New York Tribal Courts of Civil Jurisdiction in Divorce and Family Law Matters

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Introduction

American Indian, Indian, Native American, or Native, are acceptable and appropriate terminology and are often used interchangeably when describing American Indian people. The terms tribe and nation are used interchangeably but carry very different meanings for many Native people. Many tribal groups are known officially by names that include nation.[1]

Although Indian Tribes are spread out across the state of New York they are rarely in the public eye. Most New Yorkers other than those persons who frequent Indian-operated Casinos, have no contact with American Indians and no understanding of their relationship to the United States or the rights of Native Americans who live in and are citizens of New York.

The Native American population of New York was 93,384 in 2022.[2] Nationally, 2.7% of the U.S. population claims Native American heritage, according to the Census Bureau.[3] In 2013 Mark Montour became the first and only Native American judge in the New York State Court System,[4] sitting in Supreme Court, Erie County. In 2023 he was elevated to the Appellate Division, Fourth Department. He is an enrolled member of the St. Regis Mohawk tribe.[5]

In this article, we discuss the Civil Judicial Systems of the Indian Nations in the territorial jurisdiction of the State of New York and the rights of Native Americans. We preface our discussion with an examination of the relationship between Indian Tribes and the state and Federal governments.

The "New York Indian Law" applies to Native Americans in the state of New York. It contains general provisions[6] that apply to all Indian tribes and nations and provisions that govern the affairs of particular tribes and nations.[7]

The New York Indian Law defines "Indian nation or tribe" as one of the following nine New York state Indian nations or tribes: Cayuga Nation, Oneida Nation of New York, Onondaga Nation, Poospatuck or Unkechauge Nation, Saint Regis Mohawk Tribe, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Band of Seneca, and Tuscarora Nation.[8]

Eight of those New York Indian Tribes have Federal Recognition. They are the Cayuga nation;[9] Oneida nation of New York;[10] Onondaga nation of New York;[11] Saint Regis Mohawk Tribe;[12] Seneca nation of New York;[13] Shinnecock Indian nation;[14] Tonawanda Seneca nation;[15] and Tuscarora nation of New York.[16]

The Unkechauge nation of Poospatuck Indians[17] on Long Island has New York State but not federal recognition. This tribe has a government-to-government relationship with the State of New York but not with the United States. As a matter of policy, the State of New York does not grant recognition to or enter into government-to-government relationships with Indian nations that are not federally recognized. The Poospatuck relationship with the State of New York was cultivated in colonial times when on July 2, 1700, the Poospatuck received a deed of land from William Tangier Smith. The state continued to treat the group as an Indian tribe after the American Revolution. Before this tribe could open any form of gambling establishments under the federal Indian Gaming Regulatory Act, they would first have to obtain recognition by the federal Department of Interior.[18]

Article 1, Section 8 of the United States Constitution vests Congress, and by extension the Executive and Judicial branches of our government, with the authority to engage in relations with Indian tribes. Today, the Bureau of Indian Affairs (BIA) in the Department of the Interior is the primary federal agency charged with carrying out the United States' trust responsibility to American Indian people, maintaining the federal government-to-government relationship with the federally recognized Indian tribes, and promoting and supporting tribal self-determination. The bureau implements federal laws and policies and administers programs established for American Indians under the trust responsibility and the government-to-government relationship.[19]

From 1778 to 1871, the United States' relations with individual American Indian nations, indigenous to what is now the United States, were defined and conducted largely through the treaty-making process. These "contracts among nations" recognized and established unique sets of rights, benefits, and conditions for the treaty-making tribes who agreed to cede millions of acres of their homelands to the United States and accept its protection. Indian treaties are considered to be "the supreme law of the land." Congress ended treaty-making with Indian tribes in 1871. Since then, relations with Indian groups have been formalized and/or codified by Congressional acts, Executive Orders, and Executive Agreements.[20]

Federal Indian Trust Responsibility

The federal Indian trust responsibility is a legal obligation, under which the United States "has charged itself with moral obligations of the highest responsibility and trust" toward Indian tribes.[21] It is also a legally enforceable fiduciary obligation on the part of the United States to protect tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the

mandates of federal law for American Indians and tribes and villages.[22]

In *Seminole Nation v. United States*,[23] the Supreme Court observed that it has recognized the distinctive obligation of trust incumbent upon the Government in its dealings with these dependent and sometimes exploited people.[24] In carrying out its treaty obligations with the Indian tribes, the Government is something more than a mere contracting party. Under a humane and self-imposed policy that has found expression in many acts of Congress and numerous decisions of the court, it has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should therefore be judged by the most exacting fiduciary standards.

The Supreme Court recognized the existence of the trust relationship in *United States v. Jicarilla Apache Nation*.[25] While the court has ruled that the United States' liability for breach of trust may be limited by Congress, it has also concluded that certain obligations are so fundamental to the role of a trustee that the United States must be held accountable for failing to conduct itself in a manner that meets the standard of a common law trustee. "This is so because elementary trust law, after all, confirms the commonsense assumption that a fiduciary actually administering trust property may not allow it to fall into ruin on his watch. 'One of the fundamental common-law duties of a trustee is to preserve and maintain trust assets.'"[26]

Federal Indian Reservation

A federal Indian reservation is an area of land reserved for a tribe or tribes under a treaty or other agreement with the United States, executive order, or federal statute or administrative action as permanent tribal homelands, and where the federal government holds title to the land in trust on behalf of the tribe. Approximately 56.2 million acres are held in trust by the United States for various Indian tribes and individuals. There are approximately 326 Indian land areas in the U.S. administered as federal Indian reservations. Some reservations are the remnants of a tribe's original land base. Others were created by the federal government for the resettling of Indian people forcibly relocated from their homelands. Not every federally recognized tribe has a reservation. Not all Indians live on reservations. Federal Indian reservations are generally exempt from state jurisdiction, including taxation, except when Congress specifically authorizes such jurisdiction.[27]

Relationship Between Tribes and the United States

The relationship between federally recognized tribes and the United States is one between sovereigns, i.e., between a government and a government. Originally, Indian tribes were self-governing sovereign political communities, possessing the inherent power to prescribe laws for their members and to punish infractions of those laws. After the formation of the United States, the tribes became "domestic dependent nations," subject to plenary control by Congress.[28] This principle was recognized by the Supreme Court in *Cherokee Nation v. Georgia*.[29] There the Supreme Court held that the Cherokee nation was not a foreign state in the sense that the term "foreign state" is used in the Constitution of the United States. The Cherokees are a state. They had been uniformly treated as a state since the settlement of our country. The numerous treaties made with them by the United States recognized 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. The acts of our government recognized the Cherokee nation as a state, and the courts are bound by those acts. The Indians are acknowledged to have an unquestionable, and heretofore an unquestioned, right to the lands they occupy until that right shall be extinguished by a voluntary cession to our Government. Those tribes that reside within the acknowledged boundaries of the United States cannot, with strict accuracy, be denominated foreign nations. They may more correctly be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases; meanwhile, they are in a state of pupilage. Their relations to the United States resemble that of a ward to his guardian.

