**31 Idaho L. Rev. 1071**

**Idaho Law Review**

1995

[Gary C. Randall](http://www.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0202499701&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search))[a](#co_footnote_Fa105705367_1) [Katti Telstad](http://www.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0145698201&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search))[aa](#co_footnote_Faa105705367_1)

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COMMUNITY PROPERTY RULES OR AMERICAN INDIAN TRIBAL LAW -- WHICH PREVAILS?

“This land is my land, This land is your land . . . (**Title** **To** **This** **Land** **is** **Very** **Confused**)”[1](#co_footnote_F1105705367_1)

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**I. INTRODUCTION**

Actually, title to American Indian trust property is perhaps the only thing not confused. Federal law controls trust property (lands not disposed of during the “allotment” period).[2](#co_footnote_F2105705367_1) Non-trust property including both non-trust real estate and personal property, creates the real problem. State laws may or may not determine the ownership of non-trust property on Indian reservations.[3](#co_footnote_F3105705367_1) The problem is particularly acute in states which follow the community property form of property acquisition, management and ownership.[4](#co_footnote_F4105705367_1) While **\*1072** state law should not impact the ownership of trust property due to federal preemption,[5](#co_footnote_F5105705367_1) state law may potentially govern non-trust property rights even on reservations.[6](#co_footnote_F6105705367_1)

Federally recognized Indian tribes have a status similar to sovereign nations but they remain subject to some federal and state governance.[7](#co_footnote_F7105705367_1) This Article explores the extent of that governance, specifically the application of state community property laws on reservations.

**II. GENERAL APPLICATION OF COMMUNITY PROPERTY RULES**

In the United States, the community property system depends upon the domicile of individuals. An individual’s domicile is where he intends to live, together with some objective ties to that particular location.[8](#co_footnote_F8105705367_1) A married couple can have two domiciles, one in a common law and one in a community property state which creates some very strange results.[9](#co_footnote_F9105705367_1)

The Spanish theory of community property treated marriage as a contract. Usually there existed an implied contract providing that the husband’s domicile at the time of the marriage determined the **\*1073** ownership characteristics of all the couple’s future acquisitions. If the husband’s domicile used a community property system, then community property ownership laws applied to all personal property acquired during the marriage, even if acquired after the couple moved to a common law jurisdiction.[10](#co_footnote_F10105705367_1)

If Indian tribes remain dependent sovereign nations as that concept has been developed in the past,[11](#co_footnote_F11105705367_1) then Indian couples and maybe mixed Indian and non-Indian couples living in Indian country[12](#co_footnote_F12105705367_1) will be subject to the community or separate property rules of the tribe rather than state law, absent Congress’s direct grant of authority to the state.[13](#co_footnote_F13105705367_1)

Community property status affects property ownership in a number of ways. If state community property rules apply in Indian country, then married individuals domiciled in Indian country will co-own non-trust property accumulated after the marriage.[14](#co_footnote_F14105705367_1) Under usual community property principles, married individuals co-manage community property.[15](#co_footnote_F15105705367_1) Neither spouse can dispose of more than half of the community property at death.[16](#co_footnote_F16105705367_1) Both the decedent’s share of the property and the surviving spouse’s share of the property acquire a new income tax basis no matter which spouse dies first.[17](#co_footnote_F17105705367_1) Community property acquired during marriage may, or may not, be partially or fully liable for the separate property debts of either spouse.[18](#co_footnote_F18105705367_1)

**\*1074** For federal income tax purposes, the spouses divide equally the community property income.[19](#co_footnote_F19105705367_1) Usually, each spouse is responsible for the federal tax on his or her half of that community property income.[20](#co_footnote_F20105705367_1) A case pending before the United States Tax Court concerns the application of the last community property principle to Indians in Indian country in Public Law 280,[21](#co_footnote_F21105705367_1) community property states. The Tax Court certified the principal community property issue involved in the case to the Washington State Supreme Court.[22](#co_footnote_F22105705367_1)

As a general rule, states have very limited authority, civil or criminal, over Indian reservations.[23](#co_footnote_F23105705367_1) This led to concern about “law and order”[24](#co_footnote_F24105705367_1) which in turn led to the 1953 Congressional enactment of Public Law 280.[25](#co_footnote_F25105705367_1) That statute provides, in pertinent part:

The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume . . . such measure of jurisdiction over any or all such civil causes of action arising within such Indian country . . . as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country . . . as they have elsewhere within that State.[26](#co_footnote_F26105705367_1)

**\*1075 III. PUBLIC LAW 280 STATES**

Originally, Public Law 280 required five states: California, Minnesota, Nebraska, Oregon, and Wisconsin, to assume criminal and civil jurisdiction over Indians within those states.[27](#co_footnote_F27105705367_1) Congress later required Alaska to assume criminal and civil jurisdiction over Indians in Alaska.[28](#co_footnote_F28105705367_1) Public Law 280 permitted other states to assume criminal and civil jurisdiction over the Indians in their states.[29](#co_footnote_F29105705367_1)

Idaho,[30](#co_footnote_F30105705367_1) Washington[31](#co_footnote_F31105705367_1) and Arizona[32](#co_footnote_F32105705367_1) assumed partial civil and criminal jurisdiction over the Indian tribes within their states.[33](#co_footnote_F33105705367_1) **\*1076** In 1968, Congress changed the requirements for an elective state to assume civil and criminal jurisdiction over the Indians within their states. An elective state now must acquire the consent of an Indian tribe before assuming civil or criminal jurisdiction over the Indians of the Tribe.[34](#co_footnote_F34105705367_1) If Public Law 280 permits Public Law 280 states[35](#co_footnote_F35105705367_1) to apply their state civil law to Indians living in Indian country, then arguably, state community property laws govern property ownership on reservations in the community property states.[36](#co_footnote_F36105705367_1)

Two reasonable interpretations of Public Law 280 provide for different outcomes in determining whether Public Law 280 states’ community or separate property laws apply to Indians in Indian country. One interpretation provides that all substantive laws of Public Law 280 states apply, including substantive rules of property ownership. The other interpretation of Public Law 280 merely allows Public Law 280 states to assume jurisdiction to determine the outcome of civil disputes arising on the reservations.[37](#co_footnote_F37105705367_1)

Some writers believe that the Public Law 280 states can apply their “ •civil laws . . . of general application to private persons or private property’ . . . includ(ing) the laws of contract, tort, marriage, divorce, insanity, descent, etc.”[38](#co_footnote_F38105705367_1)

