 F.2d 179 (10th Cir., 1993) 233, 239, 248, 277, 471.
- City of Roseville v. Norton**, 348 F.3d 1020 (D.C.Cir. 2003) 396, 401, 403, 413, 810.
- Colorado River Indian Tribes v. National Indian Gaming Commission**, __ F.3d __, No. 05-5402 (Slip Op.) (D.C. Cir., October 20, 2006) 475.
- Colville Confederated Tribes v. Walton, 647 F.2d 42 (9th Cir. 1981) xlvi.
- Confederated Salish and Kootenai Tribes v. Namen, 665 F.2d 951 (9th Cir. 1982) xlvi.
- Confederated Tribes of Siletz Indians of Oregon v. Oregon, 143 F.3d 481 (9th Cir. 1998) 372
- Confederated Tribes of Siletz Indians of Oregon v. U.S., 110 F.3d 688 (9th Cir., 1997) 382, 287, 395
- Connecticut ex rel. Blumenthal v. U.S. Dept. of Interior, 228 F.3d 82 (2nd Cir. 2000) 397
- Cotton Petroleum Corp. v. New Mexico, 490 U.S. 163 (1989) 317, 392.
- Crow Tribe of Indians v. Racicot, 87 F.3d 1039 (9th Cir., 1996) 461.
- DeCoteau v. District Court, 420 U.S. 425 (1975) 39, 73.
- Diamond Game Enterprises, Incorporated v. Reno**, 230 F.3d 365 (D.C. Cir., 2001) 260-261, 292, 307, 407, 639.
- Donnelly v. U.S., 228 U.S. 243, 269 (1913) 712, 758, 773, 785.
- Elk v. Wilkins, 112 U.S. 94 (1884) 474.
- Enterprise Management Consultants, Inc. v. U.S.**, 883 F.2d 890 (10th Cir., 1989) 150, 151, 173.
- First American Kickapoo Operations, L.L.C. v. Multimedia Games, Inc.**, 412 F.3d 1166 (10th Cir., 2005) 213.
- Fisher v. District Court, 424 U.S. 382 (1976) 29.
- Florida Dept. of Business Regulation v. U.S. Dept. of Interior, 768 F.2d 1248 (11th Cir., 1985) 398.
- Florida Paralegic Association, Inc. v. Miccosukee Tribe of Indians**, 166 F.3d 1126 (11th Cir., 1999) 439, 473, 508, 513.
- Florida v. Seminole Tribe of Florida**, 181 F.3d 1237 (11th Cir., 1999) 211, 437.
- Forest County Potawatomi Community of Wisconsin v. Norquist, 45 F.3d 1079 (7th Cir., 1995) 68, 363, 452, 492.
- Gaming Corporation of America v. Dorsey & Whitney**, 88 F.3d 536 (8th Cir., 1996) 187, 210, 249, 425, 449, 571, 660, 798, 809.
- Gaming World Intern., Ltd. v. White Earth Band of Chippewa Indians, 317 F.3d 840 (8th Cir. 2003) 199.
- Garza v. Traditional Kickapoo Tribe of Texas,) (Slip Opinion No. 03-50209) (5th Cir., Oct 21, 2003) (unreported) 522.
- George v. Sycuan Casino, (Slip Opinion No. 00-57044) (9th Cir., Sep 21, 2001) (Unreported) 512.
- Grand Traverse Band of Ottawa and Chippewa Indians v. Office of U.S. Atty. for Western Div. of Michigan, 369 F.3d 960 (6th Cir. 2004) 412, 475.
- Groundhog v. Keeler, 442 F.2d 674 (10th Cir. 1971) xlvii.
- Hartman v. Kickapoo Tribe Gaming Commission**, 319 F.3d 1230 (10th Cir., 2003) 505.
- Idaho v. Shoshone-Bannock Tribes**, __ F.3d __, No. 04-35636 (Slip Op.) (9th Cir., October 11, 2006) 372.
- In re Indian Gaming Related Cases**, 331 F.3d 1094 (9th Cir., 2003) 64, 242, 348, 377.
- In re Prairie Island Dakota Sioux, 21 F.3d 302 (8th Cir. 1994) 198.
- In re Sac & Fox Tribe of Mississippi in Iowa/Meskwaki Casino Litigation, 340 F.3d 749 (8th Cir. 2003) 475.
- Indian Country, U.S.A., Inc. v. Oklahoma Tax Commission**, 829 F.2d 967 (10th Cir. 1987), 37.
- Inyo County, Cal. v. Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, 538 U.S. 701 (2003), 444.

TABLE OF CASES

xxiii

- Iowa Management & Consultants, Inc. v. Sac & Fox Tribe of Mississippi in Iowa, 207 F.3d 488 (8th Cir. 2000), 198.
- Iowa Mutual Ins. Co. v. LaPlante, 480 U.S. 9 (1987) 62, 176, 188, 511.
- Iowa Tribe of Indians of Kansas and Nebraska v. Kansas**, 787 F.2d 1434 (10th Cir., 1986) 30, 428, 432.
- Jicarilla Apache Tribe v. Kelly**, 129 F.3d 535 (10th Cir., 1997) 66, 328.
- Johnson v. Lindon City Corp., 405 F.3d 1065 (10th Cir., 2005) 271.
- Joint Tribal Council of Passamaquoddy Tribe v. Morton, 388 F.Supp. 649 (D.C. Me., 1975) xxxv.
- Jones v. Meehan, 175 U.S. 1 (1899) xlvii, 9.
- Kansas v. U.S.**, 249 F.3d 1213 (10th Cir., 2001) 3, 398, 428, 711, 742, 748, 772, 283–84, 800, 806.
- Kennerly v. District Court, 400 U.S. 423 (1971) 39.
- Keweenaw Bay Indian Community v. U.S.**, 136 F.3d 469 (6th Cir., 1998) 380.
- Kickapoo Tribe of Indians of Kickapoo Reservation in Kansas v. Babbitt, 43 F.3d 1491 (D.C.Cir. 1995) 66, 329.
- Kickapoo Tribe of Indians v. Deer, (10th Cir., Slip Opinion, No. 00-3095, Feb 27, 2001) (unreported) (Appeal from the District of Kansas) 420.
- Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc., 523 U.S. 751 (1998) 177, 182.
- Knight v. Shoshone and Arapaho Tribes, 670 F.2d 900 (10th Cir. 1982) xlviii.
- Krempel v. Prairie Island Indian Community, 125 F.3d 621 (8th Cir. 1997) 512.
- Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin v. U.S.**, 367 F.3d 650 (7th Cir., 2004) 384.
- Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Norton**, 422 F.3d 490 (7th Cir., 2005) 379, 420.
- Langley v. Ryder, 778 F.2d 1092 (5th Cir., 1985) 27.
- Lewis v. Norton, 424 F.3d 959 (9th Cir., 2005) 461.
- Martinez v. Santa Clara Pueblo, 540 F.2d 1039 (10th Cir. 1976) (rev'd by 436 U.S. 49) xxxvii.
- Martinez v. Southern Ute Tribe, 249 F.2d 915 (10th Cir. 1957) cert. den. 356 U.S. 960 (1958) xlvii, 157.
- Mashantucket Pequot Tribe v. Connecticut**, 913 F.2d 1024 (2nd Cir., 1990) 66, 236, 322, 339, 345, 430.
- Match-E-Be-Nash-She-Wish Band of Potawatomi Indians v. Engler, 304 F.3d 616 (6th Cir. 2002) 66, 322.
- Mattz v. Arnett, 412 U.S. 481 (1973) xliii.
- Maxey v. Wright, 34 S.W. 807 (Ct. App. Ind. Terr.) aff'd. 105 F. 1003 (8th Cir. 1900) xlvii.
- McClanahan v. Arizona Tax Commission, 411 U.S. 164 (1973) 10, 26.
- McCullough v. Maryland, 17 U.S. 316, 4 Wheat. 316 (1819) 183.
- Merrion v. Jicarilla Apache Tribe, 455 U.S. 130 (1982) 188, 247, 448, 712, 758, 773, 784.
- Mescalero Apache Tribe v. New Mexico, 131 F.3d 1379 (10th Cir. 1997) 329, 438–39, 464.
- Missouri River Services, Inc. v. Omaha Tribe of Nebraska, 267 F.3d 848 (8th Cir. 2001) 198.
- Montana v. Blackfeet, 471 U.S. 759 (1985) 52, 246, 260, 408, 430, 439, 494, 497–498, 500, 517, 724, 742, 748.
- Montana v. U.S., 450 U.S. 544 (1981) 40, 52, 158, 246, 260, 408, 430, 439, 447, 459, 463, 494, 497–498, 500, 517, 724, 742, 748, 800
- Morongo Band of Mission Indians v. California State Bd. of Equalization, 858 F.2d 1376 (9th Cir. 1988) 184.
- Morongo Band of Mission Indians v. Rose, 893 F.2d 1074 (9th Cir., 1990) 425, 445, 461.
- Morris v. Hitchcock, 194 U.S. 384 (1904) xlvii.
- Morton v. Mancari, 417 U.S. 535 (1974) xxxv, xxxvi, 136, 147, 294, 298, 393, 456, 481.
- Narragansett Indian Tribe v. National Indian Gaming Com'n, 158 F.3d 1335 (D.C.Cir. 1998) 475, 711, 783–84.
- National Farmers Union Ins. Cos. v. Crow Tribe, 471 U.S. 845 (1985) xlii, 157, 159, 174–75, 188, 203, 205, 511.
- Native American Church v. Navajo Tribal Council, 272 F.2d 131 (10th Cir. 1959) xlvii.
- Neighbors For Rational Development, Inc. v. Norton, 379 F.3d 956 (10th Cir. 2004) 397.
- New Hampshire v. Maine, 532 U.S. 742, 750 (2001) 271.
- New Mexico v. Mescalero Apache Tribe, 462 U.S. 324 (1983) xlvii, 35, 40, 42, 52–53, 55, 210, 329, 434, 438–439, 457.
- New York v. Oneida Indian Nation of New York**, 90 F.3d 58 (2nd Cir., 1996) 368