Unless and until Congress withdraws a tribal power, including the power to prosecute, the Indian community retains that authority in its "earliest form."[30]

Tribal Sovereignty Subordinate to Federal Government

Tribal sovereignty refers to the inherent authority of Indigenous tribes to govern themselves within the borders of the United States.[31]

As separate sovereigns preexisting the Constitution, tribes have historically been regarded as unconstrained by the constitutional provisions framed specifically as limitations on federal or state authority.[32]

Duly recognized Indian tribes are viewed as quasi-sovereign entities.[33] Tribal sovereignty is subordinate to the federal government, existing at the sufferance of Congress.[34] They have exclusive power to make their substantive law in internal matters and to enforce that law in their own forums.[35]

Indian tribes possess attributes of sovereignty over both their members and their territory that have not been implicitly divested by their dependent status, including the right to self-government and territorial management[36] to the extent

that sovereignty has not been withdrawn by federal statute or treaty.[37] An Indian tribe retains the inherent power to manage internal tribal matters, such as questions of membership, the use of natural resources, the adjudication of civil disputes arising on Indian territory, with some limitations on the power to exercise jurisdiction over non-Indians, and the proscription of criminal laws applicable to Indians within their territorial borders and the appropriate sanctions thereunder.[38] Every tribe is capable of managing its own affairs and governing itself.[39]

However, a tribe's inherent sovereignty is divested to the extent that it involves its external relations.[40]

Tribal sovereignty is dependent on and subordinate to, only the Federal Government, not the states.[41] The Supreme Court has held that "[i]f state-court jurisdiction over Indians or activities on Indian lands would interfere with tribal sovereignty and self-government, the state courts are generally divested of jurisdiction as a matter of federal law."[42]

Rights of Indians as Citizens of the United States

Native Americans are citizens of the United States, entitled to the same constitutional protections against federal and state action as all citizens.[43] Under the 14th Amendment, as citizens of the United States, they are also citizens of the state in which they reside.[44] A person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe is a national and a citizen of the United States at birth.[45]

American Indians have the right to vote just as all other U.S. citizens do. They can vote in presidential, congressional, state local, and tribal elections, if eligible. Tribal governments have the sovereign right to establish voter eligibility criteria. American Indians have the same rights as other citizens to hold public office. Many laws that apply to non-Indians also apply to Indians. As U.S. citizens, American Indians and Alaska Natives are generally subject to federal, state, and local laws. On federal Indian reservations, however, only federal and tribal laws apply to members of the tribe, unless Congress provides otherwise. In federal law, the Assimilative Crimes Act makes any violation of state criminal law a federal offense on reservations. American Indians have the same obligations for military service as other U.S. citizens. American Indians pay the same taxes as other citizens with the following exceptions: Federal income taxes are not levied on income from trust lands held for them by the U.S.; State income taxes are not paid on income earned on a federal Indian reservation; State sales taxes are not paid by Indians on transactions made on a federal Indian reservation; and local property taxes are not paid on reservation or trust land.[46]

Federally recognized Indian tribal governments are not subject to federal income tax but they must pay employment tax on wages paid to employees. Members of a federally recognized Indian tribe are subject to federal income and employment tax and the provisions of the Internal Revenue Code (IRC), like other United States citizens. Determinations of taxability must be based on a review of the IRC, treaties, and case law. According to Rev. Rul. 67-284, 1967-2 C.B. 55 there is no provision in the IRC exempting amounts received by an "individual" from federal income tax solely on the grounds that the individual is a member of a federally recognized Indian tribe. In addition to the exemptions enjoyed by other U.S. citizens, individual Indians may enjoy exemptions that derive plainly from treaties or agreements with the Indian tribes concerned, or some act of Congress dealing with their affairs.[47]

Indian Civil Rights Act imposed Upon Tribes Exercising Self-government

The Bill of Rights of the United States Constitution does not apply to Indian tribal governments.[48] The Indian Civil Rights Act[49] incorporates the Indian Bill of Rights.[50] The Indian Civil Rights Act[51] guarantees Indians basic civil rights. The tribes' rights are subject to the provisions of the Indian Civil Rights Act.[52]

The Indian Civil Rights Act imposes upon Indian tribal governments, in their exercise of the power of self-government, certain constitutional restrictions applicable to the federal and state governments and includes specific provisions applicable in tribal criminal proceedings and the imposition of penalties or punishments.[53]

The Indian Civil Rights Act accords a range of procedural safeguards to tribal-court defendants similar, but not identical, to those contained in the Bill of Rights and the Fourteenth Amendment.[54]

Indian Bill of Rights

The Indian Civil Rights Act provides that no Indian tribe in exercising powers of self-government shall:

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(3) subject any person for the same offense to be twice put in jeopardy;

(4) compel any person in any criminal case to be a witness against himself;

(5) take any private property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense (except as provided in subsection (b));

(7) (A) require excessive bail, impose excessive fines, or inflict cruel and unusual punishments; (B) except as provided in subparagraph (C), impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year or a fine of $5,000, or both; (C) subject to subsection (b), impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of three years or a fine of $15,000, or both; or (D) impose on a person in a criminal proceeding a total penalty or punishment greater than imprisonment for a term of nine years;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.[55]

The Bill of Rights defines "Indian tribe" to mean any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government. "Indian court" means any Indian tribal court or court of Indian offense. "Indian" means any person who would be subject to the jurisdiction of the United States as an Indian under 18 U.S.C. § 1153, if that person were to commit an offense listed in that section in the Indian country to which that section applies.[56]

The writ of habeas corpus is available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.[57]

Civil and Criminal Jurisdiction of Tribal Courts Under Federal Regulation

Generally, tribal courts have civil jurisdiction over Indians and non-Indians who either reside or do business on federal Indian reservations. They also have criminal jurisdiction over violations of tribal laws committed by tribal members residing or doing business on the reservation.[58] In this article, we limit our discussion to civil jurisdiction.

Tribal Self-Government Exception to Federal Regulation

The tribes' rights include the right to make all laws and regulations for the government and protection of tribal persons and property consistent with the Constitution and laws of the United States.[59]

The tribal self-government exception to federal regulation is designed to except purely internal matters,[60] permitting Indian tribes to make laws to govern their internal affairs and social relations.[61] Indian tribes may determine tribal membership, regulate domestic affairs among tribal members, and exclude others from entering tribal land. An Indian tribe may retain inherent power to exercise civil authority over the conduct of non-Indians on lands within its reservation when that conduct threatens or has some direct effect on the political integrity, economic security, or health or welfare of the tribe.[62]

Domestic Relations Exception to Federal Regulation

The tribal self-government exception to federal regulation excepts purely internal matters, such as domestic relations, from the general rule that otherwise applicable federal statutes apply to Indian tribes. An Indian tribe has the power to regulate the marital relationships of its members.[63] Indian law, for example, may provide and regulate the authority of persons to perform Indian marriages[64] and may provide the standard for determining the existence of a common-law marriage.[65]

The authority of an Indian tribe to regulate the marital relationships of its members necessarily includes the authority of its tribal courts to adjudicate controversies involving those relationships, including divorce proceedings, when the tribe's law so provides.[66]

An Indian tribe's domestic relations code applicable to determinations of marital property in a divorce proceeding did not apply to a divorce proceeding in state court, when the tribe's code was inconsistent with state law,[67] as provided by federal statute.[68] When a state enacts a statute for this purpose, pursuant to federal law, it enables the state to impose its marital property rules whether the Indian spouses reside on or off the reservation.[69]

Tribal Divorce Courts Under Federal Regulation

In a divorce proceeding involving one Indian spouse and one non-Indian spouse, both residing on the reservation, the tribal court may exercise jurisdiction in the parties' divorce action to the exclusion of the state court, particularly when the state expressly defers to the tribal court if tribal law provides a rule of decision and the tribal court seeks jurisdiction.[70]

After a tribal court properly exercises jurisdiction over a non-Indian spouse in a divorce proceeding, when all parties reside on the reservation, relief is limited to that afforded in the tribal system and the Indian Civil Rights Act.[71]