Other commentators, supported by case law, believe that Public **\*1077** Law 280 only permits states to adjudicate matters between two Indians arising in Indian country.[39](#co_footnote_F39105705367_1) Then the only difference between Public Law 280 states and non-Public Law 280 states would be a Public Law 280 state’s authority to adjudicate disputes arising between Indians within Indian country.[40](#co_footnote_F40105705367_1)

The statutory language which provides, “civil laws of such State that are of general application to private persons or private property” seems to give the Public Law 280 states power to apply their civil laws to Indians on or off the reservation. If that is so, tribal ordinances or customs control only if tribal customs or ordinances are not inconsistent with any applicable civil law of the State that applies under [28 U.S.C. S 1360](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=28USCAS1360&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)).[41](#co_footnote_F41105705367_1)

But even if the language seems clear, it is not. In a case involving the power of the State of Minnesota to levy a personal property tax on a trailer home owned by an Indian and located on the Leech Creek reservation, the United States Supreme Court concluded that Public Law 280 does not mean what it says.[42](#co_footnote_F42105705367_1)

Bryan v. Itasca County, Minnesota, a personal property tax case, held that state property taxes were inapplicable to reservation Indians.[43](#co_footnote_F43105705367_1) The Court observed that the background of Public Law 280 suggested a less sweeping interpretation than the statute itself might indicate:

Piecing together as best we can the sparse legislative history of S 4, subsection (a) seems to have been primarily intended to redress the lack of adequate Indian forums for resolving private legal disputes between reservation Indians, and between Indians and other private citizens, by permitting the courts of the States to decide such disputes. . . . With this as the primary focus of S 4 (a), the wording that follows in S 4 (a) -- •and those civil laws of such States . . . that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State’ -- authorizes application by the state courts of their rules of decision to decide such disputes. . . .[44](#co_footnote_F44105705367_1)

**\*1078** The Court concluded that “ . . . the primary intent of S 4 was to grant jurisdiction over private civil litigation involving reservation Indians in state court.”[45](#co_footnote_F45105705367_1)

To further complicated matters, several states, including Washington, limited their acceptance of jurisdiction over civil matters to specific areas.[46](#co_footnote_F46105705367_1) By its terms, the Washington statute seems to be limited to jurisdiction, rather than referring to substantive civil law. But if the allusion to “domestic relations” includes all of Chapter 26 of the Revised Code of Washington, that chapter, which includes the Washington community property rules, may bring community property principles onto the reservations within Washington State.[47](#co_footnote_F47105705367_1) The term “Domestic Relations” has a more limited definition in popular usage: “Domestic Relations: That branch or discipline of the law which deals with matters of the household or family, including divorce, separation, custody, support and adoption.”[48](#co_footnote_F48105705367_1) While community property (property ownership) is considered in connection with several of these concepts, it is not usually considered as being directly part of domestic relations under the cited definition.

The statutory language of the Washington statute claims “jurisdiction” over these matters, not the application of domestic relations rules of property ownership. This corresponds with the interpretation that Public Law 280 provides jurisdiction, not the application of the substantive civil rules.[49](#co_footnote_F49105705367_1)

In states where a community property issue involving Indian country arose, the courts applied community property rules on the reservations, but did not decide whether the community property **\*1079** rules of a given state applied on the reservations. The litigants did not raise that particular issue, only the application of state law and state jurisdiction over Indians living in Indian country.

A case almost on point, involved business property located on the Makah Indian Tribe reservation in Clallam County, Washington.[50](#co_footnote_F50105705367_1) The County sought to impose its personal property tax on that property, owned by a tribal Indian and, arguably, by her non-tribal husband.[51](#co_footnote_F51105705367_1) The County claimed the property was community property under Washington State law principles and subject to the County’s ad valorem personal property tax.[52](#co_footnote_F52105705367_1) However, if a Makah tribal member solely owned the property then the County’s ad valorem personal property tax did not apply to the property.[53](#co_footnote_F53105705367_1)

The Washington Supreme Court opined that community property principles were irrelevant to the issue of state or county tax exemption:

The status of this property, either under the community property statutes or under domestic relations or probate law, has little to do with its taxability here. Ascertaining its status in these areas of the law and the tenure in which held between the spouses sheds little light on whether the county may tax it as personal property while it is permanently located in and used upon the Makah Reservation and under the dominion and control of a tribal Makah. . . .[54](#co_footnote_F54105705367_1)

The court also observed that regardless of the property status (which it apparently considered as community property under Washington law), the property was not subject to the ad valorem tax. Under the “customs and usages of the Makahs,” if a Makah tribal member married a non-tribal member, the tribal member controlled what the Washington Court termed “the community property” on the reservation.[55](#co_footnote_F55105705367_1) The court stated that the tribal custom and usage was not “inconsistent” with the Washington State statutory, civil law.[56](#co_footnote_F56105705367_1) The court concluded that “the property for state tax purposes would be **\*1080** deemed personal property of a tribal Indian.”[57](#co_footnote_F57105705367_1)

This narrow holding does not mean the property was not community property, but merely determines that the tribal members control over the property prohibits the county from imposing an ad valorem tax on it.[58](#co_footnote_F58105705367_1) Management of community property, the ultimate issue in the Makah case, did not prevent the property from being community property. Indeed, under Washington law at the time the case arose, the husband solely managed the community personal property.[59](#co_footnote_F59105705367_1) The Makah[60](#co_footnote_F60105705367_1) case does not hold that state law cannot determine the status of property located in Indian country. The property management and control may differ from inside and outside of Indian country, but general community property principles may still apply if Public Law 280 gives a state the power to impose its’ property ownership systems on married couples who reside in Indian Country.[61](#co_footnote_F61105705367_1)

The only other case directly involving community property issues in a Public Law 280 state was Sheppard v. Sheppard.[62](#co_footnote_F62105705367_1) In Sheppard, the Idaho Supreme Court held that the state had jurisdiction over a divorce action between an Indian and a non-Indian who had lived both on and off the Fort Hall Shoshone-Bannock reservation during their marriage.[63](#co_footnote_F63105705367_1)

The Idaho Court divided the non-trust real estate and personal property and referred to that property as community property.[64](#co_footnote_F64105705367_1) Neither party to the divorce claimed otherwise. However, the tribal member spouse questioned the state court’s authority to divide some of the property accumulated during the marriage and located on the **\*1081** reservation.[65](#co_footnote_F65105705367_1)

