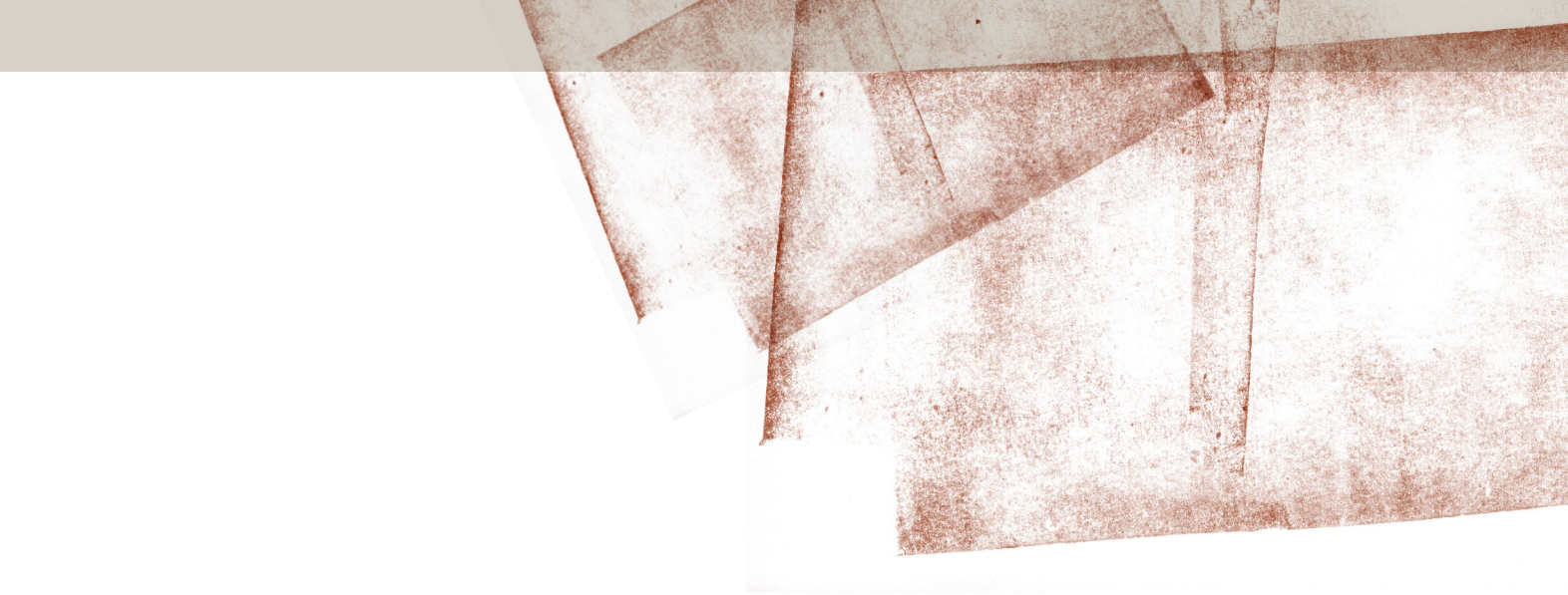
Tribal Court Comity

Settled Areas of the Law

THOMAS H. ANTHONY AND JILL N. LAUDERMAN



One of the cornerstones of real property law is that, typically, state courts have the exclusive power or jurisdiction to determine the rights of competing parties to lands situated within that state. Occasionally, the courts of one state will be presented with claims or issues related to land that is in a foreign state

For example, Michigan courts regularly deal with decedents that are Michigan residents and die owning real property in a foreign state. The Michigan courts have long recognized that in order to determine the rights of heirs or other competing parties that contest ownership of the real property, ancillary proceedings must be brought in the foreign state's courts. In other words, if the decedent owned real property in another state at the time of his death, then the Michigan courts could not determine the claims to that real estate because they lack the jurisdictional authority to do so. Similarly, given the proliferation of tribal courts throughout the United States, this article is merely emblematic of issues routinely faced in the interplay between tribal and state courts.[1]

The above foundational principles of real property law with respect to the jurisdiction of lands situated within that state seem to be settled areas of the law. However, this is not the case when we ask about civil jurisdiction of Indian tribal governments with respect to a competing party's rights to lands situated within the state and within reservation boundaries. This article will address and shed light on evolving topic of Indian tribal government civil jurisdiction in relation to tribal property and the competing jurisdictional interplay between state and tribal courts.