As between Indian and non-Indian spouses, the non-Indian is not required to exhaust tribal remedies before challenging the tribe's jurisdiction over a marital dissolution proceeding,

when the Indian spouse is not a member of the tribe asserting jurisdiction, the spouses' domicile is on fee land, and the dispute is distinctly nontribal, outside the rubric of directly affecting the health and welfare of the tribe.[72]

New York Indian Law, Tribal Courts and Laws

Title 25 is the portion of the Code of Federal Regulations that governs Government-to-Government relations with Native American tribes within the United States. Under 25 C.F.R. Part 115, tribal courts are responsible for appointing guardians, determining competency, awarding child support from Individual Indian Money (IIM) accounts, determining paternity, sanctioning adoptions, marriages, and divorces, making presumptions of death, and adjudicating claims involving trust assets.[73]

Courts of Indian Offences (CFR Courts) operate where Tribes retain jurisdiction over American Indians that is exclusive of state jurisdiction, but where Tribal courts have not been established to fully exercise that jurisdiction. The CFR Court is a trial court where parties present their cases before a Magistrate Judge. The judge's decision may be appealed to the Court of Indian Offences.[74]

There are approximately 400 Tribal justice systems throughout the nation. These courts are partially funded through Public Law 638 Tribal Priority Allocations (TPA). Tribal sovereignty is protected throughout the Tribal justice system or through a traditional court. The Bureau of Indian Affairs (BIA) of the Department of the Interior does not manage tribal justice systems. For Tribes that do not have their own Tribal justice system, the Court of Indian Offences (CFR Courts) provides that service on behalf of the Tribe.[75] There are five Regional CFR Courts.[76] There are no CFR Courts in New York.

The Code of Federal Regulations 25 CFR Part 11[77] governs the CFR Courts, unless laws and ordinances enacted by a governing body of a Tribe, and approved by the Assistant Secretary of Indian Affairs, supersede any part of the CFR. Notably, each CFR Court should apply the customs of the Tribe when consistent with the CFR.

New York Indian Law § 5 provides that any action or special proceeding between Indians or between one or more Indians and any other person or persons may be prosecuted and enforced in any court of the state to the same extent as provided by law for other actions and special proceedings.[78] This provision confers state courts with jurisdiction over civil disputes between Indians and between Indians and other persons concurrent with that of tribal courts.[79]

New York Tribal Courts' Judicial Systems

The Cayuga nation,[80] Oneida Indian nation,[81] the Seneca nation of New York,[82] and the Saint Regis Mohawk Tribe[83] have tribal justice systems. Information about each tribe's judicial system can be accessed from the links in the footnotes.

Peacemakers' Court Jurisdiction In Civil Proceedings Between Indians on the Reservations in New York

The peacemakers' court is a creation of the Indian constitution that gives it comprehensive jurisdiction for all controversies between Indians on the reservations. The peacemakers' court is given 'exclusive jurisdiction in all civil causes arising between individual Indians residing on the reservations, except those which the Surrogate's Courts have jurisdiction of,' without reference to 'contracts' or to 'wrongs.'[84]

Article 6 of the New York state constitution, relating to the judiciary, is expressly inapplicable to the peacemakers' courts or other Indian courts, the existence and operation of which must continue as provided by law.[85]

Seneca Nation

Article 4 of the Indian Law applies to the Seneca nation.[86] The provisions of the Indian Law pertaining to the Seneca Indians provide for a peacemakers' court on each reservation.[87] State courts are without jurisdiction to hear and determine controversies between individual Indians concerning their rights as members of the Seneca nation. The Supreme Court is not a superior court having authority to prohibit or restrain the action of the peacemakers' court in these matters.[88]

The Indian Law defines the powers of the peacemakers courts.[89] This is the only peacemakers' court to which the section relates. It was established in 1868 in the Seneca nation. It was created solely for their benefit and purposes.[90] The peacemakers for the Allegany, the Cattaraugus,[91] and the Tonawanda[92] reservations respectively constitute the peacemakers' courts. The eldest peacemaker of each of the courts is the presiding officer.[93] Any two of the peacemakers of any reservation are competent to perform any of the duties or exercise any of the powers assigned to the peacemakers of the reservation.[94]

The peacemakers' court of each reservation has the authority to hear and determine" all matters, disputes, and controversies" between any Indians residing on the reservation.[95] This authority includes disputes arising upon contracts or for wrongs, and for any encroachments or trespass on any land cultivated or occupied by any one of them, which has been entered and described in the clerk's books of records. However, they may not hear any claim founded upon any debt or demand originally contracted with a non-Indian.[96]

A peacemakers' court of the Allegany or Cattaraugus reservation also has jurisdiction to grant divorces[97] between Indians residing on the reservation and to hear and determine all questions and actions between individual Indians residing thereon involving the title to real estate on the reservation. If either of the parties to a controversy of which a peacemakers' court has jurisdiction resides on the Allegany reservation and

either of the other parties resides on the Cattaraugus reservation, the peacemakers' court of either reservation has jurisdiction thereof.[98]

The peacemakers have the power to make all needful rules and by-laws for notifying and bringing the parties before them, for the regulation of all proceedings, for the hearing and determination, and for enforcing the rules and by-laws.[99] They must publicly hear the proofs and allegations of the parties, and publicly declare and make known their determination within four days after the matter, dispute, or controversy is finally submitted to them by the parties.[100]

They have the power to enforce the rules and by-laws, and to issue and enforce the orders or notices for the appearance and attendance of witnesses before them to testify and give evidence. They may compel the appearance of a witness by attachment or by fine, for not appearing, in the same manner as is provided by law for compelling the attendance of witnesses in courts of justices of the peace in this state.[101] They may administer oaths to witnesses produced by the parties on any hearing, cause them to be examined on oath, and may examine any party to any matter, dispute, or controversy pending before them, on oath as a witness, when the examination is required by an adverse party.[102]

Appeals From the Peacemakers' Court of the Seneca nation

Within twenty days after the decision of a peacemakers' court of the Seneca nation, an appeal may be taken to the council of the nation, by serving upon the adverse party and upon the peacemakers before whom the action or proceeding was heard a notice of appeal. The peacemakers must certify the evidence taken before them to the council. The appeal must be heard by at least a quorum of the council and be decided upon the evidence taken in the peacemakers' court, and such additional evidence as the council may determine to hear. Upon the hearing, any party has the right to appear either in person or by counsel and argue the merits of the case. The decision of the council is conclusive.[103]

Appeals From Peacemakers' Court of Tonawanda nation

An appeal may be taken from the decision of a peacemakers' court of the Tonawanda nation, or of a tribunal of the nation consisting of a peacemaker and one or more associate chiefs, to a court consisting of six chiefs of the nation. The party appealing must give security, approved by the tribunal before which the action or proceeding was tried, for the payment of the amount awarded by such appellate court. Upon the security being given, the trial court is required to direct the marshal to summon twelve chiefs, designated by the trial tribunal, to appear at a time and place specified, not more than ten days thereafter. At that time the names of the chiefs must be drawn by lot, and the first six whose names are drawn, and who are not disqualified because of interest or relationship, will constitute a court for the hearing and determination of the appeal. The court must hear the appeal and examine the witnesses and parties under oath in the same manner as the peacemakers in a determination before them.

