

University of Montana Law Library

Research Guide
April 2009

INDIAN & TRIBAL LAW

Indian law refers primarily to that body of law dealing with the status of Indian tribes and their special relationship to the federal government, with all the attendant consequences for the tribes and their members, the states and their citizens, and the federal government. William C. Canby, *American Indian Law in a Nutshell* 1 (4th ed., Thomson West 2004). Tribal law is the law of individual tribes.

The General Allotment Act of 1887 (Dawes Act) authorized the President to allot portions of reservation land to individual Indians with no provision for consent of the tribes. Most notably, the Act authorized the Secretary of Interior to negotiate with tribes for disposition of all “excess” lands remaining after allotments for the purpose of non-Indian settlement. The primary effect was a precipitous decline in the total amount of Indian-held land. Passage of many of the fee allotments out of Indian hands left large “checkerboard” areas of alternate non-Indian and Indian ownership. Canby, *supra*, at 20-23.

Indian Country includes all of the territory within an Indian reservation, even land owned by non-Indians.

Important aspects of Indian law:

Criminal jurisdiction in Indian Country.

Federal Indian Country Crimes Act: provides for federal prosecution of crimes by non-Indians against Indians and for federal or tribal prosecution of non-major crimes by Indians against non-Indians.

Federal Major Crimes Act: Applies when an Indian or non-Indian commits any of the specified crimes against anyone.

Tribal Laws: Indian criminal acts against other Indians, other than the above two categories.

Civil jurisdiction in Indian Country.

Tribal courts have jurisdiction over a claim by a non-Indian or an Indian against an Indian when the claim arises in Indian Country.

State courts have jurisdiction over claims by tribal members against non-Indians in Indian Country.

Adoption and Child Custody: governed by the Indian Child Welfare Act (ICWA): provides priority for state courts to follow in placement of Indian children, with

preference first to the child's extended family, then to members of his or her tribe, then to Indian families generally.

Divorce: Tribal courts have exclusive jurisdiction over divorces between Indians domiciled in Indian Country.

Probate: State courts have no jurisdiction over the probate of Indian trust property.

REPORTERS

REF
KF8201

.A315 _____ Indian Law Reporter.

Published monthly.

Pulls together Native American law cases from numerous jurisdictions and courts and provides brief summaries. Each annual volume has its own index, but there is no overall index.

Mezzanine Aisle 10

Indian Claims Commission Decisions.

REFERENCE BOOKS

KF8205 .A33 2005

Cohen's Handbook of Federal Indian Law (Lexis 2005). (On Lexis).

Also on Reference

Cohen is recognized as the authority in Native American law. His book covers public policy, legislative actions, and court cases. Among other things, he covers federal authority, jurisdiction, water rights, hunting and fishing rights, and civil rights.

KF8205 .A76 2004

Nicholas J. Spaeth et al., American Indian Law Deskbook (3d ed., U. Press of Colo. 2004 & Supp. 2006).

The Conference of Western Attorneys General is responsible for the Deskbook. It addresses current issues such as the Indian Child Welfare Act, the Indian Gaming Regulatory Act, and tribal administration of federal environmental programs.

TRIBAL CODES

Reference

Codes of all Montana tribes.

KF8228 .C5 A5
@Reference Cherokee Nation Code Annotated.

KF8228 .N3 A5
@ Reference Navajo Nation Code.

TREATISES

E93 .M5818 2004 Mark Edwin Miller, Forgotten Tribes: Unrecognized Indians and the Federal Acknowledgment Process (U. of Neb. Press 2004).

E98 .R3 H18 1991 Handbook of American Indian Religious Freedom (Christopher Vecsey ed., Crossroad 1991).

KF8202 1999 Vine Deloria, Jr. & Raymond J. DeMallie, Documents of American Indian Diplomacy: Treaties, Agreements and Conventions, 1775-1979 (U. of Okla. Press 1999).
2 volumes.

KF8202 2003 Charles D. Bernholz. Kappler Revisited: An Index and Bibliographic Guide to American Indian Treaties (Epoch Books 2003).

KF8203 1904
Also @ Reserve Indian Affairs: Laws and Treaties (Charles J. Kappler ed., Govt. Printing Off. 1904).
7 volumes.
Covers treaties for the period 1778-1883 and laws up to 1902. It is necessary to check the index for each volume.

KF8204 .E53 1998 Encyclopedia of Native American Legal Tradition (Greenwood Press 1998).

KF8204.5 .C55 1991 Ralph N. Clinton et al., American Indian Law: Cases & Materials (3d ed., Michie 1991).

KF8204.5 .G47 1998 David H. Getches et al., Cases and Materials on Federal Indian Law (4th ed., West 1998).

KF8204.5 .R43 Native Americans and the Law: Contemporary and Historical Perspectives on American Indian Rights, Freedoms, and Sovereignty (Garland Publg., Inc. 1996).

KF8204.5 .T66 1990 Top Fifty: A Collection of Significant Federal Indian Cases (Native Am. Rights Fund 1990).

KF8205 .A2 C66 1996 Constitutionalism and Native Americans, 1903-1968 (John B.