- Northern Arapaho Tribe v. Wyoming**, 389 F.3d 1308 (10th Cir., 2004) 66, 343.
- Oklahoma Tax Comm. v. Sac and Fox Nation**, 508 U.S. 114 (1993) 30, 712, 785.
- Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma**, 498 U.S. 505 (1991) 30, 165, 173, 179, 438, 516, 712, 731, 785.
- Oklahoma Tax Commission v. Graham**, 489 U.S. 838 (1989) 156, 159, 176.
- Oneida Tribe of Indians of Wisconsin v. Wisconsin**, 951 F.2d 757 (7th Cir., 1991) 284, 303, 453.
- Ortiz-Barraza v. U.S.** 412 F.2d 1176 (9th Cir. 1975) xlviii.
- Osborn v. Bank of the U.S.**, 22 U.S. 738, 9 Wheat. 738 (1824) 183.
- Pan American Co. v. Sycuan Band of Mission Indians**, 884 F.2d 416 (9th Cir., 1989) 184.
- Passamaquoddy Tribe v. Maine**, 75 F.3d 784 (1st Cir., 1996) 358.
- Ponca Tribe of Oklahoma v. Oklahoma**, 89 F.3d 690 (10th Cir., 1996) 321.
- Prescott v. Little Six, Inc.**, 387 F.3d 753 (8th Cir., 2004) 509.
- Pueblo of Santa Ana v. Kelly**, 104 F.3d 1546 (10th Cir., 1997) 322, 328, 382.
- Reich v. Mashantucket Sand & Gravel**, 95 F.3d 174 (2nd Cir. 1996) 492, 508, 515, 521.
- Rhode Island v. Narragansett Indian Tribe**, 19 F.3d 685 (1st Cir., 1994) 66, 358, 711–712, 753, 756, 759, 771, 774, 783–784.
- Ringsred v. City of Duluth, a Minnesota Home-Rule Charter City**, 828 F.2d 1305 (8th Cir. 1987) 395.
- Roff v. Burney**, 168 U.S. 218 (1897) xlvii, 9, 485.
- Rumsey Indian Rancheria of Wintun Indians v. Wilson**, 64 F.3d 1250 (9th Cir., 1994) 66, 236, 345, 354, 490.
- Sac and Fox Nation of Missouri v. Norton**, 240 F.3d 1250, (10th Cir. 2001) 420, 737, 742, 748.
- Sac and Fox Nation v. Hanson** 47 F.3d 1061 (10th Cir., 1995) 177, 440.
- Santa Clara Pueblo v. Martinez**, 436 U.S. 49 (1978) 9, 129, 141, 146, 152, 158, 171–173, 176, 179, 208, 211, 247, 438, 460, 462, 474, 517, 520.
- Santa Rosa Band of Indians v. Kings County**, 532 F.2d 655 (9th Cir., 1975) 10, 12, 19, 395.
- Sault Ste. Marie Tribe of Chippewa Indians v. Michigan**, 5 F.3d 147 (6th Cir., 1993) 66, 321.
- Sault Ste. Marie Tribe of Chippewa Indians v. U.S.**, 288 F.3d 910 (6th Cir., 2002) 413, 414.
- Schmit v. International Finance Management Co.**, 980 F.2d 498 (8th Cir., 1992) 209.
- Seminole Tribe of Florida v. Butterworth**, 658 F.2d 310 (5th Cir., 1981) 17, 25, 30–31, 42, 50, 60, 427, 438.
- Seminole Tribe of Florida v. Florida**, 11 F.3d 1016 (11th Cir., 1994) 314–15, 319–20, 333, 437.
- Seminole Tribe of Florida v. Florida**, 517 U.S. 44 (1996) 66, 84, 248, 311, 321, 328, 330, 369, 386, 437, 454–56, 464–65.
- Seneca-Cayuga Tribe of Oklahoma v. N.I.G.C.**, 327 F.3d 1019 (10th Cir., 2003) 65, 271, 529, 532, 687.
- Seneca-Cayuga Tribe of Oklahoma v. Oklahoma ex rel. Thompson**, 874 F.2d 709 (10th Cir., 1989) 304, 445.
- Seymour v. Superintendent of Washington State Penitentiary**, 368 U.S. 351 (1962) xli, xliii, 60.
- Shakopee Mdewakanton Sioux Community v. City of Prior Lake, Minn.**, 771 F.2d 1153 (8th Cir., 1985) 395.
- Shakopee Mdewakanton Sioux Community v. Hope**, 16 F.3d 261 (8th Cir., 1994) 291, 295, 643–644, 646.
- Sharber v. Spirit Mountain Gaming Inc.**, 343 F.3d 974 (9th Cir. 2003) 513.
- Slattery v. Arapahoe Tribal Council**, 453 F.2d 278 (10th Cir. 1971) xxxvii.
- Smith v. Babbitt**, 100 F.3d 556 (8th Cir., 1996) 461, 463.
- Sokaogon Chippewa Community v. Babbitt**, 214 F.3d 941 (7th Cir. 2000) 382, 416, 420.
- Sokaogon Gaming Enterprise Corp. v. Tushie-Montgomery Associates, Inc.**, 86 F.3d 656 (7th Cir. 1996) 203.
- Solem v. Bartlett**, 465 U.S. 463 (1984) xl, xliii, 39, 801.
- Spokane Indian Tribe v. U.S.**, 972 F.2d 1090 (9th Cir., 1992) 260, 270, 283, 292.
- State ex rel. Nixon v. Coeur d'Alene Tribe**, 164 F.3d 1102, (8th Cir., 1999) 248, 252, 798, 809.
- Sycuan Band of Mission Indians v. Roache**, 54 F.3d 535 (9th Cir. 1994) 240, 259, 262, 270, 281, 292, 366, 438, 442, 445, 452, 491, 529–530, 539, 621, 688, 697.
- Talton v. Mayes**, 163 U.S. 376 (1896) xlvii, 146, 206–207, 474.

- Tamiami Partners, Ltd v. Miccosukee Tribe of Indians of Florida**, 999 F.2d 503 (11th Cir., 1993) 155, 159.
- Tamiami Partners, Ltd. v. Miccosukee Tribe of Indians of Florida**, 177 F.3d 1212 (11th Cir., 1999) 167.
- Tamiami Partners, Ltd. v. Miccosukee Tribe of Indians of Florida**, 63 F.3d 1030 (11th Cir., 1995) 159, 168, 211, 443, 452, 506, 510, 517.
- Taxpayers of Michigan Against Casinos v. Norton**, 433 F.3d 852 (D.C. Cir., 2006) 409.
- The Barona Group of the Capitan Grande Band of Mission Indians v. Duffy**, 694 F.2d 1185 (9th Cir., 1982) 23, 31, 35–36, 49, 51, 60, 490.
- Trans-Canada Enterprises, Ltd. v. Muckleshoot Indian Tribe**, 634 F.2d 474 (9th Cir. 1980) xlvii.
- Turn Key Gaming Inc. v. Oglala Sioux Tribe**, 164 F.3d 1092 (8th Cir., 1999) 195, 199, 213.
- Turn Key Gaming, Inc. v. Oglala Sioux Tribe**, 313 F.3d 1087 (8th Cir. 2002) 199.
- U.S. ex rel. Bernard v. Casino Magic Corp.**, 293 F.3d 419 (8th Cir., 2002) 190, 218.
- U.S. ex rel. Bernard v. Casino Magic Corp.**, 384 F.3d 510 (8th Cir., 2004) 195.
- U.S. ex rel Mackey v. Cox**, 59 U.S. 100 (1855) xlvii.
- U.S. ex rel. Morongo Band of Mission Indians v. Rose**, 34 F.3d 901 (9th Cir., 1994) 445.
- U.S. ex rel. Mosay v. Buffalo Brothers Management, Inc.**, 20 F.3d 739 (7th Cir., 1994) 191, 199.
- U.S. ex rel. Standing Bear v. Crook**. 25 F. Cas. 695 (C.C. D. Neb, 1879) xxxvi.
- U.S. ex rel. Steele v. Turn Key Gaming, Inc.**, 260 F.3d 971 (8th Cir. 2001) 190, 199.
- U.S. ex rel. The Citizen Band Potawatomi Indian Tribe of Oklahoma v. Enterprise Management Consultants, Inc.**, 883 F.2d 886 (10th Cir., 1989) 148, 151.
- U.S. v. 103 Electronic Gambling Devices**, 223 F.3d 1091 (9th Cir., 2000) 266, 274, 286, 302, 597, 605, 628, 630, 637–639, 654–656, 673–675, 696.
- U.S. v. 162 Megamania Gambling Devices**, 231 F.3d 713 (10th Cir., 2000) 264, 273, 299, 302, 597, 600, 628, 630, 637, 639, 655, 673, 675, 696, 742, 748.
- U.S. v. Anderson**, 391 F.3d 1083 (9th Cir. 2004) 493.
- U.S. v. Antelope**, 430 U.S. 641 (1977) xxxvi, 60, 147.
- U.S. v. Cook**, 922 F.2d 1026 (2nd Cir., 1991) 271, 276, 293, 480.
- U.S. v. Dakota**, 796 F.2d 186 (6th Cir., 1986) 33, 51, 61, 116, 341, 343.
- U.S. v. E.C. Investments, Inc.**, 77 F.3d 327(9th Cir., 1996) 27, 240, 256, 441, 489.
- U.S. v. Farris**, 624 F.2d 890 (9th 1980) 7, 19–20, 25, 27, 50–51, 61, 482, 486, 490, 515.
- U.S. v. Funmaker**, 10 F.3d 1327 (7th Cir., 1993) 484.
- U.S. v. Garrett**, (No. 03-4569) (4th Cir., Feb 15, 2005) (unreported) 493.
- U.S. v. John**, 437 U.S. 634 (1978) xl, 29, 713, 785.
- U.S. v. Kagama**, 118 U.S. 375 (1886) xxxi, xli, xlvii, 17, 317, 393–94.
- U.S. v. Lara**, 541 U.S. 193 (2004) xlviii.
- U.S. v. Mazurie**, 419 U.S. 544 (1975) xl, xli, xlvii, 29, 48.
- U.S. v. McGowan**, 302 US 535 (1938) xxxii, xxxix, 712–13, 758, 769, 773, 785, 810.
- U.S. v. Pelican**, 232 U.S. 442 (1914) xxxii, xxxix, 712, 758, 773, 785.
- U.S. v. Quiver**, 241 U.S. 602 (1916) xlvii, 7, 9.
- U.S. v. Ramsey**, 271 U.S. 467 (1926) xxxix.
- U.S. v. Sandoval**, 231 U.S. 28 (1913) xxxi, xxxix, 712, 758, 773, 785.
- U.S. v. Santee Sioux Tribe of Nebraska**, 254 F.3d 728 (8th Cir., 2001) 471.
- U.S. v. Santee Sioux Tribe of Nebraska**, 324 F.3d 607 (8th Cir., 2003) 65, 276, 297, 474, 531.
- U.S. v. Santee Sioux Tribe of Nebraska**, 135 F.3d 558 (8th Cir., 1998) 441, 465, 471.
- U.S. v. Seminole Nation of Oklahoma**, 321 F.3d 939 (10th Cir. 2002) 474.
- U.S. v. Sisseton-Wahpeton Sioux Tribe**, 897 F.2d 358 (8th Cir., 1990) 224,338, 341, 346, 429, 453, 455, 564, 574, 660.
- U.S. v. Sosseur**, 181 F.2d 873 (9th Cir., 1950) 4, 13, 61.
- U.S. v. The Spokane Tribe of Indians**, 139 F.3d 1297 (9th Cir., 1998) 66–67, 330, 441.
- U.S. v. Wadena**, 152 F.3d 831 (8th Cir. 1998) 493.
- U.S. v. Wheeler** 435 U.S. 313 (1978) xlvii, 9–10, 26, 179, 400, 447, 485.
- United Keetoowah Band of Cherokee Indians v. Oklahoma**, 927 F.2d 1170 (10th Cir., 1991) 304, 426.
- United Tribe of Shawnee Indians v. U.S.**, 253 F.3d 543 (10th Cir. 2001) 396.
- Washington v. Confederated Bands and Tribes of the Yakima Indian Nation**, 439 U.S. 463 (1979) 11, 14, 17, 179, 429.