The litigants initially agreed that the property in question was community property under Idaho law.[66](#co_footnote_F66105705367_1) Mrs. Sheppard later argued that Idaho State Courts lacked jurisdiction over domestic relations matters. The court rejected that argument based upon Idaho’s assumption of jurisdiction under Public Law 280.[67](#co_footnote_F67105705367_1)

The Law and Order Code of the Shoshone-Bannock Tribe of Indians recognized community property.[68](#co_footnote_F68105705367_1) Thus, there existed no issue of whether the particular property in question was community property.[69](#co_footnote_F69105705367_1)

In a pending case that directly involves the question of whether community property rules apply in Indian Country, the Puyallup Tribal Court determined that Washington State community property laws did not apply on the Puyallup reservation.[70](#co_footnote_F70105705367_1) The Internal Revenue **\*1082** Service disputed that conclusion. Currently, the matter is pending before the United States Tax Court.[71](#co_footnote_F71105705367_1)

The tribes themselves hold inconsistent views regarding whether community property principles apply on reservations located in Public Law 280, community property states.[72](#co_footnote_F72105705367_1) The Indian tribes of Washington, a community property state, varied from dealing with the property between a married couple as community property,[73](#co_footnote_F73105705367_1) to the tribe and the state having concurrent jurisdiction and applying Washington State community property laws,[74](#co_footnote_F74105705367_1) to neither following Washington State’s community property laws or having their own community property laws.[75](#co_footnote_F75105705367_1)

The tribal differences could mean several things. It could mean some tribes do not believe Public Law 280 applies community property rules to Indians living in Indian country, or that those tribes think that the custom or ordinances of the tribe do not necessarily conflict with the state community property laws, or their own laws and customs are community property based.

Tribal law is not always all that easy to discern:

A unique characteristic common to many tribal code sections . . . is a provision for the use of unwritten customs to **\*1083** settle disputes. . . . For example the Law and Order Code of the Yerington Paiute Tribe states that: In matters not covered by this Code or any ordinance, the Tribal Court shall apply traditional customs of the Tribe where such customs have been recognized by resolution of the Tribal Council.[76](#co_footnote_F76105705367_1)

Other tribes use different methods to determine tribal law. “In the event of dispute or uncertainty regarding traditional Tribal customs, the court may utilize advisors familiar with these customs.”[77](#co_footnote_F77105705367_1)

Tribal law has formalized Domestic Relations more than other areas of law. In 1988, roughly three-fourths of tribal codes surveyed in one research project included a section dealing with that subject area.[78](#co_footnote_F78105705367_1) Some of the tribal codes that provide for community property include the tribal codes of the Lummi Indian Nation,[79](#co_footnote_F79105705367_1) the Swinomish Tribal Community,[80](#co_footnote_F80105705367_1) the Fort Belknap,[81](#co_footnote_F81105705367_1) the Yavapai,[82](#co_footnote_F82105705367_1) the Yerington Paiute,[83](#co_footnote_F83105705367_1) the Colville Confederated Tribes,[84](#co_footnote_F84105705367_1) the Chehalis,[85](#co_footnote_F85105705367_1) and the Puyullap.[86](#co_footnote_F86105705367_1)

**IV. WHO DECIDES IF PUBLIC LAW 280 APPLIES?**

Commissioner of Internal Revenue v. Estate of Bosch held that state trial court decisions in which the federal government was not a party are not binding on the government for federal tax purposes.[87](#co_footnote_F87105705367_1) The United States Supreme Court agreed state law decides state **\*1084** property rights, but only a determination by the highest state court is binding for federal tax purposes.[88](#co_footnote_F88105705367_1) This decision does not discuss tribal court decisions; it dealt with state court decisions, but the result should be the same if a tribal court decision is involved.

If the Bosch rationale applies to tribal decisions, a lower level tribal court determination should receive “due consideration” but should not bind the federal courts, including the United States Tax Court. However, the highest tribal courts’ determinations should bind the United States Tax court, which is, as of the date this article is written, considering the issue of whether certain property owned by a deceased couple living on the reservation was indeed community property.[89](#co_footnote_F89105705367_1)

One of the problems of applying the Bosch principle too rigidly in determining the application of Public Law 280 is that the tribal court likely is in the best position to determine tribal law and customs.[90](#co_footnote_F90105705367_1)

**V. COMMUNITY PROPERTY PRINCIPLES**

Even if Public Law 280 states incorporate community property rules into their state law, tribal custom may prevent their application if the parties involved understand and accept tribal custom. In all community property jurisdictions a married couple can opt out of the community property system.[91](#co_footnote_F91105705367_1) In some jurisdictions this can only be done in writing, in others an oral agreement can make the character of (at least) future acquisitions, non-community in nature.[92](#co_footnote_F92105705367_1)

A couple living in Indian country can agree that their income is **\*1085** not community income just like individuals living in community property states. Although, there are no cases on point; it seems reasonable that if couples follow a tribal “custom and practice” different from the community property system, then community property rules would not apply to individuals living on the reservation.[93](#co_footnote_F93105705367_1)

**VI. NON-PUBLIC LAW 280 STATES**

Absent some Congressional act giving a state civil jurisdiction over domestic relations,[94](#co_footnote_F94105705367_1) non-Public law 280 states cannot apply their substantive property rules to Indians living in Indian country,[95](#co_footnote_F95105705367_1) or to an Indian and non-Indian couple residing in such a locale.[96](#co_footnote_F96105705367_1) In situations where a tribal member moves off the reservation and becomes domiciled in the non-Public Law 280 state, the state in which he or she resides will have jurisdiction to dissolve the marriage, but not necessarily to decide the property rights of the parties.[97](#co_footnote_F97105705367_1)

Once either party invokes jurisdiction, the trial court will likely determine not only who gets what property, but whether their property is community or separate property.[98](#co_footnote_F98105705367_1)

**VII. CONCLUSION**

Community property rules form a logical application of ownership principles in a marriage. The Spanish system, the basis of most American community property jurisdictions, recognizes both parties contributions to a marriage. The parties joint efforts to acquire the community property result in co-ownership of that property.[99](#co_footnote_F99105705367_1)

While this approach may be logical, it is not the only approach. It is likely that many Indians gave little thought to which of the state law systems they preferred, civil (community property) or common law. If asked, many Indians likely would prefer neither. In the **\*1086** absence of a federal statute imposing some form of state substantive law in Indian country, tribes clearly should decide which property ownership system they prefer.