Upon the hearing, the chiefs constituting the court are entitled to receive 25 cents each for their services, to be paid by the party appealing. In their final decision, they must determine which party will pay the costs and expenses of the suit and the appeal.[104]

Enforcement of Determination of Peacemakers' Court

If any party fails to comply with or fulfill the directions or finding of the peacemakers in any matter heard or determined by them, within the time fixed by the determination, the party in whose favor the determination is made, will be entitled to recover the amount awarded to him by the determination with costs, in an action in justice's court before any justice of the peace of the county in which the reservation or a part thereof is situated. In the action, a copy of the record of the determination, certified by the clerk, is conclusive evidence of the right and the amount of the recovery. Executions "shall be awarded to enforce the collection of the judgment obtained thereon in the same manner and with the like effect as against white persons, and the property and person of the defendant in such action shall be liable to seizure and sale or imprisonment, as in like cases against white persons."[105] If the action or proceeding is not within the jurisdiction of justice's courts, the application may be made to a court having jurisdiction over actions of the same nature.[106]

The councils of certain Indian nations have been empowered by statute to provide civil penalties for violation of ordinances or bylaws of their nations. The council of the Seneca Indian nation is empowered to enact bylaws and ordinances providing a penalty for the violation of any bylaw or ordinances, recoverable by any officer of the nation for the benefit of the nation, before the peacemakers' court of the reservation in which the offender resides or in which the offense is committed.[107]

Tonawanda Reservation and Saint Regis Tribe

There are similar provisions for the Tonawanda Reservation[108] and the Saint Regis Tribe.[109]

Marriage and Divorce

New York laws relating to the capacity to contract marriage, the solemnization of marriage, the annulment of the marriage contract, and divorce apply to Indians. Subject to the jurisdiction of the peacemakers' courts of the Seneca nation to grant divorces, the same courts have jurisdiction of actions arising thereunder, except that Indians cohabiting as husband and wife who contracted marriage according to Indian custom

or usage before the statute's enactment are deemed lawfully married.[110]

As provided by Domestic Relations Law § 11(3-a), Indian marriages may be solemnized by a judge or peacemaker judge of any Indian tribal court, a chief, a headman, or any member of any tribal council or other governing body of any nation, tribe, or band of Indians in New York duly designated by that body for that purpose, or any other persons duly designated by that body, in keeping with the culture and traditions of any nation, tribe, or band of Indians in New York, to officiate at marriages.[111]

In *Parry v. Haendiges*,[112] a case before the district court, a member of the Seneca Nation of Indians brought a § 1983 suit seeking to enjoin a state court judge from exercising jurisdiction over a divorce action brought in the state court by his wife. The member moved for preliminary injunctive relief. The district court held that the divorce action was subject to the concurrent jurisdiction of courts of the state and courts of the Seneca nation, and the balance of equities weighed in favor of the state court retaining jurisdiction. The parties to the divorce action were both members of the nation who resided on the nation's reservation throughout their marriage, and their divorce involved both the temporary use and final disposition of real property located within the sovereign territory of the nation; the action fell within the statutory grant of civil jurisdiction to the state courts. The balance of equities weighed in favor of the state court, rather than a court of the Seneca Nation of Indians, retaining jurisdiction over the divorce action between two members of the nation, even though some or all of the marital property at issue was located on tribal land. The state court had exercised sole jurisdiction over the divorce proceedings between the parties for more than two and one-half years, during which a Seneca nation court expressly held that it lacked jurisdiction, both parties had expended considerable time and resources in state court, the action did not implicate the sovereignty of the Seneca nation, and the action required the application and interpretation of state law.

Parry argued that because the parties to the underlying divorce action were both members of the Seneca nation who resided on the nation's Cattaraugus Reservation throughout their marriage, and because their divorce involved both the temporary use and final disposition of real property located within the sovereign territory of the Seneca nation, exclusive subject matter must rest with the Seneca nation's peacemakers' court. Haendiges contended that 25 U.S.C.A. § 233 expressly confers jurisdiction on the New York State courts and that it applied to the present situation. According to Haendiges, concurrent jurisdiction existed. The district court agreed that the underlying state court divorce action was subject to the concurrent jurisdiction of the state and peacemakers' courts.

Having concluded that the state court had concurrent jurisdiction over the underlying divorce action, the court found that Parry was unlikely to succeed on the merits to the extent that his request for injunctive relief rested on the proposition that the peacemakers court had exclusive jurisdiction. This did not end the court's inquiry, however, as Parry alternatively argued that he was likely to succeed on the merits under the principles of comity. Parry contended that if concurrent jurisdiction existed principles of comity required a finding that jurisdiction properly lay with the peacemakers court.

The district court applied the factors set forth in *Teague v. Bad River Band of Lake Superior Tribe of Chippewa Indians*.[113] The *Teague* court listed thirteen factors to be applied, according to appropriate weight on a case-by-case basis, to help determine, "in the spirit of cooperation, not competition," whether the state or the tribal court should exercise jurisdiction over the dispute. Applying those factors, the court found that the equities in this case weighed in favor of the state court's continued exercise of jurisdiction. The court concluded that Parry was not likely to succeed on the merits to the extent that his claim for injunctive relief rested on a balancing of equities and denied the injunction.

Child Custody

The Indian Child Welfare Act (ICWA) applies to all "child custody proceedings involving an "Indian child."[114] The Indian Child Welfare Act defines "child custody proceeding" as including foster care placements, termination of parental rights proceedings, preadoptive placements, and adoptive placements.[115] An "Indian child" is defined as "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe."[116]

The Indian Child Welfare Act vests Indian tribal courts with exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of the tribe.[117] It also creates concurrent, but presumptively tribal jurisdiction, in the case of an Indian child not domiciled on the reservation.[118] In this latter case, state courts "shall" transfer any proceeding for foster care placement or termination of parental rights to the tribal court unless "good cause" to the contrary is shown, either parent objects to the transfer or the tribe declines jurisdiction.[119]

The Indian Child Welfare Act authorizes an Indian child's tribe to intervene at any point in state court proceedings for "foster care placement" or "termination of parental rights."[120] The ICWA defines termination of parental rights as "any action resulting in the termination of the parent-child relationship."[121]

The Act provides substantive standards for the placement of Indian children in different types of child custody proceed-

ings.[122] 25 USC § 1915 subd. a, pertaining to adoptive placement proceedings, states: "In any adoptive placement of an Indian child under state law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families." These preferences have been described by the Supreme Court as "[t]he most important substantive requirement imposed on state courts."[123]

Social Services Law § 39 is the New York Indian Child Welfare Act. It and the New York regulations[124] mirror the definition of "child custody proceedings" under the Indian Child Welfare Act and the federal regulations.[125] Social Services Law § 39 and 18 N.Y.C.R.R. 431.18 expand the federal definition of Indian tribe to include recognition of [a]ny Indian tribe designated as such by the State of New York,[126] and to include federally recognized tribes and tribes recognized by the state of New York or by any other state.

The Family Court Act provides that the jurisdiction of the Family Court over Indian child custody proceedings is subject to the Indian Child Welfare Act.[127] Tribal courts of Indian tribes designated as such by the State of New York have jurisdiction over child custody proceedings involving Indian children to the same extent as federally designated Indian tribes upon the approval of the state office of Children and Family Services.[128]

The party asserting the applicability of the Indian Child Welfare Act bears the burden of providing sufficient information to put the court on notice that the child may be an "Indian child" within the meaning of the Indian Child Welfare Act.[129]

Either parent or the Indian custodian or the Indian child's tribe may bring a proceeding in any court of competent jurisdiction to invalidate any action taken in a foster care or termination proceeding involving an Indian child taken from the custody of a parent or Indian custodian, upon a showing that the action violated any provision of sections 1911, 1912, and 1913 of the Indian Child Welfare Act.[130]