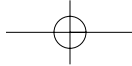


TABLE OF CASES

Washington v. Confederated Tribes, 447 U.S.
134 (1980) xlv, xlvii, 22, 35, 40–41, 43,
45, 48, 53, 174, 179, 435, 448.

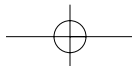
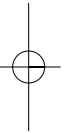
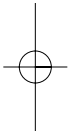
Williams v. Lee, 358 U.S. 217 (1959) xli, xlvii,
10, 29, 44, 59, 485.

Wisconsin Winnebago Business Committee v.
Koberstein, 762 F.2d 613 (7th Cir., 1985)
132, 139, 144, 151, 200.

Wisconsin Winnebago Nation v. Thompson,
22 F.3d 719 (7th Cir., 1994) 66, 348.

Worcester v. Georgia, 31 U.S. 515 (1832) xxx,
xli, xlv, xlvi, xlvii, 10, 16–17, 59, 179,
456, 485, 516, 797, 808.

Ysleta del Sur Pueblo v. Texas, 36 F.3d 1325
(5th Cir., 1994) 66, 321, 343, 355.



Preface

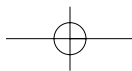
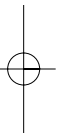
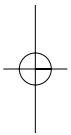
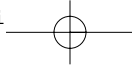
It is hoped that the materials in this casebook will be useful to teachers and students of Tribal Governmental Gaming Law, as well as a useful resource for the future practice of our students. However, I will note at the outset that the cases have been edited and should not be quoted without reference to the original opinions. Every effort has been made to retain the meaning and context of the original.

I would like to thank the University of Tulsa, our College of Law, and our Native American Law Center for their support. Former Dean Martin Belsky and current Dean Robert Butkin have been consistently supportive of this work, as well as the work of our Native American Law Center and its various programs. I also wish to acknowledge the consistent support, assistance, and friendship of my colleagues in our law school, and particularly the other Co-Directors of the Native American Law Center: Dean Vicki Limas and Professors Judith Royster, Melissa Tatum, Kathy Supernaw and former Professor Monte Deere who was kind enough to share some materials. The assistance of Kim Fryer, our NALC administrative assistant, is very much appreciated. Our work would be much more difficult if we did not have the help of Professor Richard Ducey, Director of our Mabee Legal Information Center, Faye Hadley—Native American Resources/Reference Law Librarian, and the rest of our wonderful administration and staff.

A word of thanks is also due my family. My wife, children, and grandchildren keep my feet on the ground as I wander through the intricacies of the law. My son Harrison “carried the briefcase” for me during a summer of our Indian law study abroad program in Geneva, Switzerland which allowed me to spend my time researching and writing the teaching materials which would become this casebook. My mother and father have inspired me throughout my life to stretch the limits of the possible, and my brother and sister have also supported my work.

Finally, I appreciate the students who took this class during its formative stages, and were kind enough to respond to my requests for feedback about the materials. Students and former students who contributed to this project in significant ways as my research assistant or otherwise include Wambdi Awanwicake Wastewin (Angelique Eaglewoman), now Assistant Professor of Law at Hamline University School of Law, Theresa Hearn-Hind, Brian Utsey, Christine Folsom-Smith, and Theresa Holtz. Thank you. I deeply appreciate the aid and assistance of you all, as well as those I have not named. Any errors or omissions, of course, are my own.

G. William Rice
2006



Introduction and Glossary

Students of Tribal Governmental Gaming Law who have not taken the introductory course in Indian law, and who are without a background in the subject have indicated a desire for grounding in the basic principals of Indian law during the early portions of this course. An understanding of some of the primary concepts will allow students without an Indian law background to more quickly grasp the principals of Indian gaming law. Rather than attempt to provide a condensed version of Cohen's Handbook of Federal Indian Law (the 1942, 1982, or 2005 Editions are recommended) this introductory material takes the form of a "conceptual glossary" which will provide a working definition of some terms which are used in the laws which relate to, and regulate gaming by, Indian tribal governments.

A portion of these materials have been adapted from the author's prior works first published in: G. William Rice, *There and Back Again—An Indian Hobbit's Holiday: Indians Teaching Indian Law*, 26 N.M. L. Rev. 169 (1996); and G. William Rice, *Employment in Indian Country: Considerations Respecting Tribal Regulation of the Employer-employee Relationship*, 72 N.D. L. Rev. 267 (1996). Citations have been included in this glossary to allow ready access to the primary source materials. For those with an adequate background in the core concepts of Federal Indian Law, it is hoped that this material will provide a useful review, and perhaps provoke discussion of the basic assumptions upon which the law is based.

"Allotment"

A tract of land carved from the tribal domain and reserved for the use of an individual Indian and his or her heirs under federal law. A "trust allotment" is an allotment where the legal title to the land is held by the United States in trust for an individual Indian pursuant to the General Allotment Act of February 8, 1887, c. 119, 24 Stat. 388, or some specific treaty or agreement between a tribe and the United States. A "restricted allotment" is an allotment where the legal title to the land is held by the individual Indian, but where that title is restricted against alienation by some federal statute or by a treaty or agreement between the tribe and the United States. Some individual Indians received allotments from the public domain pursuant to the General Allotment Act. Trust and restricted allotments are a part of the Indian country as defined in 18 U.S.C. §1151 until the Indian title is extinguished.

“Allotment Policy”

A federal Indian policy prevalent from about 1880 through about 1934. This policy was designed to break up tribal reservation lands by authorizing the President to assign a tract of tribal land to individual Indians and to then “negotiate” with the Tribe to sell their remaining “surplus” property, and to diminish the authority of the tribal government by isolating each Indian family upon their allotment so that they could no longer live in their usual communities. This policy resulted in the loss of over 100 million acres of tribal lands and resources which were generally opened to non-Indian homesteading. The draconian effect of the General Allotment Act which authorized the President to unilaterally allot Indian reservations without the consent of the Tribe was used as leverage to negotiate individual tribal “allotment agreements” with the Tribes in which the Tribes, in return for ceding large areas of their reservation (and many times all the remaining reservation lands), were allowed to take allotments exceeding the 80 acres of farm land, or 160 acres of grazing land allowed by the General Allotment Act, or to negotiate for other terms. This Act was the first general Congressional action designed to replace tribal property laws with American property laws. The allotment policy was finally repudiated as a failure in the Indian Reorganization Act of 1934, although the effects of this policy are still felt in the Indian Country today.

“Citizenship Act of 1924”

In *Cherokee Nation v. Georgia*,¹ and *Worcester v. Georgia*,² the Court recognized that Indian persons who were citizens of Indian tribes, bands, or nations were not citizens of the United States. After the adoption of the Fourteenth Amendment to the Constitution of the United States, the Court was faced with the question of whether this amendment defining federal and state citizens applied to the citizens of Indian tribes. In *Elk v. Wilkins*,³ the Court decided that Indians were not natural born citizens of the United States, and could obtain citizenship only by being naturalized because they were not born “subject to the jurisdiction of the United States” even though they were born in the United States. Sporadic records of individual Indians disclaiming allegiance to their tribes and becoming naturalized citizens of the United State by the normal naturalization process open to all foreign persons can be found in the federal archives.

During the treaty and allotment eras, some tribes negotiated naturalized citizenship for their members who received allotments under treaties or agreements authorizing individual tribal members to receive individual allotments of land. After the first World War, Congress adopted the Indian Citizenship Act of 1924⁴ which granted naturalized citizenship to all person[s] born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe. This naturalization provision is now found at 8 U.S.C. §1401(b).

1. 30 U.S. 1 (1831).

2. 31 U.S. 515 (1832).

3. 112 U.S. 94 (1884).

4. Act of June 2, 1924, c. 233, 43 Stat. 253.

“The Dawes Act”

See, General Allotment Act.