A Brief History of Indian Country Civil Jurisdiction

A brief history is essential in the understanding of doctrinal developments in the field of Indian law.[2] By looking back at the history of government–Indian relations, we are able to better grasp our current national policy and recognize that there has been great fluctuation in Indian legal policy from era to era. The United States has undergone drastic shifts in policy regarding Indian tribal jurisdiction and power over the short course of our country's history; however, it remains clear that tribal sovereignty is inherent.[3] This sovereignty gives tribes the right to control and govern their own internal affairs.[4] The historical eras of Indian policy are as follows: Pre-Constitutional Precedents Era, Removal Era, Allotment and Assimilation Era, Reorganization Era, Termination Era, and the modern Self-Determination Era.[5]

The earliest era is described as the Pre-Constitutional or Colonial Era, during which the Proclamation of 1763 was put into effect by the British. This policy created a boundary line between the British colonies in the New World and the Indians. The boundary line, set west of the Appalachian Mountains, prevented colonists from moving into Indian territory. Later, in 1780, Congress passed numerous Indian Intercourse Acts. These acts did many things, including regulating relations between Indians and non-Indians living on land that was then defined as "Indian country."[6] Indian Country is defined by statute and generally applies when there is a question of federal civil jurisdiction and tribal jurisdiction.[7] Indian Country is defined as:

> (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 subsequently acquitted territory thereof, and whether within or without the limits of the State, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.[8]

During this time, the federal government generally recognized the inherent sovereignty of the tribes through the U.S. Supreme Court's decisions in the Marshall Trilogy cases.[9] The cases of *Johnson v. M'Intosh*,[10] *Cherokee Nation v. Georgia*,[11] and *Worcester v. Georgia*[12] helped to shape the early balance of power between the federal government and the states and defined the basic framework of federal Indian law.[13]

Despite the decisions of then-Chief Justice John Marshall, the Removal Era was marked by policy effectuating the brutal removal of Indians from their native territories. After the Louisiana Purchase of 1803 and westward expansion of the settlers, Indian land was viewed as fertile, uninhabited land that was ripe for picking.[14] As the Indian tribes resisted the demand to relinquish their land through the signing of treaties, the federal government accelerated the policy of removal.[15] These land disputes led to the passing of the Indian Removal Act of 1830, which authorized President Andrew Jackson to relocate the Indians to land in the West in exchange for their territory in the eastern United States.[16] Removing the tribes to parcels in the West freed up a vast area of land that was now available for white settlement.[17] Many tribes were encouraged, incentivized, and coerced to sign treaties of cession and relocate their peoples to new territories.[18] The Choctaw, Seminole, Creek, Chickasaw, and Cherokee tribes were eventually forcibly relocated to designated lands.[19] One of the most infamous removals—that of the Cherokee Nation—which was known as the "Trail of Tears."[20]

After removal, came the Allotment and Assimilation Era. The federal government wanted more control over Indian affairs; therefore, it terminated treaty-making in exchange for agreements.[21] This era was marked by the passing the numerous Allotment Acts, which authorized President Grover Cleveland to survey Indian tribal land and divide the area into parcels of varying size for individual Indians and their families.[22] The Allotment Act (also known as the Dawes Act) was implemented when the President, in his discretion, deemed it was advantageous for particular Indian nations.[23] This Act, and others implemented at the same time, were methods of assimilating tribes into the dominant, non-Native culture.[24] Allotment had a devastating effect on Indian tribes, not only decreasing the amount of land owned but also causing a drastic decline in populations.[25] Allotment removed an estimated 90 million acres of territory from Indian control, creating a checkerboard pattern of ownership that resulted in a loss of access to many important sacred sites.[26]

Similarly, the U.S. government maintained that it had jurisdiction over interracial crimes under the Indian Country Crimes Act and major crimes as enumerated under the Major Crimes Act occurring on tribal lands.[27] This position was upheld by the Supreme Court in 1886, which created a new level of interference by the U.S. government in the internal affairs of Indian tribes.[28]

Moving into the Reorganization Era, there was an undertaking to stop the destruction of tribes and instead move toward tolerance and respect for traditional aspects of Indian culture.[29] In the late 1920s, the Merriam Report, a nongovernmental study of the Indian Bureau, examined the administration of Indian policy and its effect on Indian life.[30] The findings acted as a catalyst for change, shedding light on the deplorable living conditions of the Indians.[31] The report exposed that an overwhelming majority of Indians suffered from disease, poverty, and disconnect from society.[32] The report was a precursor to the passage of the Indian Reorganization Act[33] in 1934, which established protection for tribes and affirmed their inherent authority of self-governments.[34] The Reorganization Era reinforced the precedent set forth in *Worcester v. Georgia*[35] that Indian tribes were considered separate, sovereign nations that should interact with modern society rather than be forced to assimilate.[36]

Shortly after reorganization, attacks on the Indian Reorganization Act (IRA) in the late 1930s signaled the beginning of a new policy era. A push to end the IRA and adopt policies that would effectively terminate the federal–tribal relationship and the perceived special status for Indians drove the nation in the years between the attacks on Pearl Harbor and the election of John F. Kennedy.[37] This resulted in a number of new and modified Indian programs that concerned Indian lands, health, education, criminal law, taxation, and resource development.[38]

Termination became the official policy in the 1950s; in a narrow sense, termination was an experiment imposed on a small number of tribes that ended, in virtually all respects, the special relationship between those tribes and the federal government.[39] Those tribes not directly terminated were subjected to a series of laws that transferred important areas of responsibility from the Bureau of Indian Affairs to other federal agencies and to the states.[40] Vast acreages of Indian land were allowed to pass out of Indian hands, while Indians were encouraged to seek employment off the reservations. This is evidenced by both cultural and economic losses.[41]