The problem is Public Law 280. Literally, Public Law 280 imposes state civil law in Indian country for no good reason. Granting states jurisdictional rights over civil matters may be (or have been) necessary to provide some forum for the adjudication of civil disputes. However, it makes no sense at all to give states the authority to determine the respective property ownership interests of tribal members living in Indian country. Congress in enacting Public Law 280 did not intend for states to determine tribal member property rights in Indian country.

Public Law 280 should be strictly jurisdictional. “Law and order” may have been less than satisfactory on some reservations. However, individuals most affected by property laws should determine their own property ownership rights in Indian country since Public Law 280 can reasonably be interpreted as merely jurisdictional.

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| Footnotes | |
| [a](#co_footnoteReference_Fa105705367_ID0EKKA) | Gary C. Randall, Professor of Law Gonzaga University College of Law. |
| [aa](#co_footnoteReference_Faa105705367_ID0E3K) | Katti Telstad, 1995 graduate, Gonzaga University College of Law. |
| [1](#co_footnoteReference_F1105705367_ID0EWMA) | With apologies to Arlo Guthrie and “This Land Is Your Land.” |
| [2](#co_footnoteReference_F2105705367_ID0EYCA) | [25 U.S.C. SS 461](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=25USCAS461&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), [462 (1988)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=25USCAS462&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)); American Indian Law Deskbook 99 (Conference of Western Attorneys General, 1993) (hereinafter Deskbook); Joseph W. Singer, [Sovereignty and Property, 86 N.W.U.L. Rev. 1 (1991)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=0100997696&pubNum=1214&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LR&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). |
| [3](#co_footnoteReference_F3105705367_ID0EADA) | Carole E. Goldberg, Public Law 280: The Limits of State Jurisdiction Over Reservation Indians, 22 UCLA L. Rev. 535 (1975). |
| [4](#co_footnoteReference_F4105705367_ID0EFDA) | The community property states are: Washington, Idaho, California, Arizona, New Mexico, Nevada, Texas, Louisiana and Wisconsin. W.S. McClanahan, Community Property in the United States S1.1, at 2 (1982).  Note that since preparation of this Article the Washington Supreme Court has determined, in response to a certification from the United States Tax Court, that Washington community property law does extend to the Indian Reservations and Indian Country located within the State of Washington. Estate of Millie [Cross v. Commissioner of Internal Revenue, 126 Wash.2d 43, 891 P.2d 26 (1995)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1995077537&pubNum=661&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)); see infra notes 22, 70 & 71. The authors believe that the determination is incorrect. |
| [5](#co_footnoteReference_F5105705367_ID0ENDA) | On the general subject of federal preemption, see Harry M. Cross, The Community Property Law in Washington, 61 Wash. L. Rev. 14 (1986). Restrictions on dispositions of reservation allotments are further described in the Deskbook supra note 2, at 21-27. |
| [6](#co_footnoteReference_F6105705367_ID0ERDA) | Goldberg, supra note 3, at 581. |
| [7](#co_footnoteReference_F7105705367_ID0EAEA) | [McClanahan v. Arizona State Tax Comm’n, 411 U.S. 164 (1973)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1973126361&pubNum=780&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). In particular the Supreme Court’s approval of a statement in a text by the U.S. Department of Interior: “State laws generally are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that State laws shall apply.” [Id. at 170-71](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1973126361&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) (quoting Federal Indian Law 845 (1958)). |
| [8](#co_footnoteReference_F8105705367_ID0E5EA) | William Q. DeFuniak & Michael J. Vaughn, Principles of Community Property S 91, at 220-21 (2d ed. 1971); Norvie L. Lay, Community Property in Common Law States: A Comparative Analysis Of Its Treatment In Foreign Jurisdictions, 41 Temp. L.Q. 1 (1967). |
| [9](#co_footnoteReference_F9105705367_ID0ECFA) | [Keller v. Department of Revenue, 642 P.2d 284 (1982)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1982113001&pubNum=661&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). Wife domiciled in Oregon, Husband in Washington. Half of Husband’s income allocated to Wife for Oregon state income tax purposes under community property principles. |
| [10](#co_footnoteReference_F10105705367_ID0E2F) | Lay, supra note 8. |
| [11](#co_footnoteReference_F11105705367_ID0EIG) | [Worcester v. Georgia, 31 U.S. 515, 557 (1832)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1800140351&pubNum=780&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&fi=co_pp_sp_780_557&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_557); see also [McClanahan v. Arizona State Tax Comm’n, 411 U.S. 164, 168 (1973)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1973126361&pubNum=780&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&fi=co_pp_sp_780_168&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_168). |
| [12](#co_footnoteReference_F12105705367_ID0ELG) | [18 U.S.C. S 1151 (1988)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=18USCAS1151&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) defines Indian country as:  Except as otherwise provided in sections 1154 and 1156 of this title, the term “Indian Country,” as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian Communities within the borders of the United States whether within the original or subsequent acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.  Even though this statute is found in the section dealing with Indian criminal law, the Supreme Court has found this statute also defines Indian country for civil law purposes as well. [DeCoteau v. District County Court, 420 U.S. 425, 427 n.2 (1975)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1975129747&pubNum=780&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&fi=co_pp_sp_780_427&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_427). |
| [13](#co_footnoteReference_F13105705367_ID0EPG) | [California v. Cabazon Band of Mission Indians, 480 U.S. 202, 207 (1987)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1987024297&pubNum=780&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&fi=co_pp_sp_780_207&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_207). |
| [14](#co_footnoteReference_F14105705367_ID0EBH) | McClanahan, supra note 4, S 7:14, at 400. |
| [15](#co_footnoteReference_F15105705367_ID0EGH) | McClanahan, supra note 4, S 9:12, at 466. |
| [16](#co_footnoteReference_F16105705367_ID0ELH) | McClanahan, supra note 4, S 11:5, at 511. |
| [17](#co_footnoteReference_F17105705367_ID0EQH) | [I.R.C. S 1014(b)(6)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1012823&cite=26USCAS1014&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RB&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_61d20000b6d76) (1988). |
| [18](#co_footnoteReference_F18105705367_ID0EUH) | McClanahan, supra note 4, SS 10:1 to :12, at 478-501. |
| [19](#co_footnoteReference_F19105705367_ID0EHI) | [Poe v. Seaborn, 282 U.S. 101 (1930)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1930122553&pubNum=780&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). |