“Dependent Indian Community”

The term “Dependent Indian Community” was perhaps first used in *U.S. v. Sandoval*.⁵ In that case the Court held that lands owned in fee by a Pueblo were Indian country:

[I]t is not necessary to dwell specially upon the legal status of this people under either Spanish or Mexican rule, for whether Indian communities within the limits of the United States may be subjected to its guardianship and protection as dependent wards turns upon other considerations. Not only does the Constitution expressly authorize Congress to regulate commerce with the Indian tribes, but long continued legislative and executive usage and an unbroken current of judicial decisions have attributed to the United States as a superior and civilized nation the power and the duty of exercising a fostering care and protection over all dependent Indian communities within its borders, whether within its original territory or territory subsequently acquired, and whether within or without the limits of a state. As was said by this court in *United States v. Kagama*: ‘The power of the general government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protection, as well as to the safety of those among whom they dwell. It must exist in that government, because it never has existed anywhere else, because the theater of its exercise is within the geographical limits of the United States, because it has never been denied, and because it alone can enforce its laws on all the tribes. In *Tiger v. Western Invest. Co.*, prior decisions were carefully reviewed and it was further said: ‘Taking these decisions together, it may be taken as the settled doctrine of this court that Congress, in pursuance of the long-established policy of the government, has a right to determine for itself when the guardianship which has been maintained over the Indian shall cease. It is for that body, and not the courts, to determine when the true interests of the Indian require his release from such condition of tutelage.’

Of course, it is not meant by this that Congress may bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe, but only that in respect of distinctly Indian communities the questions whether, to what extent, and for what time they shall be recognized and dealt with as dependent tribes requiring the guardianship and protection of the United States are to be determined by Congress, and not by the courts.

....

It also is said that such legislation cannot be made to include the lands of the Pueblos, because the Indians have a fee simple title. It is true that the Indians of each pueblo do have such a title to all the lands connected therewith, excepting such as are occupied under Executive orders, but it is a communal title, no

5. 231 U.S. 28 (1913).

individual owning any separate tract. In other words, the lands are public lands of the pueblo, and so the situation is essentially the same as it was with the Five Civilized Tribes, whose lands, although owned in fee under patents from the United States, were adjudged subject to the legislation of Congress enacted in the exercise of the government's guardianship over those tribes and their affairs. Considering the reasons which underlie the authority of Congress to prohibit the introduction of liquor into the Indian country at all, it seems plain that this authority is sufficiently comprehensive to enable Congress to apply the prohibition to the lands of the Pueblos.⁶

In *U.S. v. McGowan*,⁷ the Supreme Court expanded on the dependant Indian community concept holding that lands purchased by the United States for the purpose of providing homes for Indians was Indian country:

Indians of the Reno Colony have been established in homes under the supervision and guardianship of the United States. The policy of Congress, uniformly enforced through the decisions of this Court, has been to regulate the liquor traffic with Indians occupying such a settlement. This protection is extended by the United States 'over all dependent Indian communities within its borders, whether within its original territory or territory subsequently acquired, and whether within or without the limits of a state.'

The fundamental consideration of both Congress and the Department of the Interior in establishing this colony has been the protection of a dependent people. Indians in this colony have been afforded the same protection by the government as that given Indians in other settlements known as 'reservations.' Congress alone has the right to determine the manner in which this country's guardianship over the Indians shall be carried out, and it is immaterial whether Congress designates a settlement as a 'reservation' or 'colony.' In the case of *United States v. Pelican*, this Court said:

'In the present case, the original reservation was Indian country simply because it had been validly set apart for the use of the Indians as such, under the superintendence of the government.'

The Reno Colony has been validly set apart for the use of the Indians. It is under the superintendence of the government. The government retains title to the lands which it permits the Indians to occupy. The government has authority to enact regulations and protective laws respecting this territory. 'Congress possesses the broad power of legislating for the protection of the Indians wherever they may be within the territory of the United States.'

When we view the facts of this case in the light of the relationship which has long existed between the government and the Indians—and which continues to date—it is not reasonably possible to draw any distinction between this Indian 'colony' and 'Indian country.'

Dependant Indian communities are a part of the Indian country as defined in 18 U.S.C. §1151.

6. *Id* at 45-46, 48. (Internal citations omitted.)

7. 302 U.S. 535, 538-39 (1938). (Internal citations omitted.) See, also, *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998).

“Federal Indian Law”

The idea of “federal Indian law” encompasses all federal laws that either (1) exercise federal authority, or (2) which allocate jurisdictional authority between the federal, tribal, and state governments over persons, places, and subject matter when Indian Tribes, Indian people, and Indian commerce are affected because of their particular status as Indians. The Constitution of the United States authorizes Congress to regulate commerce with the Indian Tribes in the same constitutional provision which authorizes Congress to regulate commerce with foreign nations and among the several states.⁸

It is difficult to characterize exactly what “Federal Indian law” entails. Experience has shown that “federal Indian law” has impacted almost every conceivable field of law currently studied in the schools of law in this country. From criminal cases to Wall Street bond issues, from adoptions to intergovernmental relations, from accounting to worker’s compensation, the range of matters in which “Indian law” can become the determinate factor is perhaps as infinite as the subjects that may be a part of the law school curriculum. Yet not every case involving an Indian tribe or Indian person is necessarily an Indian law case, and every statutory law that affects Indians is not necessarily a part of “Federal Indian law.”

Professors David H. Getches, Charles F. Wilkinson, and Robert A. Williams, Jr. have made a worthy attempt at defining the field on the first page of their casebook:⁹

The field of federal Indian law involves a body of law that regulates the legal relationships between Indian Tribes and the United States. In turn, notions of federalism dictate a unique relationship with the states and their laws. The tribes, their members, and lands held by both are affected by federal Indian law.

Professors Robert N. Clinton, Nell Jessup Newton, and Monroe E. Price also begin their casebook¹⁰ with the following description of the field of Indian law:

The body of jurisprudence in the United States surrounding the legal rights of Native Americans affords them a special protected status in the American legal structure. Unlike other minority groups, whose primary legal protections arise from laws prohibiting discrimination designed to facilitate their complete integration into the social, political, and economic fabric of the country, Indians have enjoyed a legal status that was, at the outset, designed primarily to protect their cultural autonomy. Modern Indian law in the United States involves a special protection of a separate minority population that is currently designed to facilitate Indian group autonomy.

While recognizing that some federal laws have provided a certain amount of protection to Indian tribes or people and their assets during some periods of history, some scholars have suggested that federal Indian law is primarily the means the United States uses to subjugate a separate, colonized people who rightfully have the right of self-governance independent of the United States. *See*, for example, Robert B. Porter, A Proposal to the Hanodaganyas to Decolonize Federal Indian Control Law, 31 U. Mich. J.L. Reform 899 (1998).

8. Article I, Section 8, Clause 3.

9. Getches, Wilkinson, Williams, *FEDERAL INDIAN LAW* 1 (3rd Ed.) (West Pub. Co., 1993).

10. Clinton, Newton, Price, *AMERICAN INDIAN LAW* (3rd Ed.) (Michie Co., 1991).

“Federally recognized Tribe”

The term “federally recognized tribe” is used to refer to an Indian Tribe, Band, or Nation which has a government-to-government relationship with the United States. This relationship was often the outgrowth of various treaties between the Tribe and the United States which established and perpetuated a political relationship between the parties. As with foreign countries, the relationship has also been established on occasion by Presidential recognition of the tribe either directly or through the executive departments, and by the Congress.

“General Allotment Act”

The General Allotment Act of 1887, also known as “The Dawes Act,” 24 Stat. 388, authorized the President to allot to individual Indians a limited amount of the lands belonging to the Indian Tribes, and then to “negotiate” with the Tribes for the sale of the “surplus lands” thereby “created.” This Act was one of the largest land grabs in history, as pressure from the government to force the tribes to sell their “surplus” lands was overwhelming. It has been estimated that due to the federally imposed allotment policy Indian Tribes and peoples have been deprived of over one hundred million acres of land. The “surplus lands” were usually given to non-Indians under the homestead laws. The lands of the allottees were to be held in trust for a period of twenty-five years and then conveyed in fee to the individual Indian or their heirs. These trust periods have been continued to the present day.

“Indian”

When one hears the question “who is an Indian,” the phrase “for what purpose and by whose definition?” can usually be added to the question.¹¹ To attach a “minority group” label such as “Black,” “Female,” or “English” to an individual, is generally a designation of their race, sex, or national origin. The question of “Indian” status is unique in that the generic misnomer “Indian” is used to describe different, yet overlapping, categories of persons who may be Indians for some purposes but, perhaps, not for others. To say someone is an “Indian” infers, for different people, connotations of race, culture, social condition, legal status, and political status or some combination thereof. When one individual is speaking of Indians as a cultural group, and another person is speaking of Indians in a racial, social, legal, political or other context¹², differences of opinion will arise. In such circumstances, the participants in the discussion may not even understand the reasons for their different conclusions. Thus, one participant will determine that an individual is in fact an Indian, while another participant in the discussion may just as adamantly conclude that the same individual is not Indian at all.

11. For further information on this point, see, Clinton, Newton, Price, *AMERICAN INDIAN LAW*, 83-108 (3rd Ed.) (Michie Co., 1991).

12. Obviously, it is irrelevant how these categorical viewpoints are distributed between the participants of such a discussion. Matters are even more complicated when one or more of the participants have internally incorporated two or more such categories into their definition of “who is an Indian” and proceed to use their hybrid definition to make their individual determinations.