The policy of termination was deemed a failure by the late 1960s, and the modern policies of tribal self-determination quickly followed. Self-determination operated to promote the inherent sovereign power held by Indian tribes.[42] The foundation policies of self-determination and self-governance were articulated in speeches delivered by

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President Lyndon B. Johnson and, later, President Richard M. Nixon. In 1968, Johnson proposed "a new goal for our Indian programs: A goal that ends the old debate about 'termination' of Indian programs and stresses self-determination [as] a goal that erases old attitudes of paternalism and promotes partnership and self-help."[43] This modern policy gives tribes the ability to make decisions, develop economically and preserve their cultural heritage.[44]

This changing policy toward Indian tribes has resulted in a growing recognition of the inherent authority of Indian tribes to govern themselves and their territories.[45] Thus, while the power of Indian tribes over non-Indians and nontribal members is limited by federal law and treaties, tribal jurisdiction in dealing with matters arising within Indian Country are now sometimes within the exclusive domain of tribal jurisdiction.[46]

Real Property Disputes

The need for a reciprocal and cross-jurisdictional approach to the enforcement of civil judgments between state and tribal courts may be evidenced by those situations in which state courts render judgments that include matters related to tribal lands. As indicated in the historical overview, tribal governments have the inherent power to control the land located within the tribal boundaries known as Indian Country.[47] Thus, the need for reciprocity in enforcement of civil judgments between the state and tribal courts should be apparent.

As to the enforcement of tribal judgments in state court, this is often addressed by the adoption of state court rules that specify a process for the recognition of a tribal judgment.[48] Similarly, the tribal courts have permitted the certification of state court judgments.[49] This idea of the respective courts honoring each other's judicial decrees may well result in the reduction of judicial inefficiencies by permitting both state and tribal courts to grant comity to each other's decisions.

Typical of such situations would be a state court divorce action in which the parties have an interest in real property that is located within tribal boundaries. In those cases, it has long been established that the state court is limited in its ability to determine the litigants' claims to real property that is located in a different state or forum.[50]

For example, in a divorce action that is brought in the state of Michigan, the courts are obligated to make a division of the marital estate. This is set forth at M.C.L.A. § 552.19 which states:

> Upon the annulment of a marriage, a divorce from the bonds of matrimony or a judgment of separate maintenance, the court may make a further judgment for restoring to either party the whole, or such parts as it shall deem just and reasonable, of the real and personal estate that shall have come to either party by reason of the marriage, or for awarding to either party the value thereof, to be paid by either party in money.[51]

Normally during a divorce proceeding, the division of the marital estate is left to the equity of the court in which the divorce action is being maintained. However, when the competing parties have real property in a different state or other foreign forum, the Michigan courts lack the jurisdiction or power to determine the competing title claims to the property in the foreign forum.

This limitation on one state court to determine the title issues related to real property in another state has long been resolved by the 1909 U.S. Supreme Court in *Fall v. Eastin.*[52] In *Fall,* the state of Washington granted a divorce to the parties. Included in the judgment of divorce was a determination as to the rights of the competing parties regarding their respective interests in real estate in Nebraska.[53]

Prior to moving to Washington, Ms. W. H. Eastin married Mr. E. W. Fall in Indiana in 1876.[54] Subsequently, the parties moved to Nebraska and, while living there, they acquired an interest in certain real property.[55] In 1889, the parties again relocated, this time to Washington, and resided there as husband and wife until 1895, when Eastin filed a divorce action in the Washington state courts.[56]

During the divorce action, the parties sought to have their respective rights decided as to the Nebraska real estate that had been acquired earlier in their marriage.[57] In granting the decree of divorce, the Washington court awarded the Nebraska real estate to the wife.[58] Fall was ordered to convey all of his rights, title, and interest to the property within five days from the date of judgment.[59] However, Fall failed to do so, and his ex-spouse sued for enforcement of the Washington judgment in Nebraska.[60]

Eastin argued that under the full faith and credit clause of the U.S. Constitution, Nebraska was obligated to honor and enforce the judgment of divorce previously granted by the Washington court.[61] She also went on to argue that the full faith and credit clause provides that sister states *must* give credence to judgments that have been properly entered in a different state.[62] In other words, according to the Eastin, there should be a finality to the issues previously litigated between the competing parties, and the other states should enforce the provisions of their sister state's judgments. In *Fall,* the plaintiff argued that the mere fact that one party moves or relocates to another state does not entitle that party to the opportunity to re-litigate the issues in the new state's courts. Rather, Eastin argued, the earlier judgment should be enforced by the new state's courts.[63]

In *Fall,* there was no dispute that the Washington court had jurisdiction over the parties and the subject matter—that is, the granting or denial of the requested divorce and the division of the parties' marital estate.[64] Thus, at first glance it would appear that because the matter was previously determined by the Washington courts, the Nebraska court should simply adhere to the earlier ruling.

