



 THE UNIVERSITY OF IOWA

Tribal Courts: A Question of Jurisdiction

This I-CAN report summarizes some of the laws and court decisions pertaining to the complex relationship between tribal courts and the state and federal judicial systems. Please keep in mind that the report was prepared by undergraduate student researchers, not legal experts. While we have done our best to present accurate information, our work should not be considered a definitive guide for the relationship between tribal courts and other courts.

Our understanding of the relationship between state, federal, and tribal courts is that in the state of Iowa there is full faith and credit between state and tribal courts. Essentially, this means that Iowa civil courts recognize court decisions so long as they are not in conflict with Iowa civil law. At the same time, Iowa civil laws pertain directly to the settlement and must be enforced. If a tribal court decision is not satisfactory, the appeal will go to federal court. There also exists full faith and credit between federal and tribal courts. In criminal procedures, tribal court is the initial authority. However, it must abide by federal law if it is considered a major crime or if it is in regards to domestic violence.

Federal Code

United States Code has addressed tribal jurisdiction as well as affording tribal courts full faith and credit in their decisions. In 1953, tribes were granted full force and effect for their civil laws

and customs so long as they are not inconsistent with the laws of the state where the tribe is located.

28USC 1360, “Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section”¹

The United States also guaranteed full faith and credit between every court in the US, its territories, and its possessions in 1948. A decision made in tribal court is to be recognized in all other federal and state courts.

28USC 1738, “Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.”²

When a tribal court decision involves a non-Indian the general laws of the United States determine the punishment of a crime must apply. If the tribal court is considering a case between two Indians, members or non-members, then the tribal court can base its decisions of its own laws and customs.

18USC 1152 “Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.

This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe.”³

The United States established procedure for the appeal of a tribal court decision in 1966 by giving US District Courts the power to hear appeals.

28USC 1362 “The district courts shall have original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States.”⁴

Federal code has also addressed three specific areas: major crimes, domestic violence and child custody. In these three areas major offenses would be tried and punished in accordance with federal law even if the crime takes place between two Indians on tribal land.

¹ Cornell Law School Legal Information Institute <http://www.law.cornell.edu> accessed Oct 28, 2006.

² Ibid

³ Ibid

⁴ Ibid

18USC 1153 “murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title), an assault against an individual who has not attained the age of 16 years, arson, burglary, robbery, and a felony under section 661 of this title.”⁵

In the area of domestic violence, any protection order that is issued by a court that has jurisdiction of the matter, either state or tribal, must be afforded full faith and credit in other state and tribal courts and must be enforced. This means that if a man or a woman has been granted a protection order from an abusive partner, all other courts must accept and enforce the order.

18USC 2265 “Any protection order issued that is consistent with subsection (b) of this section by the court of one State or Indian tribe (the issuing State or Indian tribe) shall be accorded full faith and credit by the court of another State or Indian tribe (the enforcing State or Indian tribe) and enforced as if it were the order of the enforcing State or tribe.

(b) Protection Order. - A protection order issued by a State or tribal court is consistent with this subsection if -

(1) Such court has jurisdiction over the parties and matter under the law of such State or Indian tribe; and

(2) Reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process.”⁶

Indian tribes have been granted the sole jurisdiction over child custody matters. The Federal Government also granted them full faith and credit in all of their court decisions regarding custody matters of a child who belongs to the tribe.

25 USC 1911 “An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law.

The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.”⁷

Iowa Law

In 1953, Congress enacted Public Law 83-280, commonly known as Public Law 280, which transferred jurisdiction of tribal lands from the federal government to state governments. Under this law, states had the right to assume jurisdiction over tribal lands within their state lines. If a

⁵ Ibid

⁶ Ibid.

⁷ Ibid

state assumed jurisdiction, it would be the ultimate authority in civil matters regarding tribes, while the federal government would remain the ultimate authority in criminal matters. In 1967, Iowa assumed jurisdiction over the Sac and Fox tribes when Iowa Code 1.12, the Jurisdiction of Indian Settlement, was written. Under this law, the state of Iowa assumes jurisdiction over civil disputes "between Indians or other persons or to which Indians or other persons are parties"⁸ for matters arising within the Sac and Fox Indian Settlement in Tama County. The law orders that Iowa civil laws pertain to the settlement and that they be enforced as they would be in the rest of the state.

In 1968, Congress amended Public Law 280, adding a tribal consent requirement for assuming jurisdiction and authorized states to retrocede their jurisdiction to the federal government. However, the tribal consent requirement only applied to future transfers of jurisdiction to states, not to the transfers that had already taken place prior to the amendment. Today, Iowa has not retroceded its jurisdiction and still maintains its civil control over tribal lands.

Supreme Court Cases

Over the past 10 years there have been several Supreme Court decisions that have defined the jurisdiction of Tribal Courts. Following is a summary of those decisions compiled from The Tribal Law and Policy Institute.⁹

On October 11, 2006 the Supreme Court refused to hear two separate cases that involved crimes committed by an Indian who was not a member of the tribe that controls the land where the crime was committed. By refusing to hear the appeal the Supreme Court gave tribal courts the authority to prosecute non-member Indians.

On April 19, 2004 the Supreme Court ruled in *United States v. Lara* that because the Indian Rights Act of 1968 gave tribal courts the inherent right to prosecute non-member Indians, they can be tried in both tribal court and federal court without double jeopardy being violated. Congress can choose to limit this authority.

On June 25, 2003 The Supreme Court ruled in *Nevada et. al. v. Hicks, Floyd et. al.* that tribal courts do not have jurisdiction over state officials who have entered tribal land to serve a search warrant to an Indian living on the tribal land for a crime committed outside of the reservation.

In the April 30, 2001 decision on the *C&L Enterprises, Inc. v. Citizen Band of Pottawatomie* the court ruled that if a tribe enters into an agreement with the state to settle arbitration then they waive their sovereign immunity granted by the federal government and must adhere to the dispute resolution procedures of the state.

On May 26, 1998 the Supreme Court ruled in the *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc* case that because a tribe has sovereign immunity from civil suits and contracts made on or off the tribal land with either the government or commercial enterprises the tribe can

⁸ State of Iowa Legislative Code. <http://www.legis.state.ia.us>

⁹ Tribal Law and Policy Institute. Supreme Court Case Review. <http://tribal-institute.org/lists/supreme.htm>

not be sued in state or federal court. The Supreme Court also ruled that because of the sovereign immunity that the tribe has been granted, the tribe can not file suits against the state. There is one exemption, the suit would have to be seeking declaratory and injunctive relief against state officers in their individual capacities. This decision was made on June 23, 1997 in the Idaho v. Coeur d'Alene Tribe of Idaho case.

This report was prepared in October, 2006 by the Iowa Civic Analysis Network (I-CAN), a non-partisan public policy undergraduate research group at the University of Iowa. For additional research on this or other issues, please visit our website at <http://www.uiowa.edu/~ican> or contact us at studorg-i-can@uiowa.edu