When one realizes the divergent perspectives from which the question may be considered, both participants may in fact be correct—from their own categorical perspective. They can likewise both be wrong. If the purposes for which one asks the question are kept in mind, the topic may be easier to address rationally.¹³ The purpose of the question at this point is to determine a tentative definition suitable for the discussion of the issue of what persons constitute “Indians” for the purpose of federal Indian gaming law. In doing so, we shall consider four interrelated categorical standards by which an individual’s “qualifications” for Indian status could be judged: legal status, political status, racial status, and cultural or social status.¹⁴

A person’s legal status is generally determined by reference to the legal system in which the question is raised. Each government decides for its own purposes the standards for meeting the legal test it has established. For tribal purposes, the government of an Indian Tribe would decide whether a person is an Indian by reference to tribal law.¹⁵ For state purposes, the Supremacy Clause of the Constitution generally binds states¹⁶ to recognize as Indians those persons so recognized by federal law. Some States have also historically recognized, pursuant to state law, some Indian Tribes that the federal government had not necessarily recognized, and has recognized the members of those tribes as Indians for state purposes.¹⁷ In several cases such “state recognized” tribes have since been formally recognized by the United States.¹⁸ For federal purposes, the government of the United States generally decides an individual’s status as an Indian by reference to federal law.¹⁹

In *Morton v. Mancari*,²⁰ the United States Supreme Court held that being “Indian” is not a racial classification, but instead refers to people who occupy a distinct and unique political status. The Court, in footnote twenty-four, amplified its holding that the employment preference extended to Indians in employment with the Bureau of Indian Affairs was not, in fact, a racial preference despite its characterization as such by qualified non-Indian employees denied promotion in favor of qualified Indians:

The preference is not directed towards a ‘racial’ group consisting of ‘Indians;’ instead, it applies only to members of ‘federally recognized’ Tribes. This oper-

13. It may not always be possible to isolate a single category which will adequately identify those who are “Indians” for the purpose for which the definition is desired. It must be understood that the question is often asked in a context where one must include more than one category in the discussion.

14. There should be no inference that these categories are mutually exclusive, nor that they are inclusive of all possible categories through which one could frame a definition for consideration. They are, however, sufficient to illustrate the point of this portion of this text.

15. See, *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978).

16. U.S. Const. Art. VI, cl. 2. See also, U.S. Const. Art. I, Sec. 8, cl. 3, which vests Congress with the authority to regulate commerce with the Indian Tribes.

17. Francis J. O’Toole and Thomas N. Tureen, *Maine Indians—state power and the Passamaquoddy Tribe: “A gross national hypocrisy?”* 23 MAINE L. REV. 1 (1971); *Joint Tribal Council of Passamaquoddy Tribe v. Morton*, 388 F.Supp. 649 (D.C.Me.1975). Maine St. T. 22 §4701 (Maine R.S. 1954, c. 25, §321) (repealed) defined as Indians all persons of at least one-quarter degree of Indian blood.

18. Three Indian tribes in Maine, which prior to the Maine Indian Claim Settlement Act, Pub.L. 96-420, 94 Stat. 1785 (1980) (25 U.S.C. §1721 et seq.) were recognized only by the state government, are now formally recognized by the government of the United States. See also, Rhode Island Indian Claims Settlement Act, Pub.L. 95-395, 92 Stat. 813 (1978) (25 U.S.C. §1701 et seq.). This is not a complete list of such entities.

19. The concept of federal recognition by the government of the United States does not take into consideration the Tribes in Canada, Mexico, and other countries of this hemisphere.

20. 417 U.S. 535, 553 (1974).

ates to exclude many individuals who are racially to be classified as ‘Indians.’ In this sense, the preference is political rather than racial in nature.²¹

This decision is consistent with prior authority that recognized the right of individual Indians to expatriate themselves from their tribe,²² and of Indian Tribes to admit to full or restricted citizenship members of other Tribes, whites, blacks, and presumably any person that the Tribe chooses to admit to citizenship.²³

The federal statutory definitions of the term “Indian” are generally consistent with the Court’s reasoning in *Morton v. Mancari*. The majority of the federal statutory definitions²⁴ define the term “Indian”²⁵ as meaning a person who is an enrolled member of a federally recognized Indian tribe, band, or nation,²⁶ and generally includes members of Alaska Native Villages.²⁷ However, a few statutory definitions provide additional or alternative categories such as certification by a tribe,²⁸ membership in terminated tribes or state recognized tribes and their descendants,²⁹ or recognition by the Secretary of the Interior as an Indian,³⁰ while others limit the general rule by providing some additional requirement such as residence on “Indian land”³¹ or within a particular state,³² or ownership of trust or restricted Indian land.³³ However, the majority of the federal statutory definitions depend primarily on the political affiliation of an individual as a citizen of an Indian tribe, band, or nation.

21. *Id.* at footnote 24. In the criminal law context, see, *U.S. v. Antelope*, 430 U.S. 641 (1977) holding that conviction of an Indian pursuant to the felony-murder rule contained in 18 U.S.C. §§1111 and 1153 was not invidious racial discrimination even though a non-Indian committing the same acts would have been tried under a state statute requiring proof of premeditation and deliberation. Proof of premeditation and deliberation was not required as elements of the federal convictions.

22. *U.S. ex rel. Standing Bear v. Crook*, 25 F.Cas. 695 (C.C. D. Neb, 1879)

23. *Cherokee Intermarriage Cases*, 203 U.S. 76 (1906); *Cherokee Nation v. Journeycake* 155 U.S. 196 (1894). See also, *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978), where the Supreme Court determined that the Indian Civil Rights Act, 25 U.S.C. §§1301 et seq., did not create a claim for relief cognizable in the federal courts despite allegations of discrimination on the basis of sex and ancestry in the enrollment of those who were not tribal members. In *Santa Clara*, the Tribe refused to accept as members children of a female tribal member who had married outside the Tribe, although the Tribe did accept as members the children of male tribal members who married outside the Tribe.

24. See, for example, the following statutory definitions. 16 U.S.C. §1722; 20 U.S.C. §80q-14; 20 U.S.C. §1401; 20 U.S.C. §4402; 25 U.S.C. §450b; 25 U.S.C. §1452; 25 U.S.C. §1903; 25 U.S.C. §3202; 42 U.S.C. §3002. There have been more than thirty-five federal statutory definitions of the term “Indian” contained in the federal statutes for various purposes during the last fifteen years.

25. The term “Native American” is sometimes classified so as to include Indians, Native Hawaiians and Native American Pacific Islanders. See, 20 U.S.C. §7601, 25 U.S.C. §2902, and 38 U.S.C. §3764.

26. See, 12 U.S.C. §4702, 25 U.S.C. §450b, and 42 U.S.C. §1996a. This is not an inclusive list. Like the definition of “Indian,” the term Indian Tribe is generally defined to mean a tribe, band, or nation recognized by the United States and eligible for federal services because of their status as Indians. The term generally includes Alaska Native Villages. However, additional groups such as state recognized tribes are sometimes included in the definition, see *e.g.*, 25 U.S.C. §305e.

27. Alaska Native Claims’ Settlement Act, 43 U.S.C. §1602(b).

28. The Indian Arts and Crafts Act, 18 U.S.C. §1159, includes in the term “Indian” a person certified as an Indian artisan by an Indian tribe. See also, 25 U.S.C. §305e.

29. 20 U.S.C. §7881.

30. 25 U.S.C. §1603.

31. 18 U.S.C. §437.

32. 25 U.S.C. §651.

33. 25 U.S.C. §2101.

The political status of a person as a citizen of an Indian tribe is generally determined by the tribes through their inherent powers of self-government.³⁴ The common law³⁵, constitutions, and statutes of Indian tribes provide the criteria for citizenship in the tribe. The criteria used often include such matters as blood quantum,³⁶ birth to paternal or maternal tribal members,³⁷ membership in a particular clan,³⁸ or some combination of similar criteria. Traditional and current notions of tribal citizenship or membership thus include factors based upon race and national origin, as well as traditional cultural, religious, and other values.

A rational general classification of racial and cultural “Indians” is elusive. As to the racial issue, some tribes such as the Cherokee Nation of Oklahoma include in their eligible membership all persons who can show that they possess *any* quantum of Cherokee blood based upon the Dawes Rolls of 1906. Others require a specific minimal tribal and/or Indian blood quantum to attain eligibility for membership.³⁹ At what point can one draw a line between those who are racially “Indian” and those who are not? Should all Indian blood be counted in such considerations, or only that of a specific tribe under consideration?⁴⁰ Can, and should, questions of race be divorced from issues of culture and recognition by the Indian community?

Cultural issues are often intertwined with the issue of race and are likewise difficult to quantify.⁴¹ For instance, very few would argue that a linguist or anthropologist from London, England, who had learned to speak an Indian language and studied that particular Tribe’s recorded cultural traits is an Indian. Yet there are those who argue that you are not “really Indian” unless you can speak the language and know or practice your tribe’s particular culture. Most would recognize the full-blood Indian who was enrolled in a federally recognized tribe as an Indian, even if the individual was adopted at birth

34. Cohen, *HANDBOOK OF FEDERAL INDIAN LAW* (USGPO, 1942). The exceptions to this rule generally involve Tribes whose rolls have been closed by specific agreement with the Tribe or by a specific act of Congress.

35. The term “common law” is used here intentionally to describe the customs, traditions, and cultural rules of conduct of Indian Tribes which are enforced by tribal law. Tribal customs, traditions, and cultural rules are entitled to no less respect than American customs, traditions, and cultural rules and therefore each are designated by the same term.

36. *Slattery v. Arapahoe Tribal Council*, 453 F.2d 278 (10th Cir. 1971).

37. *Martinez v. Santa Clara Pueblo*, 540 F.2d 1039 (10th Cir. 1976) rev. 436 U.S. 49.

38. Arthur C. Parker, *PARKER ON THE IROQUOIS* (The Constitution of the Five Nations) 42, ¶¶42 et seq. (Syracuse Univ. Press, 1968) The Constitution of the Five Nations also contained rules of naturalization for foreigners. *Id.* at 49, ¶¶66 et seq.

39. It seems that the minimal blood quantum required by most Tribes lies somewhere between one-eighth and five-eighths with one-fourth being the “standard.”

40. Some federal statutes do include or exclude persons on the basis of their blood degree for certain federal services, programs, or benefits. *See, e.g.*, 25 U.S.C. §§480, 482, 585, 903b, 971, and 1300h-3. It is unclear whether some of these blood-quantum requirements may have been enacted at the request of the affected Tribes.