However, Fall disagreed and questioned whether the Washington court had the power and jurisdiction to determine title to the land in Nebraska. He argued against the enforcement of the Washington judgment in the Nebraska courts. The matter was appealed and eventually made its way to the U.S. Supreme Court.[65] In reaching its decision, the Supreme Court agreed with the ex-husband and held that the Washington court could *not* transfer title to the Nebraska real estate.[66]

The Supreme Court in *Fall* made it clear that the Washington court had neither the power nor the jurisdiction to affect in the least, either legally or equitably, the land in Nebraska.[67] As the Nebraska state court stated in its decision, "Under the laws of this state, the courts have no power or jurisdiction in a divorce proceeding, except as derived from the statute providing for such actions, and in such an action, have no power or jurisdiction to divide or apportion the real estate of the parties."[68]

Noting a holding from a similar case, the Supreme Court in *Fall* went on to state:

> "[N]o principle is better established than that of the disposition of real estate, whether by deed, descent, or by any other mode, must be governed by the law of the state where the land is situated."[69]

The *Fall* Court rejected the argument that the Nebraska court was required to simply enforce the Washington judgment of divorce pursuant to the full faith and credit provision of the Constitution.[70] The *Fall* Court opined:

> This doctrine is entirely consistent with the provision of the Constitution of the United States, which requires a judgment in any state to be given full faith and credit in the courts of every other state. This provision does not extend the jurisdiction of the courts of one state to property situated in another, … It does not carry with it into another state the efficacy of a judgment upon property or persons, to be enforced by execution. To give it the force of a judgment in another state, it must be made a judgment there; and can only be executed in the latter as its laws may permit.[71]

The *Fall* Court reiterated its position taken in an earlier case that addressed a similar issue, explaining that "a decree cannot operate beyond the state in which the jurisdiction is exercised."[72]

Ergo, the Supreme Court ruled in *Fall* that the out-of-state judgment of divorce from Washington was not determinative of the ownership interests to the real property in Nebraska, the foreign state.[73] This principle handed down by the Supreme Court in *Fall* has been consistently upheld, and the concept that states cannot affect the title to real property in another state has become one of the cornerstones of American jurisprudence. Questions of title to real property and the interests of the competing parties are to be determined in the state where the property is located.[74]

However, the *Fall* decision does not resolve the question as to what authority, if any, a judgment by a foreign *country* or sovereign nation, such as an Indian tribe, has in the state court regarding the rights and privileges of its citizens or inhabitants. Alternatively, what authority, if any, does a state court have over any lands in a foreign country or sovereign nation, such as tribal lands?

As the Michigan courts have noted, a judgment or determination by a foreign country or sovereign nation is not entitled to full faith and credit.[75] Rather, if such a judgment is to be given any effect, it must be under the doctrine of comity.

In the decision of *Bang v. Park,*[76] the Michigan Court of Appeals addressed the dichotomy between the doctrine of full faith and credit and the doctrine of comity. In *Bang,* Mr. Joon Hong Park was the former husband of Ms. Jeong Suk Bang. The marriage was dissolved by order of a Korean court, and Park was ordered to pay Bang a sum of money over a period of time. Subsequent to the Korean court order to pay the plaintiff money, the defendant defaulted on the payments. Bang then brought suit in Michigan courts to enforce the Korean divorce judgment. At the time of the proceedings in the Michigan courts, Park was a Michigan resident. The main issue of the *Bang* case was whether the Korean divorce judgment could be enforced against Park in Michigan courts.

Taking cues from the U.S. Supreme Court cases on point, according to the *Bang* court, the full faith and credit clause of the Constitution does not apply to judgments obtained in another country.[77] U.S. courts are not required by federal law to give full force and effect to a judgment granted in another country.[78] However, the foreign judgment may be recognized under the doctrine of comity and given effect.[79]

Comity was defined by the *Bang* court as "the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of its laws."[80] Utilizing the doctrine of comity, the Michigan Court of Appeals ruled that the Korean judgment was valid against Park.[81]

In the later 1999 decision of *Dart v. Dart,*[82] the Michigan Supreme Court applied the doctrine of comity to a divorce judgment that was issued by the courts of England.[83]

This couple was married in 1980, and at that time they were residents of Okemos, Michigan.[84] They relocated to England in 1993 and began dividing their time between Michigan and England. When they left Michigan in 1993, they owned a large home on 39 acres in Okemos valued at approximately $1.5 million.[85] In 1993, the husband was informed that he had been named as a beneficiary of a family trust worth several hundred million dollars.[86] However, to receive the trust bequest, the husband was required to renounce his American citizenship and become an English citizen.[87] He took the necessary steps to conform to the trust directives and received the trust funds. Conversely, the wife decided to retain her U.S. citizenship and declined to become an English citizen. Similarly, she refused to change the citizenship of their children, and they also remained American citizens.[88]

In 1995, the husband filed for divorce in England.[89] The wife responded by initiating her own divorce action in Michigan four days later. At the time, the parties owned real property in England and Michigan. The English court granted the husband's request for divorce in October 1995.[90] Per the judgment, his ex-wife was awarded a lump sum of $13.5 million, the home in Michigan, and various items of personal property.[91]

Subsequently, he filed a motion to dismiss the Michigan action in March 1996. The motion for dismissal was based on the theories of res judicata and comity.[92] He maintained that the English court had already decided all issues between the parties; thus, there was no longer any need for the Michigan court to be involved.