| [20](#co_footnoteReference_F20105705367_ID0EMI) | [I.R.C. S 66 (1988 & Supp. V 1993)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1012823&cite=26USCAS66&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) provides some limited relief from liability for spouses who do not significantly share in community income. A discussion of [S 66](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1012823&cite=26USCAS66&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) is outside of the scope of this article. |
| [21](#co_footnoteReference_F21105705367_ID0EPI) | Pub. L. No. 83-280, 67 Stat. 588 (1953) (codified as amended in scattered sections of 18, 26 U.S.C.) (hereinafter referred to as “Public Law 280”). |
| [22](#co_footnoteReference_F22105705367_ID0EWI) | Estate of Millie Cross, Deceased, Silas V. Cross, Administrator, v. Commissioner of Internal Revenue, Docket No. 24163-90 (United States Tax Court, filed November 29, 1990). Community Property issue certified by the United States Tax Court to the Washington State Supreme Court, No. 61961-1 (Aug. 8, 1994). |
| [23](#co_footnoteReference_F23105705367_ID0EFJ) | [Bryan v. Itasca County, Minnesota, 426 U.S. 373, 379-380 (1976)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1976142397&pubNum=780&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&fi=co_pp_sp_780_379&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_379) (citing Carole E. Goldberg, Public Law 280: The Limits of State Jurisdiction Over Reservation Indians, 22 UCLA L. Rev. 535, 540-544 (1975)). |
| [24](#co_footnoteReference_F24105705367_ID0EIJ) | Prior to Public Law 280, there existed an absence of adequate tribal institutions for law enforcement on Indian Reservations. The tribes lacked the resources to adequately organize to perform function of law enforcement. Additionally, the tribes lacked forums to resolve civil disputes. [Bryan, 426 U.S. at 379-380](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1976142397&pubNum=780&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&fi=co_pp_sp_780_379&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_379) (citing H.R. Rep. No. 848, 83d Cong., 1st Sess., 5-6 (1953), reprinted in 1953 U.S.C.C.A.N. 2409, 2411-2412). |
| [25](#co_footnoteReference_F25105705367_ID0ENJ) | Goldberg, supra note 3, at 541. |
| [26](#co_footnoteReference_F26105705367_ID0E4J) | [25 U.S.C. S 1322(a)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=25USCAS1322&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RB&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_8b3b0000958a4) (1988) (emphasis added). |
| [27](#co_footnoteReference_F27105705367_ID0E4K) | [28 U.S.C. S 1360 (1988)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=28USCAS1360&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)); [18 U.S.C. S 1162 (1988)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=18USCAS1162&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). |
| [28](#co_footnoteReference_F28105705367_ID0ECL) | [28 U.S.C. S 1360 (1988)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=28USCAS1360&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). |
| [29](#co_footnoteReference_F29105705367_ID0EGL) | Florida, Iowa, Nevada, North Dakota, South Dakota and Utah have assumed full jurisdiction under Public Law 280: [Fla. Stat. Ann. S 285.16 (West 1991)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS285.16&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)); Iowa assumed civil jurisdiction over actions between Indians and other persons within the Sac and Fox Indian settlement in Tama county, [Iowa Code Ann. S 1.12 (West 1989)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000256&cite=IASTS1.12&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)); Nevada assumed civil and criminal jurisdiction over the Indian tribes within the state that consented to the jurisdiction, [Nev. Rev. Stat. Ann. S 41.430](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST41.430&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) (Michie 1986); North Dakota assumed civil jurisdiction over the Indian tribes if the tribes consented to the jurisdiction, [N.D. Cent. Code SS 27-19-01](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1002016&cite=NDST27-19-01&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) to  -13 (1991); [S.D. Codified Laws Ann. SS 1-1-12](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000359&cite=SDSTS1-1-12&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) to -21 (1992); [Utah Code Ann. SS 9-9-201](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000511&cite=UTSTS9-9-201&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) to -213, repealed by S 63-55-209, effective July 1, 1995 (Michie 1992 & Supp. 1994). Prior to the adoption of Public Law 280, Congress gave New York criminal and civil jurisdiction over the Indians within New York. [25 U.S.C. SS 232](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=25USCAS232&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), [233 (1988)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=25USCAS233&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). |
| [30](#co_footnoteReference_F30105705367_ID0ETL) | The eight subject matter areas that Idaho assumed jurisdiction over include: compulsory school attendance; juvenile delinquency and youth rehabilitation; dependent, neglected and abused children; insanities and mental illness; public assistance; domestic relations; operation and management of motor vehicles upon highways and roads maintained by the county or state, or political subdivision thereof. [Idaho Code S 67-5101](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS67-5101&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) (1989). The Idaho Code also provides for the state to assume additional concurrent civil and criminal jurisdiction where a tribe consents to the additional jurisdiction by the state. [Idaho Code S 67-5102](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000007&cite=IDSTS67-5102&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) (1989). |
| [31](#co_footnoteReference_F31105705367_ID0EWL) | The eight subject matter areas that Washington assumed jurisdiction over include: compulsory school attendance; public assistance; domestic relations; mental illness; juvenile dependency; adoption proceedings; dependent children; and the operation of motor vehicles upon public streets, alleys, roads and highways. [Wash. Rev. Code Ann. S 37.12.010 (West 1991)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST37.12.010&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). The Washington Code also provides for the state to assume additional civil and criminal jurisdiction where a tribe consents to the additional jurisdiction by the state. [Wash. Rev. Code Ann. S 37.12.021 (West 1991)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST37.12.021&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). |
| [32](#co_footnoteReference_F32105705367_ID0EZL) | Arizona only assumed criminal and civil jurisdiction over air pollution on Indian lands. [Ariz. Rev. Stat. Ann. S 49-561](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000251&cite=AZSTS49-561&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) (1988). |
| [33](#co_footnoteReference_F33105705367_ID0E5L) | [Washington v. Confederated Bands and Tribes of the Yakima Indian Nation, 439 U.S. 463 (1979)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1979108021&pubNum=780&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), reh’g denied, [440 U.S. 940 (1979)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1979232465&pubNum=780&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). This case held that Washington’s partial civil and criminal jurisdiction assumption over eight subject matter areas was constitutional. |