41. For instance, there are additional issues at work here even among those who meet every federal and tribal definition of “Indian” in use by the United States government and the federally recognized Indian tribes. One of these can be characterized by what I will call the distinction between those who may, perhaps, be denominated “American Indians” as opposed to those who might be called “Tribal Indians.” This distinction is a direct outgrowth of the forced assimilation policy to which Indian tribes have been subjected, and is perhaps a measure of the success, or lack of success, of that policy. One’s outlook on the world in general, and upon Indian issues in particular, can be significantly impacted by whether one conceives of oneself as an American who happens to be an Indian, or as a Tribal citizen who has been granted American citizenship by Act of Congress subsequent to colonization.

by a non-Indian family and had never set foot in the Indian country nor met another Indian. Such an individual meets almost every federal statutory definition. Compare the foregoing with the case of the full-blood Indian who is one-eighth of eight different tribes, each of which require a one-fourth blood quantum for recognition and enrollment. Even if that person speaks all eight languages and is expert in all eight tribal cultures, that person would not meet most of the statutory definitions of the term “Indian,” being no more Indian in the law for most purposes than our British anthropologist. It is perhaps oxymoronic to speak of a non-Indian Indian or of an Indian non-Indian. Yet in human terms, this is the result allowed by law, and the source of much confusion and controversy.

Perhaps the best that can be done with the racial and cultural categories is to state that the term “Indian” generally assumes a racial identity with the indigenous people of these continents and at least some cultural and social contact with a tribal community.⁴² The precise extent and nature of possible cultural qualifications, or the proportion of indigenous (Indian) blood needed to qualify could be the subject of unending argument. If one approaches the question from a legal or political posture, the racial and cultural issues are generally subsumed in the individual determinations by federally recognized tribes of the categories of persons that the tribe will acknowledge as its citizens. Thus, tribal membership generally, could provide a touchstone for a working definition of “Who is an Indian?” However attractive such a definition could be from its simplicity, it will not suffice as a sufficient and complete definition as it fails to recognize some persons who are expressly recognized as Indians by federal law.⁴³

“Indian Allotment”

See “Allotment.”

“Indian Citizens”

See, Citizenship Act of 1924.

42. One federal statutory attempt to provide a definition of the term “Indian” which would address the various legal, political, racial, and cultural categories through which the term could be defined can be found at 25 U.S.C. §479 (the Indian Reorganization Act) which provides:

“The term ‘Indian’ as used in sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of this title shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. For the purposes of said sections, Eskimos and other aboriginal peoples of Alaska shall be considered Indians.”

43. For instance, such simplicity would preclude recognition of members of Tribes from Canada, Mexico, or Central and South America. It would also preclude many persons who are of one-quarter or more degree of total Indian blood who live within, and as a part of recognized Indian communities.

“Indian Civil Rights Act”

The Indian Civil Rights Act of 1968, Pub.L. 90-284, Title II, §201, Apr. 11, 1968, 82 Stat. 77 (25 U.S.C. §§1301 et seq.), imposed upon tribal governments many, but not all, of the provisions of the “Bill of Rights” of the first ten amendments to the constitution of the United States. Since the constitution of the United States does not apply to Indian tribes, it is a misnomer to speak of “constitutional rights” vis-a-vis a tribal government unless one is speaking of rights guaranteed by the constitution of the tribe. The rights conferred on individuals by this act are statutory rights, and are not necessarily subject to the “cultural baggage” which is affixed to the federal government’s Bill of Rights. Important differences in this Act and the Bill of Rights include: Indians were not granted the right to keep and bear arms, legal counsel is available to defendants in criminal cases although only at the defendant’s own expense, and, while freedom of religion is provided, Congress did not impose the prohibition on establishment of religion as some tribes continue to be governed directly or indirectly by theocracies or tribal social and cultural systems which are religious in nature.

“Indian Country”

The term “Indian Country” was perhaps first defined by statute in the Act of June 30, 1834, 4 Stat. 729 (1834) as “all that part of the United States west of the Mississippi, and not within the states of Missouri and Louisiana, or the territory of Arkansas, and, also, that part of the United States east of the Mississippi river, and not within any state to which Indian title has not been extinguished...” The effect of the early statutes defining Indian country was summarized by the noted Indian law scholar, Felix Cohen, in his *HANDBOOK OF FEDERAL INDIAN LAW* 6 (1942 Ed.) as follows:

Indian country in all these statutes is territory, wherever situated, within which tribal law is generally applicable, federal law is applicable only in special cases designated by statute, and state law is not applicable at all.⁴⁴

Although the 1834 definition of Indian country was not included in the Revised Statutes of the United States, and therefore repealed, it provided a useful mechanism for the Court to apply statutory laws relating to “Indian Country” and “Indian Reservations.”⁴⁵ In a series of now famous cases, the Court developed a definition of “Indian Country” at common law which included Indian reservations,⁴⁶ trust and restricted Indian allotments,⁴⁷ and areas set aside for the use and occupancy of Indians as dependant Indian communities although not called a “reservation.”⁴⁸

44. The complete prohibition as to the application of state law in the Indian Country has been modified to the extent Congress has deemed proper. 18 U.S.C. §1161 (liquor laws); Act of February 15, 1929, c. 216, 45 Stat. 1185 (health and education)(25 U.S.C. §231); 25 U.S.C. §§232, 233 (New York); 18 U.S.C. §1162 (criminal jurisdiction in Pub. L. 83-280 states); 28 U.S.C. §1360 (civil jurisdiction in Pub. L. 83-280 states); 25 U.S.C. §§1321 et. seq. (assumption and retrocession of civil or criminal jurisdiction by states which are not mandatory Pub. L. 83-280 states).

45. *Donnelly v. U.S.*, 228 U.S. 243, 269 (1913).

46. *Bates v. Clark*, 95 U.S. 204 (1887); *Donnelly v. U.S.*, 228 U.S. 243 (1913).

47. *U.S. v. Pelican*, 232 U.S. 442 (1914); *U.S. v. Ramsey*, 271 U.S. 467 (1926).

48. *U.S. v. Sandoval*, 231 U.S. 28 (1913); *U.S. v. McGowan*, 302 U.S. 535 (1938).

In *Bates v. Clark* the Court stated at page 209:

It follows from this that all the country described by the act of 1834 as Indian country remains Indian country so long as the Indians retain their original title to the soil, and ceases to be Indian country whenever they lose that title, in the absence of any different provision by treaty or by act of Congress.

Although the Indian country status had thus been tied to aboriginal ownership of the soil, the Court in *Donnelly* extended the application of the term to lands reserved for tribes carved from the public domain. Tribal ownership, however, remained the benchmark indicia of Indian country status for Indian reservations as a historical consequence of the 1834 act. In pre-1948 decisions of the federal courts, as well as those later cases which rely without critical analysis upon such decisions, the ownership of title to the soil was often critical to the status of land as Indian country or “reservation” land.

The foregoing decisions left open the question of whether land within the exterior boundaries of an Indian reservation which was held in fee (in other words an “open” or “assimilated” reservation) was Indian Country. Cohen, *HANDBOOK OF FEDERAL INDIAN LAW* 8 (1942 Ed.). The practical effect of this “open reservation” issue was whether federal and tribal jurisdiction remained exclusive in reservation areas where allotments had been taken and the surplus sold, or where trust periods on allotments had expired, or where restrictions against alienation had been removed.

In 1948, Congress resolved this issue in favor of federal and tribal jurisdiction over trust and fee patented lands within reservations, and codified the Supreme Courts existing common law classifications of Indian Country by the Act of June 25, 1948, 62 Stat. 757, codified in its present form at 25 U.S.C. §1151, which states:

Except as otherwise provided in sections 1154 and 1156 of this title, the term “Indian country,” as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation,⁴⁹ (b) all dependent Indian communities within the borders of the United States whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-or-way running through the same.

49. *United States v. Mazurie*, 419 U.S. 544, 547 (1975). The impact of this Congressional action was to render obsolete Court decisions which tied Indian Country status of Indian reservations to issues of land title, and to define by statute the territorial area for the operation of tribal government. The question of continuing land ownership should have remained relevant only in the context of Indian allotments outside Indian reservations pursuant to 25 U.S.C. §1151(c). While often speaking in terms of “reservation” or “allotment” or “dependant Indian community” as relevant in a particular circumstance, between 1948 and 1981 the Court clearly held that “Indian country” is the legally recognized term of art defining the territorial area for the exercise of tribal self-government. *United States v. Mazurie*, 419 U.S. 544, (1975); *DeCoteau v. District Court*, 420 U.S. 425 (1975); *United States v. John*, 437 U.S. 634 (1978); *Solem v. Bartlett*, 465 U.S. 463 (1984). Without referring to this statute or its prior decisions recognizing tribal jurisdiction over all “Indian country” by virtue of this act, the Court in *Montana v. U.S.*, 450 U.S. 544 (1981) began a line of cases which once again impose some limits upon tribal jurisdiction over Indian country lands where the title to the land is owned by non-Indians. To date the Court has cited no statutory authority for this position, nor has it explained why the statute and its interpretive cases were ignored in this new line of decisions which appear to be intended to limit tribal jurisdiction over non-Indians.

In *Seymour v. Superintendent of Washington State Penitentiary*,⁵⁰ the Court held that the phrase “notwithstanding the issuance of any patent” contained in the Indian country statute⁵¹ included patents to both Indians and non-Indians, and Indian conduct on property owned in fee by non-Indians but within reservation boundaries was therefore Indian conduct within the Indian country. Further, in *U.S. v. Mazurie*⁵² the Court held that non-Indian conduct on non-Indian owned fee lands within a continuing reservation was conduct within the Indian country for the purpose of federal laws regulating the introduction of liquor into the Indian country. In response to the claim that non-Indians could not be subjected to rules of law adopted by an Indian tribe in whose governmental affairs the non-Indian could not participate⁵³, the Court through then Justice Rehnquist stated:

Cases such as *Worcester*, supra, and *Kagama*, supra, surely establish the proposition that Indian tribes within ‘Indian country’ are a good deal more than ‘private, voluntary organizations,’ and they thus undermine the rationale of the Court of Appeals’ decision.... The fact that the Mazuries could not become members of the tribe, and therefore could not participate in the tribal government, does not alter our conclusion. This claim, that because respondents are non-Indians Congress could not subject them to the authority of the Tribal Council with respect to the sale of liquor, is answered by this Court’s opinion in *Williams v. Lee*.⁵⁴

As a general rule, land which is within an Indian reservation or dependant Indian community, or which is a trust or restricted Indian allotment constitutes Indian country.