In the *Dart* decision, the Michigan Supreme Court adopted the *Bang* court's[93] definition of comity as "the recognition which one nation allows within its territory to the … judicial acts of another."[94]

The *Dart* Court went on to state that comity mandates that the English decree of divorce be given force and effect in Michigan.[95] In rendering this decision, the court cited extensively from U.S. Supreme Court case *Hilton v. Guyot* and opined,

> Where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, … after voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, of fraud in the procuring of the judgment, or any other special reason why the comity of this nation should not allow if full effect, the merits of the case should not, in an action

> brought in this country upon the judgment, be tried afresh, as on a new trial or an appeal, upon the mere assertion that the judgment was erroneous in law or in fact.[96]

In the *Dart* case, the wife participated fully in the English court proceedings. She was unable to demonstrate that there was any basis (fraud, prejudice, denial of due process, etc.) to deny the English decree comity and uphold the decision regarding the disposition of the Michigan property by the English court.[97] The Michigan Supreme Court opined that the mere fact that she was unsatisfied with the decree handed down by the English court did not give her the basis or right to what would amount to a new trial or an appeal through the Michigan proceedings she filed.

Furthermore, according to the Michigan Supreme Court, one of the goals of a judicial decision is to bring finality to the disputes between the competing parties and not to permit re-litigation of the same issues between the same parties merely because one party brings a new action in a different venue. The *Dart* Court addressed this matter, and opined:

Furthermore, according to the Michigan Supreme Court, one of the goals of a judicial decision is to bring finality to the disputes between the competing parties and not to permit re-litigation of the same issues between the same parties merely because one party brings a new action in a different venue.

> [R]es judicata bars the plaintiff from re-litigating the property distribution issue. The English court decided this issue on the merits. Res judicata bars a subsequent action between the same parties when the evidence or essential facts are identical. … A second action is barred when (1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first, and (3) both actions involve the same parties … Michigan courts have broadly applied the doctrine of res judicata. They have barred, not only claims already litigated, but every claim arising from the same transaction that the parties exercising reasonable diligence, could have raised, but did not.[98]

Therefore, the Michigan Supreme Court was not going to give the ex-wife the proverbial second bite of the apple merely because she did not like the earlier decree by the English courts. Rather, the *Dart* Court determined that the forum in the foreign country did, indeed, have the power to render a decision affecting the title rights of the parties to the $1.5-million-dollar real property in Michigan.

It should be noted that the application of the comity doctrine has not been universal by the Michigan courts. A result contrary to *Dart*[99] was reached in the case of *Bessmertnaja v Schwager*,[100] a 1991 decision. In *Bessmertnaja*, the Michigan Court of Appeals declined to give effect to a Swedish judgment that determined that Schwager, a U.S. citizen, was the biological father of Bessmertnaja's child, Daniel. Bessmertnaja was a Swedish citizen when the paternity action was filed. Despite determining that the Schwager was the father of the child, the Swedish court declined to order him to pay child support or otherwise provide for the child.[101]

Jurisdiction Over Tribal Property

This brings us back to the question as to what authority, if any, a state court has over land in a sovereign nation. Specifically, what authority, if any, does a particular state court have to render an enforceable decision as the rights of competing parties to tribal land within that state's borders?

As referenced herein, a litigant cannot rely on the full faith and credit clause in a misguided endeavor to see enforcement of a judgment in one state over lands in a different state.[102] Typically, jurisdiction over real property is granted to the state or sovereign nation where that real property is located.[103] However, this begs the question as to whether a state judgment could be given comity by the tribal courts to permit a litigant to enforce the state judgment as to tribal lands.

Assume arguendo that the Michigan court is requested to grant a divorce and that at least one of the litigants is a tribal member. Further, assume that the parties have an ownership interest in real property within the tribal boundaries. Obviously, the concern should be whether the Michigan court has jurisdiction or power to determine the rights of the litigants to this parcel of real estate. Clearly, if the real property were in another state, e.g., Wisconsin, then the Michigan courts would not have jurisdiction to determine the rights of the litigants to the real property.[104]

Similarly, if the Michigan court grants a divorce, and the judgment attempts to divide real property interests that are in tribal lands, should the tribal courts be bound by the Michigan decree? Such judgments by the state courts are not enforceable in tribal court unless the tribal court elects to honor the state judgment under the doctrine of comity.[105]

Unfortunately, there is literally a plethora of anecdotal information regarding the failure of parties to seek enforcement of the Michigan judgment in the tribal courts under the doctrine of comity in the mistaken belief that the judgment by the state court could determine the property rights of the competing parties to their respective interests in tribal lands.