| [34](#co_footnoteReference_F34105705367_ID0ELM) | [25 U.S.C. S 1326 (1988)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=25USCAS1326&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). |
| [35](#co_footnoteReference_F35105705367_ID0EOM) | Public Law 280 states in this Article refers to both states required to assume jurisdiction and those states electing to assume jurisdiction under Public Law 280. |
| [36](#co_footnoteReference_F36105705367_ID0ESM) | This is only “arguable” in states such as Washington, which assumed criminal and civil jurisdiction over, among other things, “domestic relations.” [Wash. Rev. Code Ann. S 37.12.010](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST37.12.010&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) (1994). This might be limited to “traditional” forms of domestic relations, such as the divorce and child support provisions of Washington law, or it could be broad enough to include all aspects of Washington Revised Code Annotated Title 26 (Domestic Relations), which includes the community property laws of that state. [Wash. Rev. Code Ann. SS 26.16.010](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST26.16.010&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) - .250 (1986 & Supp. 1995). The states can not affect the ownership of trust property. Public Law 280; Cf. [County of Yakima v. Confederated Tribes and Bands of the Yakima Nation, 502 U.S. 251 (1991)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1992022722&pubNum=780&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). In any case, Indians living outside of Indian country are subject to the same rights and responsibilities as other state citizens under a state’s jurisdiction. |
| [37](#co_footnoteReference_F37105705367_ID0EGN) | See Goldberg, supra note 3. |
| [38](#co_footnoteReference_F38105705367_ID0EAO) | [Bryan, 426 U.S. at 385 n.10](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1976142397&pubNum=780&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&fi=co_pp_sp_780_385&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_385) (quoting Daniel H. Israel & Thomas L. Smithson, Indian Taxation, Tribal Sovereignty and Economic Development, 49 N.D. L. Rev. 267, 296 (1973)). Felix Cohen’s handbook on Indian Law states that “The courts have construed Public Law 280 to leave substantial governmental authority with the tribes, holding that the statute should be interpreted to delegate to the states that jurisdiction which Congress clearly intended to transfer.” Felix S. Cohen’s Handbook of Federal Indian Law 344-45 (1982) (emphasis added). |
| [39](#co_footnoteReference_F39105705367_ID0EUO) | [Confederated Tribes of the Colville Reservation v. State of Washington, 938 F.2d 146, 147 (9th Cir. 1991)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1991120007&pubNum=350&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&fi=co_pp_sp_350_147&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_350_147). See also Stephen L. Pevar, The Rights of Indians and Tribes: The Basic ACLU Guide to Indian and Tribal Rights 161 (2d ed. 1992); Sandra Hansen, [Survey of Civil Jurisdiction in Indian Country 1990, 16 Am. Indian L. Rev. 319, 338 (1991)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=0103108413&pubNum=1087&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LR&fi=co_pp_sp_1087_338&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_1087_338). |
| [40](#co_footnoteReference_F40105705367_ID0EYO) | Pevar, supra note 39, at 161. |
| [41](#co_footnoteReference_F41105705367_ID0E1P) | [28 U.S.C. S 1360 (1988)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=28USCAS1360&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). |
| [42](#co_footnoteReference_F42105705367_ID0ELQ) | [Bryan v. Itasca County, 426 U.S. 373 (1975)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1976142397&pubNum=780&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). |
| [43](#co_footnoteReference_F43105705367_ID0E1Q) | Id. |
| [44](#co_footnoteReference_F44105705367_ID0EOR) | Id. at 383-84 (emphasis added). |
| [45](#co_footnoteReference_F45105705367_ID0EMS) | Id. at 385. The opinion refers to another possible interpretation of S 4(a): Civil laws “would include the laws of contract, tort, marriage, divorce, insanity, descent. . . .” Id. at 384 n.10 (quoting Daniel H. Israel & Thomas L. Smithson, Indian Taxation, Tribal Sovereignty and Economic Development, 49 N.D. L. Rev. 267, 296 (1973)). Such an interpretation would include community property principles if a reservation is located in a Public Law 280 community property state. Another commentator suggests that the provision is really limited to the state court’s power to determine civil actions, as opposed to substantive civil law. Richard B. Collins, Implied Limitations on the Jurisdiction of Indian Tribes, 54 Wash. L. Rev. 479, 522 (1979). |
| [46](#co_footnoteReference_F46105705367_ID0E2S) | See supra note 31. |
| [47](#co_footnoteReference_F47105705367_ID0EDT) | [Wash. Rev. Code Ann. SS 26.16.010](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST26.16.010&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) - .250 (1986 & Supp. 1995) (dealing with property rights, child custody, the right of a couple to sue each other, and related concepts). |
| [48](#co_footnoteReference_F48105705367_ID0ERT) | Black’s Law Dictionary 484 (6th ed. 1990). |
| [49](#co_footnoteReference_F49105705367_ID0EEU) | In this respect, see supra note 36 and accompanying text. |
| [50](#co_footnoteReference_F50105705367_ID0EHV) | [Makah Indian Tribe v. Clallam County, 73 Wash. 2d 677, 440 P.2d 442 (1968)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1968128938&pubNum=661&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). |
| [51](#co_footnoteReference_F51105705367_ID0EMV) | [Id. at 678, 440 P.2d at 443.](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1968128938&pubNum=661&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&fi=co_pp_sp_661_443&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_661_443) |
| [52](#co_footnoteReference_F52105705367_ID0ERV) | [Id. at 682; 440 P.2d at 445.](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1968128938&pubNum=661&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&fi=co_pp_sp_661_445&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_661_445) |
| [53](#co_footnoteReference_F53105705367_ID0EVV) | Id. |
| [54](#co_footnoteReference_F54105705367_ID0ETW) | [Id. at 682-83, 440 P.2d at 445-46.](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1968128938&pubNum=661&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&fi=co_pp_sp_661_445&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_661_445) |
| [55](#co_footnoteReference_F55105705367_ID0ERX) | [Id. at 685, 440 P.2d at 446-47.](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1968128938&pubNum=661&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&fi=co_pp_sp_661_446&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_661_446) |
| [56](#co_footnoteReference_F56105705367_ID0EWX) | [Id. at 685, 440 P.2d at 447.](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1968128938&pubNum=661&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&fi=co_pp_sp_661_447&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_661_447) See [Wash. Rev. Code Ann. S 37.12.070](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST37.12.070&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) (1991); see also, supra note 41. |