Recognition of Tribal Court Judgments, Decrees, and Orders

Any person seeking recognition of a judgment, decree, or order rendered by a court duly established under tribal or federal law by any Indian tribe, band, or nation recognized by the state of New York or by the United States may commence a special proceeding in Supreme Court under Article 4 of the CPLR by filing a notice of petition and a petition with a copy of the tribal court judgment, decree or order appended thereto in the county clerk's office in any appropriate county of the state. If the court finds that the judgment, decree, or order is entitled to recognition under the principles of the common law of comity, it shall direct entry of the tribal judgment, decree, or order as a judgment, decree, or order of the Supreme Court of the State of New York. This procedure shall not supplant or diminish other available procedures for the recognition of judgments, decrees, and orders under the law.[131]

Uniform Child Custody Jurisdiction and Enforcement Act

A New York court must treat a tribe as if it were a state of the United States to apply the provisions of Title One (general provisions) and Title Two (jurisdiction) of the Uniform Child Custody Jurisdiction and Enforcement Act.[132] Tribal court custody determinations made in substantial conformity with provisions of the Uniform Child Custody Jurisdiction and Enforcement Act must be afforded full faith and credit under Domestic Relations Law § 75-c(3). In *Kawisiiostha N. v. Arthur O.*,[133] the Appellate Division held that the Family Court properly declined to exercise jurisdiction over a custody proceeding, given the then-pending custody litigation in Tribal Court. Tribal court custody determinations made in substantial conformity with provisions of the UCCJEA must be afforded full faith and credit under DRL § 75-c.

A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act,[134] is not subject to the Uniform Child Custody Jurisdiction and Enforcement Act to the extent that it is governed by the Indian Child Welfare Act.[135]

Full Faith and Credit for Child Support Orders Act

The Full Faith and Credit for Child Support Orders Act,[136] which deals with the recognition, modification, and enforcement of child support orders, applies to Indian tribes. It provides: "The appropriate authorities of each state shall enforce according to its terms a child support order made consistently with this section by a court of another state; and shall not seek or make a modification of such an order except in accordance with subsections (e), (f), and (i)."[137] The term "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian country as defined in 18 USC 1151.[138]

Uniform Interstate Family Support Act

Under the Uniform Interstate Family Support Act Indian Tribes are treated as states. Their orders are entitled to full faith and credit. Family Court Act § 580-102(26) provides that "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession under the jurisdiction of the United States. The term includes an Indian nation or tribe.

Department of Motor Vehicles Recognition of Tribal Court Orders

All Department of Motor Vehicles issuing offices must recognize orders, decrees, and judgments issued by Indian tribal courts and directives issued by Councils of Chiefs.[139]

Conclusion

In 2016, the "Reclaiming Native Truth Project"[140] of the Colorado-based First Nations Development Institute[141] conducted a $3.3 million initiative that examined the dominant narratives in American society about Native peoples, asking where they originate and how they impact public perceptions, opinions, attitudes, and behaviors of non-Native individuals and institutions towards Native Americans. It concluded that the largest narrative barrier facing Native peoples is invisibility in the minds of the public, the media, the education system, and popular culture: 78% of Americans said they know little to nothing about Native Americans; 87% of schools didn't teach about Native peoples past 1900; and 95% of images that appeared in internet searches of "Native Americans" were antiquated, pre-1900 portrayals of Native peoples. A significant percentage of Americans weren't even sure that Native Americans still existed (and believed that, if they did exist, they must be a dwindling population). The project concluded that this invisibility negatively impacts Native peoples, communities, and tribal nations, and fuels discrimination against Native Americans.[142] This article is intended to positively impact the perceptions and opinions that lawyers, judges, and legal professionals have about Native Americans.

Appendix – New York Tribes and Courts

Cayuga Nation

Cayuga Nation Tribal Court

https://cayuganationpolice.com/justice-system/cayuga-nation-tribal-court/

P.O. Box 803

Seneca Falls, New York 13160

Nation Representative Clint Halftown

sharon.leroy@cayuganation-nsn.gov

315-568-0750

http://www.cayuganation-nsn.gov

Oneida Indian Nation

Oneida Nation Court

https://www.oneidaindiannation.com/court/

1256 Union Street

Oneida, NY 13421

Phone: (315) 829-8465

Fax: (315) 829-8472

Oneida Indian Nation Codes, Ordinances and Regulations

https://www.oneidaindiannation.com/

Oneida Indian Nation of New York

2037 Dream Catcher Plaza

Oneida, NY 13421

Phone: (315) 829-8900

Fax: (315) 829-8958

https://www.oneidaindiannation.com/

Seneca Nation of New York

Seneca Nation of New York – Allegany Reservation Court of Appeals, Peacemaker's Court, and Surrogate Court

P.O. Box 231

Salamanca, NY 14779

Phone: (716) 945-0145

Fax: (716) 945-0209

https://sni.org/about-our-government/judicial/

Seneca Nation of New York – Cattaraugus Reservation Court of Appeals, Peacemaker's Court and Surrogates Court

2 Thomas Indian School Drive

1508 Route 438

Irving, NY 14081

Phone: (716) 532-4900

Fax: (716) 532-8317

https://sni.org/about-our-government/judicial/

Saint Regis Mohawk Tribe

Saint Regis Mohawk Tribal Court

545 State Route 37

Akwesasne, NY 13655

Phone: (518) 358-6300

https://www.srmt-nsn.gov/divisions/justice/tribal_court/

Saint Regis Mohawk Tribe (en-US)

71 Margaret Terrance Memorial Way

Akwesasne, NY 13655

Phone: (518) 358-2272

Fax: (518) 358-3203

Chiefs (3) Michael Connors; Ronald LaFrance, Jr.; Beverly Cook

abero@srmt-nsn.gov

https://www.srmt-nsn.go

Onondaga Nation

4040 Route 11

Nedrow, New York 13120

Chief Sidney Hill

admin@onondaganation.org

(315)469-0302

http://www.onondaganation.org

Shinnecock Indian Nation

Shinnecock Indian Reservation

PO Box 5006

Southampton, New York, 11969-5006

(631) 283-0751 (fax)

www.shinnecocknation.com

Council of Trustees Bryan Polite; Randall King; Donald Williams, Jr.,

adminoffice@shinnecock.org

631-283-6143

Tonawanda Band of Seneca

7027 Meadville Road

Basom, New York 14013

Chief Roger Hill

(716) 542-4244

Tuscarora Nation (No Tribal Court)

5226 Walmore Road

Lewistown, New York 14092

Chief Tom Jonathan

tuscnationhouse@gmail.com

(716) 264-6007 x110[143]

https://native-americans.com/tuscarora-nation-of-new-york-index/

Unkechauge Nation

Community Center

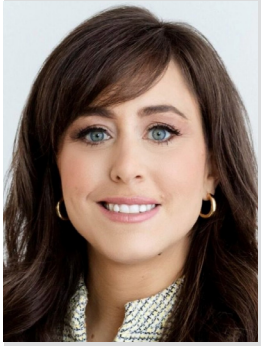
P.O. Box 86

Mastic, NY 11950

(516) 281-6464

https://unkechaug.wordpress.com

Joel R. Brandes practices matrimonial law in New York City concentrating on appeals. He represents clients in appeals in divorce, equitable distribution, custody, and family law cases in all four Judicial Departments. He has been recognized by the New York Appellate Division as a "noted authority and expert on New York family law and divorce." His "Law and the Family" column is a regular feature in the New York Law Journal. He is the author of the 12-volume treatise, Law and the Family New York, 2023 Edition, and Law and the Family New York Forms, 2023 Edition (five volumes), both published by Thomson Reuters, and the New York Matrimonial Trial Handbook (Bookbaby). He can be reached at joel@nysdivorce.com or at his website at www.nysdivorce.com.