Does this mean that judgments of divorce that are entered by state courts lack merit and should be disregarded altogether? Obviously, the answer is no. As noted in the *Fall* decision, the Wash-

ington court did have the jurisdiction to grant the parties a divorce. However, the Washington court could not determine the rights of the competing parties as to the lands in Nebraska. The *Fall* Court did suggest a remedy to address such a situation. As noted earlier, the *Fall* Court stated, "[T]o give it the force of a judgment in another state, it must be made a judgment there; and can only be executed in the latter as its laws may permit."[106]

In like fashion, the state judgment can be granted comity by the tribal court. In order to effectuate a state court judgment that divides the interests of the respective parties over tribal lands, the state judgment should be submitted to the tribal court for review with a request for the tribal court to certify the state court judgment and give it effect pursuant to tribal laws, whereupon the tribal court can then make a determination as to whether to give the state court judgment effect or, in other words, grant comity to the state court judgment. This procedure is commonly called a Petition for Enforcement of a Foreign Judgment.

Once the Petition for Enforcement of a Foreign Judgment is brought before the tribal court, then the tribal court has the opportunity to certify the state court judgment by independent review. Comity may be granted by the tribal court if it is satisfied that minimum rights were afforded to the litigants. Generally, the tribal courts will look to the following issues when considering whether to grant comity: (1) whether the foreign court properly exercised personal jurisdiction over the defendant; (2) whether the defendant was given proper notice of the proceeding and opportunity to be heard; (3) whether the proceedings operated with prejudice or were tainted by fraud; or (4) whether the judgment offends local state's public policy.[107] If the foreign judgment can pass these four hurdles, then it can be certified. Certification of foreign judgments promotes uniformity, limits litigation, and shows courtesy and respect for other court's decisions.

The Supreme Court ruled in Fall that the out-of-state judgment of divorce from Washington was not determinative of the ownership interests to the real property in Nebraska, the foreign state.

If the tribal court, for whatever reason, refuses to give effect to the "foreign" judgment, then the parties will be forced to re-litigate the matter in tribal court. Alternatively, if the tribal court agrees to grant comity to the foreign judgment, then the matter is resolved without the necessity of added litigation. But, to merely rest on a state court judgment without taking the steps to have the tribal court certify the state court judgment and grant it comity simply leaves the parties without resolution and open to unnecessary and unpleasant future legal proceedings.

In an attempt to facilitate the cooperation between the state and tribal courts, the state of Michigan Tribal State Federal Judicial Forum was created.[108] The membership of the forum consists of the chief tribal judge of each of Michigan's 12 federally recognized tribes, or their designated alternate judges, with membership to be expanded to accommodate any new federally recognized tribes; and 12 state court judges, who are appointed by the Michigan Supreme Court from among a pool of currently serving or retired Michigan judges or justices.[109] The forum was created by Michigan Supreme Court Administrative Order in June 2014 and is the first entity of its kind to meet since the previous Tribal State Court Forum was created in 1992.[110]

Conclusion

As noted herein, the issue of whether one state can determine the rights of the litigants to real property in another state has been long settled. Per the U.S. Supreme Court's ruling in the *Fall* decision, the Washington state court did not have jurisdiction or power to affect in the least the rights of the litigants to property in Nebraska.[111] Ergo, the Washington court judgment was not entitled to be given full faith and credit, and the Nebraska courts had the exclusive jurisdiction over real property within Nebraska's borders.[112]

Likewise, state courts do not have the power or authority to determine the rights of the litigants to real property within tribal borders. While the state courts can resolve other issues that are properly within the state's jurisdiction, such as divorcing the parties, the tribal courts are the final arbiters as to the litigant's claims concerning real property within tribal borders.

In the exercise of the tribal court jurisdiction, rather than re-litigate the parties claims to the property, the tribal court may elect to recognize the state court judgment and grant comity to the state court judgement upon proper application by one of the litigants. However, until and unless the state court judgement is approved by the tribal court under the doctrine of comity, any attempt by the litigants to enforce the state court judgement regarding tribal lands will be futile. ⊙

Endnotes

[1]This article is based on Michigan law, as the authors of this article practice in the state of Michigan.

[2]"Federal Indian Law" is defined as "that body of law dealing with the status of the Indian tribes and their special relationship to the federal government, and all the attendant consequences for the tribes and their members, the states and their citizens, and the federal government," William C. Canby, Jr., American Indian Law in a Nutshell (4th ed. 2004); *see generally* Cohen's Handbook of Federal Indian Law 1-3 (Nell Jessup Newton, et al., eds., 2005). "Federal Indian Law" includes statutes, treaties, regulations, and other codified law, as well as the federal common law interpreting these statutes and the constitutional common law arising out of the court's application of the constitution to Indian affairs.

[3]Cohen's Handbook of Federal Indian Law § 1.01.

[4]*Id.*

[5]*Id.*

[6]*Id.*

[7]*Id.* at § 1.01 n. 33 (noting that the Indian Country statute is thus of general importance in defining the special territory where Indians are governed primarily by tribal and federal law rather than state law); *DeCoteau v. District County Court,* 420 U.S. 425, 427 n. 2 (1975); s*ee also Moe v. Confederated Salish & Kootenai Tribes,* 425 U.S. 463, 476-79 (1976).

[8]Cohen's Handbook of Federal Indian Law § 1.01; s*ee also* 18 U.S.C. § 1151 (noting most Indian lands are clearly designated as reservations or allotments, explicitly invoking the statutory terms).