| [57](#co_footnoteReference_F57105705367_ID0EIY) | [73 Wash. 2d at 684, 440 P.2d at 447.](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1968128938&pubNum=661&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&fi=co_pp_sp_661_447&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_661_447) |
| [58](#co_footnoteReference_F58105705367_ID0EXY) | This is, of course, contrary to usual community property principles. Under Washington law personal property is subject to management by either member of the marital community. [Wash. Rev. Code Ann. S 26.16.030 (West 1986)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST26.16.030&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). At the time the Makah case arose, management of community property in Washington was vested solely in the husband. [Wash. Rev. Code Ann. S 26.16.030](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST26.16.030&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), amended by Laws 1972, Ex. Sess., ch. 108 (1972). See also, Cross supra note 5, at 76. |
| [59](#co_footnoteReference_F59105705367_ID0E6Y) | [Wash. Rev. Code Ann. S 37.12.070 (West 1991)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000259&cite=WAST37.12.070&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). |
| [60](#co_footnoteReference_F60105705367_ID0ECZ) | Makah Indian Tribe, [73 Wash. 2d 677, 440 P.2d 492.](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1968128950&pubNum=661&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) |
| [61](#co_footnoteReference_F61105705367_ID0EJZ) | Although not a case arising in a Public Law 280 state, [Lonewolf v. Lonewolf, 657 P.2d 627 (N.M. 1982)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1983106614&pubNum=661&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), illustrates general acceptance of community property principles in Indian Country. New Mexico’s community property laws were applied to determine ownership of personal property located on the Santa Lara reservation. The case was strictly a jurisdictional matter. |
| [62](#co_footnoteReference_F62105705367_ID0EYZ) | [104 Idaho 1, 655 P.2d 895 (1982)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1982154526&pubNum=661&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). The case includes an excellent discussion of the background of Public Law 280 and tribal sovereignty. |
| [63](#co_footnoteReference_F63105705367_ID0E3Z) | Id. |
| [64](#co_footnoteReference_F64105705367_ID0EL1) | [Id. at 5, 655 P.2d at 899.](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1982154526&pubNum=661&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&fi=co_pp_sp_661_899&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_661_899) |
| [65](#co_footnoteReference_F65105705367_ID0EX1) | [Id. at 14, 655 P.2d at 908.](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1982154526&pubNum=661&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&fi=co_pp_sp_661_908&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_661_908) |
| [66](#co_footnoteReference_F66105705367_ID0EG2) | [Id. at 21, 655 P.2d at 915.](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1982154526&pubNum=661&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&fi=co_pp_sp_661_915&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_661_915) Mrs. Sheppard, on appeal, claimed otherwise as to their cattle operation, not on the basis the property was not subject to community property principles because of the inapplicability of Public Law 280, but because the property was “trust” property. That argument the Idaho Supreme Court summarily rejected. [Id. at 10, 655 P.2d at 904.](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1982154526&pubNum=661&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&fi=co_pp_sp_661_904&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_661_904) |
| [67](#co_footnoteReference_F67105705367_ID0EN2) | [Id. at 13, 655 P.2d at 907.](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1982154526&pubNum=661&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&fi=co_pp_sp_661_907&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_661_907) The court also concluded that Idaho community property principles were included in the general state provisions dealing with domestic relations. A later case also applied community property principles in a divorce setting. The applicability of community property on the reservation itself was not at issue. [Fisher v. Fisher, 104 Idaho 68, 656 P.2d 129 (1982)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1983100384&pubNum=661&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). In Sheppard, the Idaho Supreme Court did not sanction an award of the trust property or reservation property to the non-tribal member. It did, however, permit a reimbursement to him for community funds spent on such property. [104 Idaho at 21, 655 P.2d at 915 (1982)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1982154526&pubNum=661&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&fi=co_pp_sp_661_915&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_661_915). |
| [68](#co_footnoteReference_F68105705367_ID0E32) | [Sheppard, 104 Idaho at 20, 655 P.2d at 914.](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1982154526&pubNum=661&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&fi=co_pp_sp_661_914&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_661_914) This is not unusual in the case of tribes located in community property states. Tribal codes often closely reflect state community property rules. But the reflection is not perfect. See, e.g. the community property laws of New Mexico, [N.M. Stat. Ann. SS 40-3-1](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000036&cite=NMSTS40-3-1&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) to -17 (Michie 1994); cf. the Jicarilla Apache Tribal Code, Jicarilla Apache Tribal Code, tit. 3, SS 3 and 7 (1987). The latter is much shorter than the former. |
| [69](#co_footnoteReference_F69105705367_ID0EA3) | The adoption of the tribal code of community property principles indeed suggests that the issue was moot, whether or not Public Law 280 forced community property principles on reservations located in Idaho. |
| [70](#co_footnoteReference_F70105705367_ID0EP3) | In the Matter of Silas V. Cross, deceased. Case No. 92-2491, Order Allowing Final Account and Order of Distribution, September 30, 1992. The Tribal Court specifically found that “the community property laws of the State of Washington have no force or effect in this matter as the decedent was a Puyallup tribal member who lived and worked on trust lands within the exterior boundaries of the Puyallup Indian Reservation for his entire adult life.” A similar order was entered when his wife, Millie Cross, died. In the Matter of the Estate Of Millie Cross, deceased. Case No. 92-2445, Order Allowing Final Account and Order of Distribution, November 13, 1992. (The Puyallup Tribe has since adopted community property rules in its tribal code). See infra note 72. |
| [71](#co_footnoteReference_F71105705367_ID0E23) | See supra note 22. |
| [72](#co_footnoteReference_F72105705367_ID0EK4) | Inquiries where mailed to the 542 federally recognized Indian tribes in the United States. The Indian Tribes were asked if their tribe had adopted Community Property laws. The individual Indian tribes that responded had no consistent opinion on whether community property laws applied to the Indians in Indian country (records on file, Gonzaga University College of Law; copies on file, University of Idaho, College of Law). |