“Indian Financing Act”

The Indian Financing Act of 1974, Pub.L. 93-262, §2, Apr. 12, 1974, 88 Stat. 77, consolidated several previously existing programs to provide loans to Indians for economic development purposes, and added some new lending authority. Loans, loan guarantees, interest subsidies, and grants are authorized under this act.

“Indian Law”

When most people think of “Indian law,” they are thinking of *federal* Indian law, in other words, the body of laws of the United States federal government dealing specifi-

50. 368 U.S. 351 (1962).

51. 18 U.S.C. §1151(a).

52. 419 U.S. 544, 547 (1975).

53. The Court of Appeals held in part that: “The tribal members are citizens of the United States. It is difficult to see how such an association of citizens could exercise any degree of governmental authority or sovereignty over other citizens who do not belong, and who cannot participate in any way in the tribal organization. The situation is in no way comparable to a city, county, or special district under state laws. There cannot be such a separate ‘nation’ of United States citizens within the boundaries of the United States which has any authority, other than as landowners, over individuals who are excluded as members.” *Id.* at 556.

54. *Id.* at 557, 558. (Citations omitted.)

cally with Indian tribes and Indian people.⁵⁵ That is the portion of “Indian law” which is the primary subject of this text. However, It must also be realized that many states have constitutional, statutory, and decisional law that relate specifically to Indians within those states. Canada and other countries in this hemisphere have a special body of law relating to Indians in their capacity as Indians within those countries. Finally, the United Nations has undertaken to develop international standards which will become international law concerning how the members of that organization interact with indigenous peoples within their borders, and the rights of indigenous peoples in the international law. Perhaps most neglected in the legal education of our future litigators, judicial officers, and lawyer-politicians is the study of the Constitutions and laws of the Indian Tribes, Bands, and Nations.⁵⁶

“Indian Removal Act”

See, Indian Removal Policy.

“Indian Removal Policy”

The Indian Removal Policy, which existed from the mid 1820s through perhaps 1845, was characterized by the Indian Removal Act of May 28, 1830, c. 148, 1 Stat. 411. This “Act to provide for an exchange of lands with the Indians residing in any of the states or territories, and for their removal west of the river Mississippi,” did not actually order the removal of any Native Americans. Instead, the President was authorized to negotiate treaties with tribes located in the boundaries of existing states through which those Tribes would exchange their lands east of the Mississippi for lands west of that river under a “voluntary” program. It was not, however, presented to the tribes as a voluntary action but a requirement of the government, and Andrew Jackson’s presidency was not above fraud, deceit, and the use of force to gain tribal “consent” to their removal. This policy resulted in the several infamous “Trails of Tears” to which the people of the Cherokee, Choctaw, Chickasaw, Seminole, and Muscogee (Creek) Nations were subjected, and the relocation or removal of various other “eastern Tribes” from their traditional homelands.

55. Much of the federal statutory law relating to Indians is found in Title 25 of the United States Code entitled “Indians.” Other statutes directly related to Indian Tribes and Indian people are scattered throughout the United States Code. While this body of law is impressive in itself, it is only a small part of the federal law directly related to Indians. To obtain a more complete view of “Federal Indian Law,” one must also consider at a minimum the hundreds of treaties and agreements between the United States and Indian tribes and statutes which are not codified in the United States Code. Kappler, *INDIAN AFFAIRS LAWS AND TREATIES* (USGPO), decisional law of the federal courts, various solicitor’s opinions, and the regulations of federal agencies specifically dealing with Indians.

56. As Congress and the Courts continue to recognize the importance of tribal laws, and the general jurisdictional powers of tribal courts, it is perhaps surprising that few law schools offer any opportunity for students to become cognizant of, let alone competent in, the laws and legal systems of Indian tribes—the third great set of governmental entities in this country having the authority to decide important personal and property rights. See, *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978); *National Farmer’s Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845 (1985); *Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9 (1987).

“Indian Reorganization Act”

The Indian Reorganization Act of June 18, 1934, c.576, 48 Stat. 988 (now codified at 25 U.S.C. §§461 et seq.) was intended to return a measure of self-government to Indian tribes who had become subject to administrative domination through the policies adopted during the time in which the allotment policy was in vogue. It contained provisions prohibiting further allotment of tribal lands, extending existing periods of trust for Indian lands, providing statutory authority for the creation of written tribal constitutions, authorizing the Secretary to issue federal charters of incorporation to tribes organized under the act, included provisions authorizing various methods to acquire land for individual Indians and tribes, and made the application of the act subject to tribal consent. Certain listed tribes in Oklahoma were excepted from some of the provisions of this Act. In 1936, Congress authorized those tribes in Oklahoma to adopt a constitution and charter in which the Secretary could convey to the tribe “the right to participate in the revolving credit fund and to enjoy any other rights or privileges secured to an organized Indian tribe under the Act of June 18, 1934.” See, Act of June 26, 1936, c. 831, §3, 49 Stat. 1967 (now codified at 25 U.S.C. §§501 et seq). The promise of this new policy to support the reorganization and redevelopment of tribal government, and to promote economic opportunity and growth within the reservations was interrupted by the Second World War. Many tribes are now organized pursuant to this act, and have corporate charters under this act.

“Indian Reservation”

The term “Indian reservation” was originally used to refer to the area of the tribal domain that was reserved by the tribe to its own use in a treaty when the tribe ceded a portion of its aboriginal domain to some European sovereign or the United States. Over time, the term also came to include any area of land which had been set apart by the United States as a homeland for the tribe, band, or nation. This often occurred as a result of land transactions where the United States would trade federal lands in one place in return for tribal lands in a different location.

Once an area of land has been set apart as an Indian reservation, all tracts within that area remain Indian country until the reservation is extinguished by Congress.⁵⁷ The corollary to this rule is that the statute or treaty extinguishing the reservation must be clear on its face, or, if the statutory language could be interpreted to extinguish the reservation but is ambiguous, the legislative history and tribal understanding must clearly indicate an intent to terminate reservation status. Anything less than this clear language or showing of intent and understanding should result in a finding that the reservation continues as Indian country due to the traditional rules that ambiguities are to be resolved to the benefit of the Indians, and that Indian treaties and agreements must be interpreted as the Indians would have understood them.⁵⁸

Indian reservations are a part of the Indian country as defined in 18 U.S.C. §1151.

57. *Seymour v. Superintendent*, 368 U.S. 351 (1962); *Mattz v. Arnett*, 412 U.S. 481 (1973); *DeCoteau v. District Court*, 420 U.S. 425 (1975), and *Solem v. Bartlett*, 465 U.S. 463 (1984).

58. *Seymour v. Superintendent*, 368 U.S. 351 (1962); *Mattz v. Arnett*, 412 U.S. 481 (1973), *Montana v. Blackfeet*, 471 U.S. 759 (1985); *Choctaw Nation v. Oklahoma*, 397 U.S. 620 (1970).

“Indian Self-Determination Act”

Indian Self-Determination and Education Assistance Act of 1975, Pub.L. 93-638, Jan. 4, 1975, 88 Stat. 2203 (25 U.S.C. §§450 et seq.). Although pregnant with the assumption that Indian tribes would be able to exercise a greater degree of political authority within their respective territories, this Act actually authorized the Secretary of the Interior and the Secretary of Health, Education and Welfare to enter contracts with tribes by which the tribe would assume responsibility for the administration of federal Indian programs otherwise administered by those agencies for the benefit of the tribe.

“Indian Self-Governance Act”

The Indian Self-Governance Act, Pub.L. 93-638, Title IV, §401, as permanently added Pub.L. 103-413, Title II, §204, Oct. 25, 1994, 108 Stat. 4272 (codified at 25 U.S.C. §§458aa et seq.), again implies that tribes will attain greater political and legal authority, but fails to deliver on that promise. Instead, it expanded the amount of funding available to tribes under a “Compact” of self-governance which is essentially an enhanced self-determination contract. This act does provide significant enhancements to the contracting process, allowing the tribe to include funds at higher administrative levels, to reprogram those funds to different programs or services, and in some cases to obtain a waiver of existing federal regulations, or to write their own regulations to govern the program, service, or function.

“Indian Tribe, Band, or Nation”

The term “Indian Tribe, Band, or Nation” has been used to refer to both the collection of persons who are citizens of the particular tribe, band, or nation, and to the government of the Indian tribe, band, or nation. The Supreme Court has defined these terms as follows:

... So much of the argument as was intended to prove the character of the Cherokees as a state, as a distinct political society, separated from others, capable of managing its own affairs and governing itself, has, in the opinion of a majority of the judges, been completely successful. They have been uniformly treated as a state from the settlement of our country. The numerous treaties made with them by the United States recognize them as a people capable of maintaining the relations of peace and war, of being responsible in their political character for any violation of their engagements, or for any aggression committed on the citizens of the United States by any individual of their community. Laws have been enacted in the spirit of these treaties. The acts of our government plainly recognize the Cherokee nation as a state, and the courts are bound by those acts.

Cherokee Nation v. Georgia, 30 U.S. 1, 16 (1831).

The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any

other European potentate than the first discoverer of the coast of the particular region claimed: and this was a restriction which those European potentates imposed on themselves, as well as on the Indians. The very term 'nation,' so generally applied to them, means 'a people distinct from others.' The constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently admits their rank among those powers who are capable of making treaties. The words 'treaty' and 'nation' are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well understood meaning. We have applied them to Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense.

Worcester v. Georgia, 31 U.S. 515, 559 (1832).

By a 'tribe' we understand a body of Indians of the same or a similar race, united in a community under one leadership or government, and inhabiting a particular though sometimes ill-defined territory; by a 'band,' a company of Indians not necessarily, though often, of the same race or tribe, but united under the same leadership in a common design. While a 'band' does not imply the separate racial origin characteristic of a tribe, of which it is usually an offshoot, it does imply a leadership and a concert of action. How large the company must be to constitute a 'band' within the meaning of the act it is unnecessary to decide. It may be doubtful whether it requires more than independence of action, continuity of existence, a common leadership, and concert of action.

Montoya v. U.S., 280 U.S. 261, 266(1901).