[9]Matthew L.M. Fletcher, *The Iron Cold of the Marshall Trilogy,* 82 N.D. L. Rev. 627, 628-29 (2006) (discussing the Marshall Trilogy and its continuing relevance to students of modern American Indian law).

[10]*Johnson v. M'Intosh,* 21 U.S. 543 (1823).

[11]*Cherokee Nation v. Georgia,* 30 U.S. 1 (1831).

[12]*Worcester v. Georgia,* 31 U.S. 515 (1832).

[13]*See generally* Fletcher, *supra* note 9, at 628.

[14]Cohen's Handbook of Federal Indian Law § 1.02.

[15]*Id.*

[16]*Id.*

[17]*Id.*

[18]PBS, *Indian Removal*,www.pbs.org/wgbh/aia/part4/4p2959.html (last visited Nov. 20, 2015).

[19]*Id.* (explaining that by 1837, the Jackson administration had removed 46,000 Native American people from their land east of the Mississippi, and had secured treaties which led to the removal of a slightly larger number. Most members of the five southeastern nations had been relocated west, opening 25 million acres of land to white settlement and to slavery).

[20]*Id.* (explaining that the Cherokee were given two years to migrate voluntarily, at the end of which time they would be forcibly removed. By 1838 only 2,000 had migrated; 16,000 remained on their land. The U.S. government sent in 7,000 troops, who forced the Cherokees into stockades at bayonet point. They were not allowed time to gather their belongings, and as they left, whites looted their homes. They then began the march known as the Trail of Tears, in which 4,000 Cherokee people died of cold, hunger, and disease on their way to the western lands.) *See generally* Francis Paul Prucha, American Indian Treaties: The History of a Political Anomaly 81 (Univ. Cal. Press 1994).

[21]Cohen's Handbook of Federal Indian Law § 1.03.

[22]Indian Land Tenure Foundation, *History of Allotment,* https://www.iltf.org/resources/land-tenure-history/allotment (last visited Sept. 3, 2015); Cohen's Handbook of Federal Indian Law at 129.

[23]Cohen's Handbook of Federal Indian Law § 1.03.

[24]*See generally id.*

[25]*Id.*

[26]Indian Land Tenure Foundation, *History of Allotment*,www.iltf.org/resources/land-tenure-history/allotment (last visited Nov. 20, 2015).

[27]Cohen's Handbook of Federal Indian Law § 5.01; Indian Country Crimes Act, 18 U.S.C.S. §1152; Major Crimes Act ,18 U.S.C.S. §1153.

[28]*Id.* § 1.04 ("Advocates of broader federal jurisdiction over Indians used the decision to foment popular outrage, spurring Congress to add to the Appropriation Act of March 3, 1885, a section specifying seven major crimes over which the federal courts were authorized to exercise jurisdiction. The Supreme Court upheld this assertion of criminal jurisdiction in *United States v. Kagama* in 1886 and thus opened the way for a new level of interference in the internal affairs of Indian tribes."); s*ee United States v. Kagama,* 118 U.S. 375 (1886).

[29]Cohen's Handbook of Federal Indian Law § 1.05.

[30]*Id.*

[31]*Id.*

[32]*Id.*

[33]25 U.S.C.A. § 461, et seq. (1934) (also called the IRA or Wheeler-Howard Act).

[34]*See generally* Cohen's Handbook of Federal Indian Law § 1.05.

[35]Worcester v. Georgia, 31 U.S. 515 (1832).

[36]Cohen's Handbook of Federal Indian Law § 1.06.

[37]*Id.*

[38]*Id.*

[39]*Id.*

[40]*Id.*

[41]*Id.*

[42]*Id.* at § 1.07.

[43]*See* Lyndon Johnson, Special Message to Congress, March 6, 1968, *in Public Papers of the Presidents of the United States*: Lyndon Johnson, 1968-69, 1 Pub. Papers 336.

[44]*See generally* Cohen's Handbook of Federal Indian Law § 1.07.

[45]*Id.* § 4.01 (explaining that tribes have plenary and exclusive power over their members and their territory subject only to limitations imposed by federal law).

[46]*Id.*

[47]*Id.*

[48]Michigan Court Rule 2.615 (2015).

[49]Cohen's Handbook of Federal Indian Law § 7.02.

[50]Mich. Comp. Laws Ann. § 552.19.

[51]*Id.*

[52]*Fall v. Eastin,* 215 U.S. 1, 30 S. Ct. 3 (1909).

[53]*Id.* at 2.

[54]*Id.*

[55]*Id.*

[56]*Id.*

[57]*Id.* at 4.

[58]*Id.*

[59]*Id.*

[60]*Id.*

[61]*Id.*

[62]*Id.* at 12.

[63]*Id.*

[64]*Id.* at 9.

