

**SURVEY OF NATIVE AMERICAN LAW**  
**UTAH DEFENSE LAWYERS ASSOCIATION**  
June 29, 2023

I. WHO IS AN INDIAN

1. Federal Recognition
2. Tribal Membership
3. Disestablishment
4. Political Association

II. TRIBAL CIVIL JURISDICTION OVER NON-INDIANS

1. State Assumption of Jurisdiction
2. Coextensive Legislative and Adjudicative Authority
3. Civil Jurisdiction Over Non-Indians:
  - (a) Tribes may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.
  - (b) Tribes may exercise civil authority over the conduct of non-Indians on fee lands within the reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. The conduct, however, must do more than injure the tribe, it must “imperil the subsistence” of the tribal community so that tribal power must be necessary to avert “catastrophic consequences.”<sup>1</sup>
4. Indian Civil Rights Act

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<sup>1</sup> *Plains Commerce Bank v. Long Family Land and Cattle Co.*, 554 U.S. 316, 329-30 and 341 (2008).

### III. CHOICE OF LAWS

1. Concurrent State and Tribal Jurisdiction
2. Preemption
3. Utah History

### IV. CHALLENGING TRIBAL AUTHORITY

1. 28 U.S.C. § 1331
2. Exhaustion of Tribal Court Remedies
3. Making a Record
4. Civil Rights Cases

### V. TRIBAL COURT JUDGMENTS - FULL FAITH AND CREDIT

1. Utah Foreign Judgments Act

### VI. DOMESTIC RELATIONS

1. Indian Child Welfare Act

### VII. TRIBAL SOVEREIGN IMMUNITY