Vanessa Gabriele practices matrimonial and family law in Western New York, focusing on divorce, child custody, child support, and family law litigation. She also teaches family law as an instructor at the University of Buffalo. Vanessa is a frequent lecturer on family law topics and has chaired Continuing Legal Education seminars for both the Bar Association of Erie County and the New York State Bar Association. She currently serves as the financial officer of the New York State Bar Association's Family Law Section.

Endnotes

1. *See* https://americanindian.si.edu/nk360/about/understandings#eublock1 (National Museum of the American Indian).
2. *See* https://www.gothamgazette.com/state/9189-goverment-conditioned-ignore-or-erase-us-native-americans-in-new-york-2020-census-undercount.
3. *See* https://www.abalegalprofile.com/judges.htm.
4. *See* https://narf.org/native-judges-belong-on-the-federal-bench/.
5. *See* https://history.nycourts.gov/about_period/20-stories-montour/.
6. Indian Law §§ 2 to 19.
7. Indian Law §§ 20 to 28 (Onondaga Tribe); Indian Law §§ 40 to 60 (Seneca Indians); Indian Law §§ 70 to 78 (Seneca Indians on the Allegany and Cattaraugus Reservations); Indian Law §§ 80 to 90 (Seneca Indians on the Tonawanda Reservation); Indian Law §§ 95 to 98 (Tuscarora nation); Indian Law §§ 100 to 114 (Saint Regis Tribe); Indian Law §§ 120 to 122 (Shinnecock Tribe); Indian Law §§ 150 to 153 (Poospatuck (Unkechauge) Indian nation).
8. Indian Law § 2.
9. *See* Brandes, Law and the Family New York, 2023 Ed, Volume 1, Section 4A:5 for a discussion of the history of the nation.

10. *See* Brandes, Law and the Family New York, 2023 Ed, Volume 1, Section 4A:6 for a discussion of the history of the nation.
11. *See* Brandes, Law and the Family New York, 2023 Ed, Volume 1, Section 4A:7 for a discussion of the history of the nation.
12. *See* Brandes, Law and the Family New York, 2023 Ed, Volume 1, Section 4A:8 for a discussion of the history of the nation.
13. *See* Brandes, Law and the Family New York, 2023 Ed, Volume 1, Section 4A:9 for a discussion of the history of the nation.
14. *See* Brandes, Law and the Family New York, 2023 Ed, Volume 1, Section 4A:10 for a discussion of the history of the nation.
15. *See* Brandes, Law and the Family New York, 2023 Ed, Volume 1, Section 4A:11 for a discussion of the history of the nation.
16. *See* Brandes, Law and the Family New York, 2023 Ed, Volume 1, Section 4A:12 for a discussion of the history of the nation.
17. Unkechaug Indian nation, Poospatuck Indian Reservation, 151 Poospatuck Ln Mastic, NY 11950, Phone: (631) 395-1618, unkechaugnation@gmail.com, https://www.facebook.com/Unkechaug-Indian-Nation-182228627237/.
18. *See* https://en.wikipedia.org/wiki/List_of_federally_recognized_tribes_by_state.
19. *See* Bureau of Indian Affairs, Frequently Asked Questions at https://www.bia.gov/frequently-asked-questions#:~:text=The%20federal%20Indian%20trust%20responsibility%20is%20a%20legal%20obligation%20under,United%20States%2C%201942).
20. *See* Bureau of Indian Affairs, Frequently Asked Questions at https://www.bia.gov/frequently-asked-questions#:~:text=The%20federal%20Indian%20trust%20responsibility%20is%20a%20legal%20obligation%20under,United%20States%2C%201942).
21. *See Cherokee Nation v. Georgia*, 30 U.S. 1 (1831).
22. *See* Bureau of Indian Affairs, Frequently Asked Questions at https://www.bia.gov/frequently-asked-questions#:~:text=The%20federal%20Indian%20trust%20responsibility%20is%20a%20legal%20obligation%20under,United%20States%2C%201942).
23. 316 U.S. 286 (1942).
24. *Citing e.g.*, 30 U. S. Georgia, 5 Pet. 1; *United States v. Kagama*, 118 U. S. 375; *Choctaw Nation v. United States*, 119 U. S. 1; *United States v. Pelican*, 232 U. S. 442; *United States v. Creek Nation,* 295 U. S. 103; *Tulee v. Washington,* 316 U.S. 681.
25. 131 S. Ct. 2313, 2324-25 (2011).
26. *United States v. White Mountain Apache Tribe*, 537 U.S. 465, 475 (2003), *see* https://www.doi.gov/sites/doi.gov/files/migrated/news/pressreleases/upload/Signed-SO-3335.pdf#:~:text=Dating%20back%20as%20early%20as%201831%2C%20the,of%20any%20other%20two%20people%20in%20existence.
27. *See* https://www.bia.gov/faqs/what-federal-indian-reservation#:~:text=A%20federal%20Indian%20reservation%20is,on%20behalf%20of%20the%20tribe.
28. *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 134 S. Ct. 2024, 188 L. Ed. 2d 1071 (2014); *Gingras v. Think Finance, Inc.*, 922 F.3d 112, R.I.C.O. Bus. Disp. Guide (CCH) P 13172 (2d Cir. 2019).
29. 30 U.S.1, 5 Pet. 11 (1831).
30. *Puerto Rico v. Sanchez Valle,* 579 U.S. 59, 136 S. Ct. 1863, 195 L. Ed. 2d 179 (2016).
31. *See* https://en.wikipedia.org/wiki/Tribal_sovereignty_in_the_United_States.
32. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 98 S. Ct. 1670, 56 L. Ed. 2d 106 (1978).
33. *Duro v. Reina*, 495 U.S. 676, 110 S. Ct. 2053, 109 L. Ed. 2d 693 (1990).
34. *Reich v. Mashantucket Sand & Gravel*, 95 F.3d 174, 17 O.S.H. Cas. (BNA) 1747, 1995-1997 O.S.H. Dec. (CCH) P 31137 (2d Cir. 1996); *Cayuga Nation v. Campbell*, 34 N.Y.3d 282, 117 N.Y.S.3d 105, 140 N.E.3d 479 (2019).
35. Santa Clara Pueblo, 436 US at 55–56; *Bowen v. Doyle*, 880 F. Supp. 99, 112–113 (W.D. N.Y. 1995).
36. *Spota ex rel. Unkechaug Indian Nation v. Jackson*, 10 N.Y.3d 46, 853 N.Y.S.2d 520, 883 N.E.2d 344 (2008).
37. *Cayuga Nation v. Campbell*, 34 N.Y.3d 282, 117 N.Y.S.3d 105, 140 N.E.3d 479 (2019).
38. *Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d 874 (2d Cir. 1996).
39. *Cayuga Nation v. Tanner*, 824 F.3d 321 (2d Cir. 2016).
40. *Brendale v. Confederated Tribes and Bands of Yakima Indian Nation*, 492 U.S. 408, 109 S. Ct. 2994, 106 L. Ed. 2d 343 (1989).
41. *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 153–154, 100 S. Ct. 2069, 65 L. Ed. 2d 10, 29 Fed. R. Serv. 2d 743 (1980).
42. *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 15, 107 S. Ct. 971, 94 L. Ed. 2d 10 (1987); *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334, 103 S. Ct. 2378, 76 L. Ed. 2d 611 (1983).
43. *U.S. v. Cavanaugh*, 643 F.3d 592 (8th Cir. 2011).
44. *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 107 S. Ct. 971, 94 L. Ed. 2d 10 (1987).
45. *See* 8 U.S.C.A. § 1401(b), also providing that citizenship does not in any manner impair or otherwise affect the person's right to tribal or other property.
46. *See* https://www.bia.gov/frequently-asked-questions#:~:text=Natives%20pay%20taxes%3F-,Yes.,on%20a%20federal%20Indian%20reservation.
47. Income Tax Guide for Native American Individuals and Sole Proprietors, Publication 5424 (9-2020); *See* https://www.irs.gov/pub/irs-pdf/p5424.pdf.
48. *Duro v. Reina*, 495 U.S. 676, 110 S. Ct. 2053, 109 L. Ed. 2d 693 (1990).
49. 25 U.S.C.A. §§ 1301 et seq.
50. 25 U.S.C.A. § 1302(a).
51. Pub. L. 90-284, title II, § 201, Apr. 11, 1968, 82 Stat. 77; Pub. L. 101-511, title VIII, § 8077(b), (c), Nov. 5, 1990, 104 Stat. 1892.
52. 25 U.S.C.A. § 1302, Constitutional rights.
53. *Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d 874 (2d Cir. 1996).
54. *U.S. v. Bryant*, 579 U.S. 140, 136 S. Ct. 1954, 195 L. Ed. 2d 317 (2016), as revised, (July 7, 2016).
55. 25 U.S.C.A. § 1302(a).
56. 25 U.S.C.A. § 1301; (Pub. L. 90–284, title II, § 201, Apr. 11, 1968, 82 Stat. 77; Pub. L. 101–511, title VIII, § 8077(b), (c), Nov. 5, 1990, 104 Stat. 1892.
57. 25 U.S.C.A. § 1303; (Pub. L. 90–284, title II, § 203, Apr. 11, 1968, 82 Stat. 78.).
58. *See* Bureau of Indian Affairs, Frequently Asked Questions at https://www.bia.gov/frequently-asked-questions#:~:text=The%20federal%20Indian%20trust%20responsibility%20is%20a%20legal%20obligation%20under,United%20States%2C%201942).

