

TITLE 4 - CIVIL ACTIONS

CHAPTER 1 - CIVIL ACTIONS

Legislative History: Papago Law and Order Code Chapter 2, "Civil Actions," was enacted and adopted by the Papago Council on April 7, 1945 and approved the Sells Indian Agency Superintendent on April 16, 1945; amended, renumbered, and codified by Resolution No. 92-425 (deleting and replacing Sections 1 and 2, renumbering all sections, and codifying Civil Actions as Title III of Laws of the Tohono O'odham Nation), which was passed by the Tohono O'odham Legislative Council on October 13, 1992, presented to the Nation's Chairman on October 14, 1992, and returned unsigned on October 16, 1992 (48-hour deadline for Nation's Chairman's signature and return expired).

The Tohono O'odham Law and Order Code is amended by deleting Chapter 2, Civil Actions, Sections 1 and 2 in their entirety and substituting the following, which shall be codified as Title III of the Laws of the Tohono O'Odham Nation:

TITLE III – CIVIL ACTIONS

CHAPTER 1: Civil Jurisdiction

1-101 Jurisdiction

- a. The Tohono O'odham Courts are courts of record and of general jurisdiction and are empowered to hear all actions in law and equity arising under the Tohono O'odham Constitution, the laws, ordinances or customs of the Tohono O'odham Nation, actions arising under the Indian Civil Rights Act or other federal law, and actions arising under the laws of the several states when the court finds such actions cognizable as a matter of comity.
- b. The civil jurisdiction of the Tohono O'odham Courts shall extend to the following persons and causes of action:
 1. Any person who is domiciled within the territorial jurisdiction of the Tohono O'odham Nation; or
 2. Any person who does an act or who causes an act to occur within the territorial jurisdiction of the Tohono O'odham Nation, or does an act which has an effect within the

territorial jurisdiction of the Nation, upon which a cause of action can be stated; or

3. Any person who conducts business within the territorial jurisdiction of the Nation, or any person who has ceased doing business within the Nation when a cause of action can be stated arising out of business formerly conducted; or
4. Any person who negotiates or executes a contract, or is a party to a contract to be performed, within the territorial jurisdiction of the Nation when a cause of action is stated arising from such a contract; or
5. Any person who owned, leased, used or possessed real or personal property in the territorial jurisdiction of the Nation with respect to any cause of action arising out of the property while it was owned, leased, used or possessed by the person, and in the case of personalty the cause of action arose while the property was located within the Nation; or
6. Any action for dissolution of marriage when the parties are both members of the Nation, and any action between a member and a non-member or between non-members when either party has been domiciled within the territorial

jurisdiction of the Nation for a period of six months. Provided, that jurisdiction over a person must be obtained prior to affecting the person's interests in separate property or community property not located within the territorial jurisdiction of the Nation.

7. Any action concerning the custody, adoption, guardianship, commitment or paternity of the Tohono O'odham child, provided that the Tohono O'odham courts shall have exclusive jurisdiction over any Tohono O'odham child who is domiciled within the territorial jurisdiction of the Nation. The jurisdiction of the Tohono O'odham courts shall also extend to any such actions concerning a child who is not Tohono O'odham when said child has been domiciled within the territorial jurisdiction of the Nation for a period of six months.
8. Any action relating to an interest in real or personal property located within the territorial jurisdiction of the Nation, including descent and distribution of a deceased person's estate.
9. Any person who consents to the jurisdiction of the Tohono O'odham Courts whether expressly, by filing an action, by appearing as a defendant, or in any other manner; and

10. All other causes of action where assertion of jurisdiction over a person or property or the subject matter is permissible under the Tohono O'odham Constitution.

c. For purposes of this Chapter the following definitions shall apply:

1. "Territorial Jurisdiction of the Tohono O'odham Nation" shall mean all lands within the exterior boundaries of the Tohono O'odham Nation, including allotments and fee lands, and all other lands held in trust by the United States for the Tohono O'odham Nation;
2. "Conducting Business" shall include, but not be limited to, any of the following whether or not conducted for profit: maintaining an office; advertising, marketing, soliciting, ordering, selling, distributing, receiving, or delivering goods or services; debt collection, including self-help repossession; manufacturing, assembling or repairing goods; construction of buildings, roads, and utilities; growing of crops and livestock.
3. "Person" means an individual; a corporation, partnership or other unincorporated association be it foreign or domestic; any other group of individuals acting in

concert; a government, any of its political subdivisions, or enterprises.

4. "Domicile" shall mean a person's true, fixed and permanent home and the place to which a person intends to return even though actually residing elsewhere, and shall also mean a person's actual place of residence. Members of the Nation are presumed to be domiciled within the territorial jurisdiction of the Nation.
5. "Tohono O'Odham child" shall mean an individual under the age of eighteen who is a member of the Nation, eligible for membership in the Nation, or the child of a member of the Nation.

1-102

Tohono O'odham Law

In all civil cases the Tohono O'odham Courts shall apply, in order of precedence, the Tohono O'odham Constitution, the Nation's laws and ordinances, and finally the customs of the Nation. O'odham custom may be proved by testimony of persons familiar with the customary practices of the O'odham, or the custom of a particular community within the Nation. If a Tohono O'odham Court finds that there is no Tohono O'Odham law or custom which addresses the claims asserted, the court may in its discretion look to the laws of the State of Arizona for guidance.

