

Federal Law and Indian Tribes

Fall 2019

Professor Matthew L.M. Fletcher

M/W 8:30AM – 9:45AM

Room 324

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Office Hours: By Appointment

Required Texts

Getches et al., Cases and Materials on Federal Indian Law, 7th ed. 2017 (Getches)
2019-2020 Teacher's Memorandum (TM), available on the Turtle Talk Blog
(<https://turtletalk.files.wordpress.com/2019/08/teachere28099s-memorandum-2019-2020.pdf>)

Recommended Texts

Fletcher, Federal Indian Law (West 2016) or Fletcher, Principles of Federal Indian Law (West 2017)

Turtle Talk Materials

Other materials listed in the syllabus, including the Teacher's Memorandum, are available on the Turtle Talk blog (<http://turtletalk.wordpress.com/>)

A Note on Fletcher's Teaching Style

I prefer to not lecture all class period, but I don't like to call on people or rely too much on volunteers. I will ask each of you to think of a question to ask me (it is my understanding that the originator of the Socratic method, Socrates, didn't ask questions, he solicited them and answered them . . . at length) about the assigned material for the day. I will talk a little, but mostly call on people to ask me questions.

I am offering a final exam, take home. Old exams are here: <https://turtletalk.files.wordpress.com/2017/09/combined-indian-law-exams-fall-2017.pdf>.

Assignments

Class #1 (8/26) – **Introduction – Indian Law Origins and *Johnson v. M'Intosh***

Getches Chapter 1

Class #2 (8/28) – **Trade & Intercourse Acts, *The Cherokee Cases*, and the Treaty Period**

Getches Chapter 2*

Getches Chapter 3A-3D

Class #3 (9/4) – **Allotment and Plenary Power**

Getches Chapter 3E; 4A

Class #4 (9/9) – **Reorganization, Termination, and Self-Determination**

Getches Chapter 4B-4D

Class #5 (9/11) – **Tribal Property**

Getches Chapter 5A

Class #6 (9/16) – **The Federal-Tribal Relationship**

Getches Chapter 5B-5C

No class 9/18/19 – Replacement Class – 1819 Treaty Commemoration at MSU

Law (9/20 & 9/21)

Class #7 (9/23) – ***Carciari* Exercise**

TM 3-6 + Materials TBA (TT)

Class #8 (9/25) – **Tribal Sovereignty and *Martinez***

Getches Chapter 6A-6C

Class #9 (9/30) – **Sovereign Immunity and Tribal Justice Systems**

Getches Chapter 6D-6E + TM 21-24

Class #10 (10/2) – **“Indian Country” and Federal Criminal Jurisdiction**

Getches Chapter 7A-7B + TM 25

Class #11 (10/7) **Labor Relations Exercise**

TM 10-16 + Fletcher/Fort/Singel Article (TT)

* We will have already talked about *Johnson v. McIntosh* but the rest of the chapter is fair game.

Class #12 (10/9) – **State and Tribal Criminal Jurisdiction**

Getches Chapter 7C-7D

Tribal In-House Counsel Conference at MSU Law (10/10 & 10/11)

Class #13 (10/14) – **Civil Regulatory Jurisdiction**

Getches Chapter 8A

No class 10/16/19 – Replacement Class – TICA Conference

Class #14 (10/21) – **Civil Adjudicatory Jurisdiction**

Getches Chapter 8B

Class #15 (10/23) – **Preemption**

Getches Chapter 8C + TM 26-38

Class #16 (11/4) – **Indian Child Welfare Act**

Getches Chapter 8D + TM 39-54

Class #17 (11/6) – **ICWA Exercise**

Materials TBA (TT)

Class #18 (11/11) – **Indian Gaming**

Getches Chapter 9

Class #19 (11/13) – **Indian Religion and Culture**

Getches Chapter 10 + TM 79-81

Class #20 (11/18) – **Water Rights**

Getches Chapter 11 + Materials TBA (TT)

Class #21 (11/20) – **Hunting and Fishing Rights**

Getches Chapter 12 + TM 82-93

Fall break

Class #22 (12/4) – **Alaska & Hawai'i**

Getches Chapter 13

Class #23 (12/6) – **International and Comparative Perspectives**

Getches Chapter 14

Review Session TBA

Questions Every Indian Law Student Should be Able to Answer (at the end of the semester)*