59. *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 107 S. Ct. 971, 94 L. Ed. 2d 10 (1987).

60. *Solis v. Matheson*, 563 F.3d 425, 14 Wage & Hour Cas. 2d (BNA) 1350, 157 Lab. Cas. (CCH) P 35564 (9th Cir. 2009).

61. *South Dakota v. Bourland*, 508 U.S. 679, 113 S. Ct. 2309, 124 L. Ed. 2d 606, 23 Envtl. L. Rep. 20972 (1993); *Miccosukee Tribe of Indians of Florida v. U.S.*, 698 F.3d 1326, 2012-2 U.S. Tax Cas. (CCH) P 50625, 110 A.F.T.R.2d 2012-6342 (11th Cir. 2012).

62. *United States v. Cooley*, 141 S. Ct. 1638, 210 L. Ed. 2d 1 (2021).

63. *Montana v. U. S.,* 450 U.S. 544, 101 S. Ct. 1245, 67 L. Ed. 2d 493 (1981) (recognizing rule); *Conroy v. Conroy*, 575 F.2d 175, 25 Fed. R. Serv. 2d 316 (8th Cir. 1978).

64. *In re* Viles, 6 Am. Tribal Law 3, 2005 WL 6169013 (N.A. 2005).

65. *Beller ex rel. Beller v. U.S.*, 221 F.R.D. 679 (D.N.M. 2003) (common-law marriage under Navajo law).

66. *Conroy v. Conroy*, 575 F.2d 175, 25 Fed. R. Serv. 2d 316 (8th Cir. 1978).

67. *U.S. v. Jarvison*, 409 F.3d 1221 (10th Cir. 2005).

68. 28 U.S.C.A. § 1360.

69. *Hardy v. U.S.,* 918 F. Supp. 312, 96-1 U.S. Tax Cas. (CCH) P 50214, 77 A.F.T.R.2d 96-1401 (D. Nev. 1996).

70. *Sanders v. Robinson*, 864 F.2d 630 (9th Cir. 1988).

71. *Id.*

72. *Martinez v. Martinez*, 2008 WL 5262793 (W.D. Wash. 2008).

73. *See* Bureau of Indian Affairs, Frequently Asked Questions at https://www.bia.gov/frequently-asked-questions#:~:text=The%20federal%20Indian%20trust%20responsibility%20is%20a%20legal%20obligation%20under,United%20States%2C%201942).

74. *See* https://www.bia.gov/CFRCourts.

75. 25 C.F.R. Pt. 11.

76. *See* https://www.bia.gov/CFRCourts.

77. *See* https://ecfr.io/Title-25/pt25.1.11.

78. Indian Law § 5. *See Matter of Jimerson v. Halftown Estate*, 22 A.D.2d 417, 419, 255 N.Y.S.2d 959 (3d Dep't,1965).

79. *Seneca v. Seneca*, 293 A.D.2d 56, 741 N.Y.S.2d 375 (4th Dep't, 2002) (The Seneca nation has granted itself original jurisdiction in commercial disputes, but it has not made that jurisdiction exclusive).

80. *See* https://cayuganationpolice.com/justice-system/cayuga-nation-tribal-court/.

81. *See* https://www.oneidaindiannation.com/court/; *see also* Oneida Indian Nation Codes, Ordinances and Regulations at https://www.oneidaindiannation.com/.

82. Seneca Nation of New York – Allegany Reservation Court of Appeals

    Seneca Nation of New York – Allegany Reservation peacemaker's court

    Seneca Nation of New York – Allegany Reservation Surrogate Court

    Seneca Nation of New York – Cattaraugus Reservation Court of Appeals

    Seneca Nation of New York – Cattaraugus Reservation peacemaker's court

    Seneca Nation of New York – Cattaraugus Reservation Surrogate Court

    Seneca Nation Constitution

    See also http://wellnesscourts.org/state.cfm?topic=52&state=NY; https://sni.org/about-our-government/president/.

83. *See* https://www.srmt-nsn.gov/divisions/justice/tribal_court/.

84. *Patterson v. Council of Seneca Nation*, 245 N.Y. 433, 157 N.E. 734 (1927). In *Hatch v. Luckman*, 64 Misc. 508, 118 N.Y.S. 689, 10 Mills 51, (Sup Ct, 1909), affirmed 155 A.D. 765, 140 N.Y.S. 1123 the court held: "It is true, the Tonawanda Indians have a Peacemakers' Court, created by the statutes of this state. The jurisdiction conferred by that statute upon the Peacemakers' Court is exceedingly limited, and gives that court no right to exercise any of the power and authority conferred upon Surrogates' Courts in reference to decedents' estates."

85. N.Y. Const. Art. VI, § 31 provides § 31. [Indian courts excepted from application of article]. This article does not apply to the peacemakers courts or other Indian courts, the existence and operation of which shall continue as may be provided by law.

86. *See* New York Indian Law § 40 to § 60.

87. Indian Law § 46 (applicable to the Alleghany, Cattaraugus, and Tonawanda reservations).

88. *People ex rel. Jimeson v. Shongo*, 83 Misc. 325, 144 N.Y.S. 885 (Sup. Ct.,1913) aff'd without opn 164 A.D. 908, 148 N.Y.S. 1137 (Mem) (4 Dep't 1914); *see also Jimeson v. Lehley*, 51 Misc. 352, 101 N.Y.S. 215 (Sup. Ct.,1906); *Jones v. Gordon*, 51 Misc. 305, 99 N.Y.S. 958 (Sup. Ct.,1906).

89. *See* 66 N.Y. Jur. 2d Indians § 34.

90. *Peters v. Tallchief*, 121 A.D. 309, 106 N.Y.S. 64 (4 Dep't 1907).

91. In *Rice v. Maybee*, 2 F.Supp. 669 (1933), the court held that an action between Seneca Indians residing on the Cattaraugus Reservation, involving title to lands on the reservation, is within the jurisdiction of the peacemakers' court of the Seneca nation.