- Wunder ed., Garland Publ., Inc. 1996).
- KF8205 .A2 S68 Sovereignty Symposium (Sup. Ct. of Okla.)
Annual.
Covers all aspects of Native American law.
- KF8205 .D63 1990 Documents of United States Indian Policy (Francis Paul Prucha
ed., 2d ed. expanded, U. of Neb. Press 1990).
- KF8205 .N386 1996 Native American Sovereignty (John R. Wunder, ed., Garland
Publ., Inc. 1996).
- KF8205 .P65 1995 Frank Pommersheim, Braid of Feathers: American Indian Law and
Contemporary Tribal Life (U. of Cal. Press 1995).
- KF8205 .P774 1994 Francis Paul Prucha, American Indian Treaties: The History of a
Political Anomaly (U. of Cal. Press 1994).
Appendices B-D provides a means for locating treaties.
- KF8205 .W38 Wilcomb E. Washburn, Red Man's Land/White Man's Law: The
Past and Present Status of the American Indian (U. Okla. Press
1995).
- KF8205 .W527 1997 David E. Wilkins, American Indian Sovereignty and the United
States Supreme Court (U. Tex. Press 1997).
- KF8205 .W527 2001 David E. Wilkins, Uneven Ground: American Indian Sovereignty
and Federal Law (U. Okla. Press 2001).
- KF8205 .Z9 C63 2004
@Reserve William C. Canby, Jr., American Indian Law in a Nutshell
(4th ed., West 2004).
- KF8210 .A57 P75 1991 H. Marcus Price, III, Disputing the Dead: U.S. Law on Aboriginal
Remains and Grave Goods (U. of Mo. Press 1991).
- KF8210 .C45 2007 Native American Rights Fund, A Practical Guide to the Indian
Child Welfare Act (Native American Rights Fund 2007).
- KF8210 .C45 J66 2007 B.J. Jones, The Indian Child Welfare Act Handbook: A Legal
Guide to the Custody and Adoption of Native American Children
(2d ed., ABA 2007).
- KF8210 .C5 D45 1999 Vine Deloria, Jr. & David E. Wilkins, Tribes, Treaties, and
Constitutional Tribulations (U. of Tex. Press 1999).
- KF8210 .C5 E53 1997 Encyclopedia of American Indian Civil Rights (James S. Olson,

ed., Greenwood Press, 1997).

- KF8210 .C5 P48 2002 Stephen L. Pevar, The Rights of Indians and Tribes (3d ed., Bantam Books 2002).
- KF8210 .C7 N38 2006 Native Americans and the Criminal Justice System (Jeffrey Ian Ross & Larry Gould eds., Paradigm Publishers 2006).
- KF8210 .N37 M38 2002 Daniel McCool, Native Waters: Contemporary Indian Water Settlements and the Second Treaty Era (U. Ariz. Press 2002).
- KF8210 .N37 R69 2002 Judith V. Royster & Michael C. Blumm, Native American Natural Resources Law: Cases and Materials (Carolina Academic Press 2002).
- KF8210 .R37 N38 _____ Native American Cultural and Religious Freedoms (Garland Publ. 1996).
- KF8220 .B37 2000 Basic Indian Law (Falmouth Inst. 2000).
- KF8220 .C646 Charters, Constitutions and By-Laws of the Indian Tribes of North America (George Emory Fay comp., Colo. St. College 1967-1981). 19 volumes.

MICROFICHE

- Microfiche Cabinet Native American Collection
An historical collection of laws, treaties, and law-related materials. See indexes in Law Library Microforms Consortium Sourcebook; American Legal Materials: A Union List; and Native Americans: A Legal/Historical Collection (all on top of the file cabinet).

PERIODICALS & LAW REVIEWS

- Mezzanine American Indian Law Review
- Mezzanine American Indian Report.
News, federal regulations, legal issues and legislation of interest to Native American communities.
- Mezzanine _____ NARF (Native American Rights Fund) Legal Review.
Semi-annual.
Short articles and court updates.
- Mezzanine Native American Law Digest.

Published monthly.

Mezzanine

Public Lands and Resources Law Review.

Often publishes articles about Native American land issues.

ELECTRONIC RESOURCES

UM Law Library Web Page:

Research Tools

Tribal Law and Government.

Lexis

Area of Law: Native American Law (includes Montana-specific information).

Westlaw

Tropical Practice Area: Native American Law.

Federal Procedure treatise (Fed Proc 46); Chapter 46.

American Jurisprudence 2nd : “ci(Indians).”

INTERNET SITES

Native American Rights Fund

<http://www.narf.org>

Indian Law Materials (Cornell)

<http://www.law.cornell.edu/topics/indian.html>

Fourth World Documentation Project

<http://www.cwis.org/fwdp.html>

Over 500 full-text documents about Native American and Indigenous law and politics. Documents include essays, treaties, government resolutions, tribal and intertribal resolutions, and UN documents

National Indian Law Library

<http://www.narf.org/nill.Nillindex.html>

CALL NUMBERS

For more information on Indian Law, look for books in these call numbers.

E51 - E99

Indians of North America

E99

Indians of North America by Tribe

KF8201 - KF8228

Indian Law

If you have any questions, please ask a librarian.

Prepared by Fritz Snyder, Law Librarian, and Stacey Gordon, Reference Librarian