1. What are the five clear ~~statement~~ expression rules?
2. What is the Montana general rule and its two exceptions?
3. What are the three to five canons of treaty construction?
4. Federal Indian affairs statutes are valid if they are rationally related to what?
5. What is the federal Indian law preemption doctrine?
6. What is the infringement test?
7. How may Indian Civil Rights Act civil rights be enforced? Criminal procedure rights?
8. What is the tribal exhaustion doctrine?
9. What is the power of exclusion and the concomitant power to condition entry?
10. How may tribal, state, or federal sovereign immunity be waived or abrogated?
11. What is the Ex parte Young doctrine?
12. What is the difference between the general trust responsibility and the enforceable trust responsibility?
13. What are federal reserved water rights?
14. What criminals can Indian tribes prosecute?
15. When can states prosecute criminals in Indian country?
16. What is the criminal/prohibitory – civil/regulatory doctrine under Public Law 280?
17. What is membership based tribal jurisdiction?
18. What is territory based tribal jurisdiction?
19. When does the Fifth Amendment apply to federal takings of tribal property rights? (Alternatively, when are federal takings of tribal property compensable?)
20. Does the Constitution apply to Indian tribal governments?
21. What is the two-part threshold determination that must be made before Indians and tribes can sue the United States under the Indian Tucker Act?
22. Where does Congressional plenary power in Indian affairs come from?
23. What is the difference between Class II and Class III Indian gaming?
24. Can tribes tax or regulate nonmembers on tribal lands?
25. What is Indian country?
26. When does federal action impose a substantial burden on Indian religious freedom?
27. What is free, prior, and informed consent?*
28. What is inherent tribal sovereignty?

* Questions marked with an asterisk are *advanced*.

29. Who has the power to determine tribal membership?
30. What are the three main principles of federal Indian law, and two concomitant principles?
31. What is allotment?
32. What is termination?
33. What is federal recognition?
34. What is a 638 or self-determination contract? What is a self-governance contract?*
35. What are contract support costs?*
36. What is the Tuscarora/Coeur d'Alene rule?*
37. What is removal?
38. What is the significance of Indian boarding schools?
39. What are the so-called equitable defenses identified in City of Sherrill?
40. What is the Indian Reorganization Act?
41. What are Section 17 corporations?*
42. What is a fee to trust acquisition?
43. Who is Felix Cohen?*
44. What is the Nonintercourse Act?
45. What is a Class III gaming compact?
46. What is an Executive Order reservation?*
47. What is the scope of federal criminal jurisdiction in Indian country?
48. What is an intergovernmental agreement?
49. What is domicile under the Indian Child Welfare Act?
50. What is on-reservation value in the context of federal Indian law preemption?*
51. What is the significance of Carcieri v. Salazar?*
52. What must tribes do to prosecute non-Indians under the Violence against Women Act?*
53. What is the scope of tribal criminal sentencing authority?
54. What must tribes do to qualify for the enhanced sentencing authority under the Tribal Law and Order Act?*
55. What is the significance of the Alaska Native Claims Settlement Act?
56. What is the prior appropriations doctrine?
57. What is the practicably irrigable acreage standard?*
58. What are surplus land acts?*
59. Under what standard are tribal court judgments enforced in state and federal courts?*
60. What is treatment-as-state status under federal environmental statutes?*
61. When does a tribal court have jurisdiction under the Indian Child Welfare Act?
62. What is original Indian title (or aboriginal title)?

- 63. How may the federal government extinguish Indian title?
- 64. What are vested tribal property interests?
- 65. What is the Boldt decision in United States v. Washington?*
- 66. What is the Fox decision in United States v. Michigan?*
- 67. What is the McCarren Amendment?*
- 68. What is tribal gaming revenue sharing?*
- 69. What are the key exceptions to the bar on gaming on lands acquired after the enactment of the Indian Gaming Regulatory Act?*
- 70. What is the dual sovereignty exception to the Double Jeopardy Clause?

Additional:

- 71. What are the three ways tribal powers can be divested?