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Thomas H. Anthony was admitted to practice law in Michigan in October 1975 and has achieved the status of Master Attorney by the State Bar Association. He has also been admitted to the Western District of Michigan and the Saginaw Chippewa Tribal Court. He has maintained an active litigation practice in tribal court for well over 20 years and was one of the first local attorneys admitted to practice in the local trial court. He is also a Central Michigan University faculty member. Jill N. Lauderman is practicing at the Law Office of Thomas H. Anthony in Mt. Pleasant, Michigan. She is practices mainly family law and estate planning. Additionally, she teaches in the Finance and Law Department of Central Michigan University. She earned her J.D. in 2012, graduating magna cum laude, from Thomas M. Cooley Law School, and her B.S. from the University of Toledo in 2008. She was admitted to the Tennessee State Bar in 2013, the State Bar of Michigan in 2014, and the Saginaw Chippewa Tribal Court in 2015.

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[65]*Id.* at 3.
[66]*Id.* at 14.
[67]*Id.*
[68]*Id.* at 6.
[69]*Id.* at 9 (citing *Watkins v. Holman,* 41 U.S. 25, 57 (1842)).
[70]*Id.* at 12.
[71]*Id.*
[72]*Id.* at 8 (citing *Watts v. Waddle,* 31 U.S. 389, 400 (1832)).
[73]*Id.* at 14.
[74]*Id.*
[75]*Id.* at 12.
[76]*Bang v. Park,* 116 Mich. App. 34, 321 N.W.2d 831 (1982).
[77]*Id.* at 40 (citing *Hilton v. Guyot,* 159 U.S. 113, 16 S. Ct. 139, 40 L. Ed. 95 (1895)).
[78]*Id.*
[79]*See also Growe v. Growe,* 2 Mich. App. 25, 138 N.W.2d 537 (1965), 321 N.W. 2d at 834..
[80]*Bang,* 116 Mich. App. at 39.
[81]*Id.* at 40 (noting that the Korean judgment was an award of monetary damages and did not involve real properties).
[82]*Dart v. Dart,* 460 Mich. 573, 596 N.W.2d 82 (1999).
[83]*Id.* at 575.
[84]*Id.*
[85]*Id.* at 576.
[86]*Id.*
[87]*Id.*
[88]*Id.*
[89]*Id.*
[90]*Id.* at 578.
[91]*Id.*
[92]*Id.*
[93]*Bang v. Park,* 116 Mich. App. 34, 39, 321 N.W.2d 831, 834 (1982), 597 N.W. 2d at 85..
[94]*Dart,* 460 Mich. at 580.
[95]*Id.*
[96]*Id.* at 581, 597 N.W. 2d at 85 (citing *Hilton v. Guyot,* 159 U.S. 113, 202-203, 16 S. Ct. 139 (1895)).
[97]*Id.* at 586 , 597 N.W. 2d at 88.
[98]*Id.* at 586–87, 597 N.W. 2d at 88 (internal citations omitted).
[99]*Id.*
[100]*Bessmertnaja v. Schwager,* 191 Mich. App. 151, 477 N.W.2d 126 (1991).
[101]The Michigan courts refused to grant comity in the *Bessmertnaja* litigation because the decision was contrary to the public policy of the state of Michigan. Enforcement of the Swedish decision would have denied child support to the parties' minor child. *Id.* at 156-57.
[102]*Bang v. Park,* 116 Mich. App. 34, 40, 321 N.W.2d 831 (1982).
[103]*Id.*
[104]*Fall v. Eastin,* 215 U.S. 1, 8-12; 30 S. Ct. 3, 6-8 30 S. Ct. 3, 6-8 (1909).
[105]Cohen's Handbook of Federal Indian Law § 7.02.
[106]*Fall*, 215 U.S. at 12.
[107]*See generally* Cohen's Handbook of Federal Indian Law § 7.02.
[108]John Nevin, *Tribal State and Federal Courts Will Meet to Expand Collaboration on Child Welfare Issues*, Michigan Courts News Release, Oct. 24, 2014.
[109]*Id.*
[110]Samantha Meinke, *Michigan Supreme Court Created Michigan Trial Federal Judicial Forum*, State Bar of Michigan Blog, Comment, News, and Issues of Interest to Michigan Lawyers (Dec. 4, 2015),sbmblog.typepad.com/sbm-blog/2014/06/michigan-supreme-court-creates-michigan-tribal-state-federal-judicial-forum.html.
[111]*See generally People v. Jondreau,* 384 Mich. 539, 185 N.W.2d 831 (1982), which discusses the exclusive jurisdiction of the tribal court over the rights of tribal members to hunt and fish certain land and water. The state court's prosecution was nullified because the tribal authorities were granted exclusive jurisdiction over the disputed issues by a treaty between the tribe and the U.S. government. Thus, they have exclusive jurisdiction to interpret or enforce treaties solely vested in the federal government. Per the U.S. Constitution, the states are without power to act in areas covered by the treaty.
[112]*See generally* the decision of *Bay Mills Indian Community v. State of Michigan,* 244 Mich. App. 739, 626 N.W.2d 169 (2001); *United States of America, on behalf of the Saginaw Chippewa Indian Tribe v. State of Michigan,* 106 F. 3d 130, sub nom. *Michigan v. United States,* 524 U.S. 923 (1998) discussing the taxing authority of the state of Michigan to tax tribal land.