“Public Law No. 83-280”

The Act commonly known as “Public Law 280” or “PL-280” is the Act of August 15, 1953, c. 505, Pub. L. 83-280, 67 Stat. 589. Portions of this statute are still codified in the various provisions of the United States Code. Enactment of this statute heralded the “Termination Era” of federal Indian policy which existed from the early 1950s through the early 1970s. By virtue of this policy, the states of Alaska, California, Minnesota (except the Red Lake Reservation), Nebraska, Oregon (except the Warm Springs Reservation), and Wisconsin, were granted jurisdiction over some or all of the Indian country within the state. Other states were given Congressional approval to unilaterally extend state jurisdiction over Indian country within their state, and other provisions destructive of tribal government were provided. Even more destructive of Indian tribes and people was the “termination” of tribes pursuant to this act. “Termination” was the extinguishment of the federal-tribal relationship. A “terminated tribe” was no longer recognized by the federal government as a tribe, and the members of that tribe were no longer recognized as Indians. A large number of tribes were subjected to the termination process, and the problems encountered by those tribes and their members caused other tribes to avoid any semblance of economic or political self-sufficiency in order to avoid a similar fate.

This policy was reversed by the Self-Determination policy adopted in the early 1970s. Some of the terminated tribes were “restored,” meaning that the United States once again recognized them as an Indian tribe and their members as Indians. However, vari-

ous parts of their former tribal territories were lost due to sales or loss of lands during the period in which the tribe was not recognized. Further, states who took jurisdiction over Indian country were allowed to return that authority to the federal government. Tribes were given the right to veto any attempt by a state to acquire jurisdiction over their Indian country, and no state has since acquired jurisdiction over Indian country under this act. To this day, attempts in Indian country to act independently of the federal government, or to strive for economic or political self-sufficiency are likely to be met with warnings from some elder who remembers this period: “Don’t do that, they’ll terminate us.”

“Restricted Allotment”

See “Allotment.”

“Termination Policy”

See, Public Law No. 83-280.

“Tribal Government”

Felix Cohen, former Solicitor for the Department of the Interior and the author of the original *HANDBOOK OF FEDERAL INDIAN LAW* described tribal powers of self-government as follows:⁵⁹

“The most basic principle of Indian Law, supported by a host of decisions, is that those powers which are lawfully vested in an Indian tribe are not, in general, delegated powers granted by express acts of Congress, but rather inherent powers of a limited sovereignty which have never been extinguished. The statutes of Congress then, must be examined to determine the express limitations placed upon tribal sovereignty rather than to determine its sources or positive content.”⁶⁰

Most tribal governmental powers, then, do not emanate as a grant from any other authority than the tribe’s inherent sovereignty, and this source of tribal authority has been repeatedly confirmed in various circumstances, including tribal powers of taxation⁶¹,

59. Within Indian country, State jurisdiction is usually preempted both by the general federal protection of tribal self-government — *Worcester* doctrine — and by specific federal statutes relating to civil and criminal jurisdiction within Indian country, *McClanahan v. Arizona Tax Commission*, 411 U.S. 164 (1973). See, 25 U.S.C. §§1321–1326; 18 U.S.C. §1151; *Kennerly v. District Court*, 400 U.S. 423 (1971). See also, “*The Journey from Ex Parte Crow Dog to Littlechief: A Survey of Tribal Civil and Criminal Jurisdiction in Western Oklahoma*,” 6 AM. INDIAN L. REV. 1 (1979). There have been, however, some notable exceptions. See, e.g. *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 192, (1989).

60. F. Cohen, *HANDBOOK OF FEDERAL INDIAN LAW* 122 (USGPO, 1942)

61. *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982) (inherent power to tax, regulate, and exclude non-Indians); *Washington v. Confederated Tribes*, 447 U.S. 134 (1980) (inherent power to tax).

civil regulatory authority⁶², criminal justice⁶³, determinations of tribal citizenship⁶⁴, inheritance determinations⁶⁵, control of domestic relations⁶⁶, the admittance or exclusion of non-members to their territory⁶⁷, and other sovereign powers and immunities.⁶⁸

As separate sovereigns pre-existing the United States, the United States Constitution has repeatedly been held not to apply to, or limit, the tribe's powers of self-government.⁶⁹ Indian tribes then, as distinct political communities, retain their original natural rights of self-government, and remain a separate people with the power of regulating both their members and other persons or entities within their territory when the non-Indians have some impact on the tribe or its members.⁷⁰

It follows, that Indian tribes have the authority to enforce their own laws in their own forums as to both Indians and non-Indians.⁷¹ The inherent power to tax, regulate, and exclude non-Indians has been consistently upheld, and the widely held understanding of the federal government has always been that federal laws have not worked a divestiture of such powers⁷². Therefore, a tribe may regulate, through taxation, licensing, or other means, the activities of Indians or non-Indians who enter consensual relationships with the tribe or its members through commercial dealing, contracts, leases, or other arrangements and clearly may do so where the conduct of the non-Indian threatens or has direct effect on the Tribe or its members.⁷³ One should be aware, however,

62. *United States ex rel Mackey v. Cox*, 59 U.S. 100 (1855) (authority of tribal courts to resolve important personal and property rights).

63. *U.S. v. Wheeler* 435 U.S. 313 (1978) (power to exercise criminal jurisdiction over Indians); *Talton v. Mayes*, 163 U.S. 376, (1896).

64. *Roff v. Burney*, 168 U.S. 218 (1897); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978) (membership).

65. *Jones v. Meehan*, 175 U.S. 1 (1899) (inheritance).

66. *U.S. v. Quiver*, 241 U.S. 602 (1916) (domestic relations).

67. *Worcester v. Georgia*, 31 U.S. 515 (1832) (power to exclude nonmembers).

68. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978) (immunity from suit by reason of sovereign immunity).

69. *Talton v. Mayes*, 163 U.S. 376 (1876); *Santa Clara Pueblo v. Martinez*, 426 U.S. 49 (1978); *Twin Cities Chippewa Council v. Minnesota Chippewa Tribe*, 370 F.2d 529, 533 (8th Cir. 1967); *Native American Church v. Navajo Tribal Council*, 272 F.2d 131 (10th Cir. 1959); *Martinez v. Southern Ute Tribe*, 249 F.2d 915 (10th Cir. 1957) cert. den. 356 U.S. 960 (1958); *Groundhog v. Keeler*, 442 F.2d 674 (10th Cir. 1971).

70. *Worcester v. Georgia*, 31 U.S. 515 (1832); *U.S. v. Mazurie*, 419 U.S. 42 (1975); *U.S. v. Kagama*, 118 U.S. 375 (1886); *U.S. v. Wheeler*, 435 U.S. 313 (1978); *Santa Clara Pueblo v. Martinez*, 426 U.S. 49 (1978); *Twin Cities Chippewa Council v. Minnesota Chippewa Tribe*, 370 F.2d 529, 533 (8th Cir. 1967); *Native American Church v. Navajo Tribal Council*, 272 F.2d 131 (10th Cir. 1959); *Martinez v. Southern Ute Tribe*, 249 F.2d 915 (10th Cir. 1957) cert. den. 356 U.S. 960 (1958); *Groundhog v. Keeler*, 442 F.2d 674 (10th Cir. 1971); *Montana v. U.S.*, 450 U.S. 544 (1981); *Washington v. Confederate Tribes*, 447 U.S. 134 (1980); *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982); F. Cohen, HANDBOOK OF FEDERAL INDIAN LAW 122–23 (1942 USGPO).

71. *Williams v. Lee*, 358 U.S. 217 (1959); *Fisher v. District Court*, 424 U.S. 382 (1976); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978); *Merrion v. Jicarilla Apache Tribe*, 445 U.S. 130 (1982). *Cardin v. De La Cruz*, 671 F.2d 363 (9th Cir. 1982) cert. den. (1982). *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324 (1983).

72. *Washington v. Confederate Tribes*, 447 U.S. 134, 152–53 (1980); *Montana v. U.S.*, 450 U.S. 544, 565–66 (1981); *Merrion v. Jicarilla Apache Tribe* 455 U.S. 130 (1982).

73. *Washington v. Confederate Tribes*, 447 U.S. 134, 153–55 (1980); *Williams v. Lee*, 358 U.S. 217 (1959); *Morris v. Hitchcock*, 194 U.S. 384 (1904); *Fisher v. District Court*, 424 U.S. 382 (1976); *Buster v. Wright*, 135 F. 947 (8th Cir. 1905) appeal dismissed. 203 U.S. 599 (1906); *Maxey v. Wright*, 34 S.W. 807 (Ct. App. Ind. Terr.) affirmed. 105 F. 1003 (8th Cir. 1900); *Barta v. Oglala Sioux Tribe*, 259 F.2d 553 (8th Cir. 1958); *Trans-Canada Enterprises, Ltd. v. Muckleshoot Indian Tribe*, 634 F.2d 474 (9th Cir. 1980); *Cardin v. De La Cruz*, 671 F.2d 363, 366 (9th Cir. 1982) cert. den. 74 L.Ed.2d 277

that the Supreme Court has recently ignored these authorities and federal statutory law to impose its own policy limitations upon some aspects of tribal self-government over non-members. In one case, Congress has acted to expressly repudiate the Supreme Court's policy decisions.⁷⁴ It remains to be seen whether the Court or Congress will prevail in deciding the future of tribal self-government.

“Tribal Government Tax Status Act”

The Indian Tribal Government Tax Status Act of 1982, Pub.L. 97-473, Title II, §202(a), Jan. 14, 1983, 96 Stat. 2608, accorded tribes many of the tax advantages under federal law enjoyed by the states. However, additional restrictions were placed on tribal bonds for certain economic development activities.

“Trust Allotment”

See “Allotment.”

(1982); *Knight v. Shoshone and Arapaho Tribes*, 670 F.2d 900 (10th Cir. 1982); *Ortiz-Barraza v. U.S.* 412 F.2d 1176, 1179 (9th Cir. 1975); *Confederated Salish and Kootenai Tribes v. Namen*, 665 F.2d 951, 963–64 (9th Cir. 1982); *Colville Confederated Tribes v. Walton*, 647 F.2d 42 (9th Cir. 1981).

74. *U.S. v. Lara*, 541 U.S. 193 (2004).