1-103

Judgments in Civil Actions

In all civil cases, judgment shall consist of an order of the court awarding money damages to be paid to the injured party or directing the surrender of certain property to the injured party, or the performance of some other act for the benefit of the injured party.

Where the injury inflicted was the result of carelessness of the defendant, the judgment shall fairly compensate the injured party for the loss he has suffered.

Where the injury was deliberately inflicted, the judgment shall impose an additional penalty upon the defendant, which additional penalty may run either in favor of the injured party or in favor of the Tribe.

Where the injury was inflicted as the result of accident or where both the complainant and the defendant were at fault, the judgment may compensate the injured party for reasonable part of the loss he has suffered.

1-104

Costs in Civil Actions

The court may assess the accruing costs of the case against the party of parties against whom judgment is given.

1-105

Payment of Judgment from Individual Indian Money

Whenever the Papago Tribal Court or either of the District Court shall have ordered payment of money damages to an injured party and the

losing party refuses to make such payment within the time set for payment by the court, and when the party has sufficient funds to his credit at the Agency Office to pay all or part of such judgment, the Superintendent may certify to the Secretary of the Interior the record of the case and the amount of the available funds, for direction by the Secretary of the Interior for the payment of the amount of the judgment or lesser amount to the injured party.

1-106 Immunity from Suit

Nothing in this chapter shall be construed as a waiver of the sovereign immunity of the Tohono O'odham Nation.

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Amending Chapter 2 of the Tohono O'Odham Law and Order Code)

RESOLUTION NO. 92-425

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3 WHEREAS, on April 7, 1945 the Tohono O'Odham Nation (then known as the
4 Papago Tribe) adopted Chapter 2 of the Law and Order Code by
5 Tribal Council Resolution, which was approved by the Secretary
6 of the Interior on July 27, 1945; and
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8 WHEREAS, Chapter 2 of the Law and Order Code entitled "Civil Actions" has
9 not been amended since its enactment; and
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11 WHEREAS, the Tohono O'Odham people adopted a new Constitution by
12 popular vote on January 18, 1986 which was approved by the
13 Secretary of the Interior on March 6, 1986; and
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15 WHEREAS, the Tohono O'Odham Constitution defines the jurisdiction of the
16 Nation, and consequently its courts, to "extend to all persons and
17 activities carried on within the boundaries of the Tohono
18 O'Odham Nation consistent with federal law" (Art. I, Sec. 2),
19 and to members of the Nation whether within or beyond the
20 geographical boundaries of the Nation (Art. I, Sec. 3); and
21

22 WHEREAS, the Tohono O'Odham Legislative Council finds that amendment
23 of Chapter 2, "Civil Actions", of the Law and Order Code is
24 necessary to bring the ordinance into conformity with the Tohonō
25 O'Odham Constitution, and to clarify the law regarding the extent
26 of the Nation's jurisdiction; and
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RESOLUTION NO. 92-425

(Amending Chapter 2 of the Tohono O'Odham Law and Order Code)

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2
3 WHEREAS, Title I of the Laws of the Tohono O'Odham Nation is reserved for
4 the Criminal Code and Title II has been reserved to codify the
5 activities, authority, duties, rules and procedures of the Judicial
6 Branch, and former Chapter 2, "Civil Actions", needs to be
7 redesignated and incorporated in the existing system of
8 codification of the Laws of the Tohono O'Odham Nation.
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11 NOW, THEREFORE, BE IT RESOLVED that Chapter 2, "Civil Actions", of
12 the Law and Order Code is amended as provided in Exhibit A
13 (attached hereto) and integrated into the Laws of Tohono
14 O'Odham Nation as Title III, Civil Actions.
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16 BE IT FURTHER RESOLVED that any other provision of Tohono O'Odham
17 law in conflict with Title III as amended is hereby expressly
18 repealed.
19

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21 The foregoing Resolution was passed by the Tohono O'Odham Legislative
22 Council on the 13TH. day of OCTOBER, 1992 at a meeting at which a quorum
23 was present with a vote of 896.0 FOR; 246.0 AGAINST; 310.0 NOT VOTING;
24 and 272.0 [13] ABSENT, pursuant to the powers vested in the Council by
25 Section 1 (c)(6) of Article VI of the Constitution of the Tohono O'Odham
26 Nation, adopted by the Tohono O'Odham Nation on January 18, 1986; and
27 approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations)
28 on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat.
984).

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(Amending Chapter 2 of the Tohono O'Odham Law and Order Code)

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TOHONO O'ODHAM LEGISLATIVE COUNCIL

Joanne C. Preston
for Mary Ann Antone, Legislative Chairwoman

14th day of October, 1992

ATTEST:

Teresa M. Choyguha
Teresa M. Choyguha, Legislative Secretary

14th day of October, 1992

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 14th day of October, 1992, at 2:20 o'clock, P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Joanne C. Preston
for Mary Ann Antone, Legislative Chairwoman

[] APPROVED on the _____ day of _____, 19__

[] DISAPPROVED) at _____ o'clock, _____M.

EXCEEDED 48 HOURS

JOSIAH MOORE, Chairman
TOHONO O'ODHAM NATION

RESOLUTION NO. 92-425

(Amending Chapter 2 of the Tohono O'odham Law and Order Code)

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Returned to the Legislative Secretary on the 16th day of October,
19 92, at 4:45 o'clock, P.M.

Yancinda A. Don Dor:
Teresa M. Choyguha, Legislative Secretary