| [73](#co_footnoteReference_F73105705367_ID0EN4) | For example, the Lummi Indian Business Council has adopted community property laws. Lummi Indian Nation Tribal Code SS 11.3.01 - .04. See also Letter from Shirley Leckman, Reservation Counsel, Lummi Indian Business Council, to Katti Telstad, Gonzaga University School of Law (Nov. 8, 1994) (on file with the University of Idaho Law Review). |
| [74](#co_footnoteReference_F74105705367_ID0EQ4) | The Kalispell Tribe believes that the community property laws of Washington apply to the Kalispell Reservation on a concurrent basis. Additionally, the Kalispell tribe has not adopted its own community property laws. Letter from Dave Bonga, Kalispell Tribe of Indians, to Katti Telstad, Gonzaga University School of Law (Sept. 13, 1994) (on file with the University of Idaho Law Review). |
| [75](#co_footnoteReference_F75105705367_ID0EU4) | The Tulalip Tribe has not adopted the community property laws of Washington. Letter from Tulalip Tribe to Katti Telstad, Gonzaga University School of Law (on file with the University of Idaho Law Review). The Port Gamble S’Klallam Tribe has not adopted community property laws either. Letter from Tallis Woodward, Tribal Attorney, Port Gamble S’Klallam Tribe, to Katti Telstad, Gonzaga University School of Law (Sept. 12, 1994) (on file with the University of Idaho Law Review). |
| [76](#co_footnoteReference_F76105705367_ID0ED6) | Indian Tribal Codes: A Microfiche Collection of Indian Tribal Law Codes 22 (Ralph Johnson & Richard Davies eds., 1988). |
| [77](#co_footnoteReference_F77105705367_ID0EAA) | Id. at 23. |
| [78](#co_footnoteReference_F78105705367_ID0ESA) | Id. at 23. |
| [79](#co_footnoteReference_F79105705367_ID0EVA) | Lummi Indian Nation Tribal Code SS 11.3.01 - .04. See also Letter from Shirley Leckman, Reservation Counsel, Lummi Indian Business Council, to Katti Telstad, Gonzaga University School of Law (Nov. 8, 1994) (on file with the University of Idaho Law Review). |
| [80](#co_footnoteReference_F80105705367_ID0EYA) | Swinomish Tribal Community Code SS 9-3.010 - .140. See also Letter from Rusty Kuntze, Swinomish Indian Tribal Community, to Katti Telstad, Gonzaga University College of Law (Sept. 6, 1994) (on file with the University of Idaho Law Review). |
| [81](#co_footnoteReference_F81105705367_ID0E2A) | Fort Belknap Indian Community Tribal Code tit. IX (1979). |
| [82](#co_footnoteReference_F82105705367_ID0E5A) | Yavapai Prescott Indian Tribal Code S 3.10 (1979). |
| [83](#co_footnoteReference_F83105705367_ID0EBB) | Yerington Paiute Tribal Code SS 9.30.010 - .70 (1977). |
| [84](#co_footnoteReference_F84105705367_ID0EEB) | Colville Confederated Tribes Tribal Code S 13.5.03(5) (1987). |
| [85](#co_footnoteReference_F85105705367_ID0EHB) | Chehalis Tribal Code SS 11.3.01 - .04 (1985). |
| [86](#co_footnoteReference_F86105705367_ID0ELB) | Brief for Petitioner at 3, Estate of Cross v. Commissioner of Internal Revenue, issue certified to Washington State Supreme Court (No. 61961-1) (Aug. 8, 1994). |
| [87](#co_footnoteReference_F87105705367_ID0EEC) | [Commissioner of Internal Revenue v. Estate of Bosch, 387 U.S. 456, 465 (1967)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1967129537&pubNum=780&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&fi=co_pp_sp_780_465&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_465). |
| [88](#co_footnoteReference_F88105705367_ID0EOC) | Id. |
| [89](#co_footnoteReference_F89105705367_ID0EBD) | See supra note 22. |
| [90](#co_footnoteReference_F90105705367_ID0EPD) | As an illustration of just how difficult this can be, consider the comment in a 1981 discussion of Indian Tribal Codes: “Tribal law can be either written or oral. Tribal law that is generally known and observed by the tribal community as a whole, but that is not written down, typically is described as • Customary law.’ . . . In theory, customary oral law and written law have equal weight when presented to a tribal court.” Indian Tribal Codes: A Microfiche Collection of Indian Tribal Law Codes 8-9 (Ralph W. Johnson & Susan Lupton eds., 1981). |
| [91](#co_footnoteReference_F91105705367_ID0ELE) | McClanahan, supra note 4, at 405-30. See also [Rev. Rul. 77-359, 1977-2 C.B. 24](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1977019348&pubNum=0001048&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=CA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) (oral agreement sufficient to change the status of personal property then owned and thereafter acquired in the State of Washington); [Naegle v. Commissioner, 24 T.C.M. (CCH) 1099 (1965)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1965001021&pubNum=1620&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), aff’d on other grounds, [378 F.2d 397 (1967)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1967116944&pubNum=350&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), cert. denied, [390 U.S. 927 (1968)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1968201760&pubNum=780&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) (oral agreement in Arizona sufficient to change community into separate income); [Lucia v. Commissioner, 61 T.C.M. (CCH) 1982 (1991)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1991044688&pubNum=1620&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) (California spouse failed to prove oral agreement that husband’s income would not be community income). |
| [92](#co_footnoteReference_F92105705367_ID0EPE) | McClanahan, supra note 4, at 405-30. |
| [93](#co_footnoteReference_F93105705367_ID0EFF) | See supra note 83. |
| [94](#co_footnoteReference_F94105705367_ID0E3F) | See supra note 3. |
| [95](#co_footnoteReference_F95105705367_ID0E6F) | [Whyte v. District Court of Montezuma County, 346 P.2d 1012 (Colo. 1959)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1960120161&pubNum=661&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)); [In re Marriage of Limpy, 636 P.2d 266 (Mont. 1981)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1981147780&pubNum=661&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). |
| [96](#co_footnoteReference_F96105705367_ID0EEG) | [Sanders v. Robinson, 864 F.2d 630, 634 (9th Cir. 1988)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1988165865&pubNum=350&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&fi=co_pp_sp_350_634&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_350_634). Contra [Harris v. Young 473 N.W.2d 141, 142, 147 (S. D. 1991)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1991120099&pubNum=595&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&fi=co_pp_sp_595_142&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_595_142). |
| [97](#co_footnoteReference_F97105705367_ID0EIG) | [Wells v. Wells, 451 N.W.2d 402, 406 (S.D. 1990)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1990036656&pubNum=595&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&fi=co_pp_sp_595_406&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_595_406). |
| [98](#co_footnoteReference_F98105705367_ID0EWG) | See, e.g. [Lonewolf v. Lonewolf, 657 P.2d 627 (N.M. 1982)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1983106614&pubNum=661&originatingDoc=Ic6fb89415adc11dbbd2dfa5ce1d08a25&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). In most instances of marital divisions the actual status of the property may be irrelevant in any event. Divorce courts tend to divide property acquired during a marriage by other than inheritance or gift in an “equitable” manner, whether the jurisdiction is a community or non community property state. |
| [99](#co_footnoteReference_F99105705367_ID0EUH) | DeFuniak & Vaughn, supra note 8, at 38-9. |

31 IDLR 1071

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