    In *Velez v. Huff*, 1965, 48 Misc.2d 10, 263 N.Y.S.2d 967 (Sup Ct, 1965), the court held that the Legislature as recently as 1953 has specifically expressed an intent that all disputes involving title to real property on the Cattaraugus Reservation be determined by the peacemakers' court. The court was not unmindful of section 5 of the Indian Law which states: "Any action or special proceeding between Indians or between one or more Indians and any other person or persons may be prosecuted and enforced in any court of the state to the same extent as provided by law for other actions and special proceedings." This also was a law passed by the 1953 Legislature. This in no way, in the judgment of this court, impaired the specific directions that all title disputes between Cattaraugus Reservation residents of the Seneca nation shall be decided in peacemakers' court. Independent of the question of exclusive jurisdiction on this issue the courts have been very reluctant to authorize interference by another court with a pending matter before the peacemakers' court.

92. *Hatch v. Luckman*, 64 Misc. 508, 118 N.Y.S. 689, 10 Mills 519, (1909) affirmed 155 A.D. 765, 140 N.Y.S. 1123 held that the only court on the Tonawanda reservation created and existing by authority of law is the peacemakers' court.

93. Indian Law § 46.

94. Indian Law § 46.

95. *People ex rel. Jamerson v. John*, 80 Misc. 418, 141 N.Y.S. 225 (Sup. Ct.,1913) held that the power and authority of the peacemakers' court is derived purely and solely from the legislative authority conferred by Indian Law § 46, and it can exercise no jurisdiction or powers except those that are expressly conferred upon it by statute. The fair construction of the language used in this section is that it describes that class of actions commonly known as actions founded on contract and action sounding in tort, and does not describe or cover that class of actions arising in equity or of an equitable character where the judgment rendered provides for other relief than a money judgment.

96. Indian Law §§ 4, 46.

97. *People v. John*, 181 Misc. 921, 44 N.Y.S.2d 806 (Sup. Ct.,1943) held that the term "divorce", as used in this section granting peacemakers' courts of the Seneca nation jurisdiction to grant divorces, includes a limited divorce or separation as well as a total divorce.

98. Indian Law § 46. Peacemakers' courts, L.1909, c. 31, eff. Feb. 17, 1909. Amended L.1915, c. 560, eff. May 10, 1915; L.1953, c. 672, eff. July 1, 1953; L.1981, c. 171, § 1.

99. Indian Law § 46.

100. *Id.*

101. *Id.*

102. *Id.*

103. Indian Law § 50.

    In re Jimerson, 22 A.D.2d 417, 419, 255 N.Y.S.2d 959, 961 (3 Dep't, 1965) the Appellate Division held that there exists no provision of law providing for review of decisions of the Indian courts by any state court.

    In *People ex rel. Jimeson v. Shongo*, 83 Misc. 325, 144 N.Y.S. 885 (Sup. Ct.,1913) aff'd without open 164 A.D. 908, 148 N.Y.S. 1137 (Mem) (4 Dep't 1914) an action was commenced in the peacemakers' court of the Cattaraugus Indian Reservation to partition certain lands on the Cattaraugus Reservation, resulting in a judgment in favor of the plaintiffs. The relators appealed to the council of the nation, where the judgment was affirmed, and the premises were advertised for sale pursuant to the judgment. The relators motion for a writ of prohibition restraining the defendants from proceeding with the sale was denied. The court held that the determination of the peacemakers' court, affirmed by the council of the nation (Indian Law, § 50), is conclusive as to the rights of the parties, and that the court was powerless, for lack of jurisdiction, to grant any relief to the relators. The Indians have such rights in our courts as are granted by statute. Our courts are without jurisdiction to hear and determine controversies between individual Indians in respect to their rights as members of the Seneca nation, and the Supreme Court is not a superior court having the authority to prohibit the action of the peacemakers' court.

104. Indian Law § 51

105. Indian Law § 52.

106. *Id.*

107. Indian Law § 73(4).

108. Indian Law § 80 provides: The council of the Tonawanda nation may determine upon the laying out and working of roads and highways, and may make by-laws for the regulation of such work; may pass by-laws and ordinances, not inconsistent with law, for the protection and improvement of the common land of the nation; for the regulation of fences; and for the prevention of trespasses by cattle and other domestic animals; and may provide a penalty of not exceeding five dollars, for the violation of any such by-law or ordinance, recoverable for the benefit of such nation by any chief or officer thereof, in any justice's court of the county of Genesee.

109. Indian Law § 107 provides: The council of the Saint Regis nation may pass by-laws and ordinances not inconsistent with law, for the protection and improvement of the common land of the nation, for the regulation of fences and for the prevention of trespasses by cattle and other domestic animals, and may provide a penalty of not exceeding five dollars for the violation or disobedience of any such by-law or ordinance recoverable for the benefit of such nation, by any chief or officer thereof in the name of the nation in any justice's court of the county of Franklin.

110. Indian Law § 4.

111. Indian Law § 4; DRL § 11(3-a).

112. *Parry v. Haendiges*, 458 F. Supp. 2d 90 (W.D. N.Y. 2006).

113. 2003 WI 118, 265 Wis. 2d 64, 665 N.W.2d 899 (2003).

114. 25 U.S.C. §§ 1903, 1911.

115. 25 U.S.C. § 1903, subd. 1 [i]-[iv].

116. 25 U.S.C. § 1903 subd. 4.

117. 25 U.S.C. § 1911 (a).

118. 25 U.S.C. § 1911 (b).

119. *Id.*

120. 25 U.S.C. § 1911 (c).

121. *Matter of Baby Boy C.*, 27 A.D.3d 34, 805 N.Y.S.2d 313 (1st Dep't, 2005).

122. 25 USC § 1915.

123. *Id.*

124. 18 N.Y.C.R.R. 431.18.

125. 81 FR 31877.

126. Social Services Law § 39.

127. Family Court Act § 115(d).

128. *Id.*

129. 25 U.S.C. § 1911 subd. (b).

130. 25 U.S.C. § 1914.

131. 22 N.Y.C.R.R. § 202.71.

132. Domestic Relations Law § 75-c provides:

    § 75-c. Application to Indian tribes

    1. A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C.A. § 1901 et seq., is not subject to this article to the extent that it is governed by the Indian Child Welfare Act.

    2. A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying this title and title two of this article.

    3. A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this article must be recognized and enforced under title three of this article.

133. 170 A.D.3d 1445, 97 N.Y.S.3d 329 (3d Dep't 2019).

134. 25 U.S.C.A. § 1901 et seq.

135. DRL § 75-c(1). *See* DRL § 75-c—Application to Indian tribes.

136. 28 U.S.C.A. § 1738(B).

137. 28 U.S.C.A. § 1738B(a).

138. 28 U.S.C.A. § 1738B(b)(9).

139. *See* http://www.nyfedstatetribalcourtsforum.org/pdfs/NYSDMV-RecognitionofTribalCourtOrders.pdf.

140. *See* https://rnt.firstnations.org/research/.

141. *See* https://www.firstnations.org/.

142. *See* https://ssir.org/articles/entry/stolen_land_stolen_bodies_and_stolen_stories#:~:text=78%20percent%20of%20Americans%20said,1900%20portrayals%20of%20Native%20peoples.

143. *See* https://biamaps.geoplatform.gov/Tribal-Leaders-Directory/ (last accessed April 21, 2024).

[*1]

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Dane, J.
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Supreme Court, Nassau County

L.K.F, Plaintiff,

against

M.T.F, Defendant.

Index No. XXXXXX/2021

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