TITLE 9 - DOMESTIC RELATIONS

CHAPTER 1 - DOMESTIC RELATIONS

Legislative History: Papago Law and Order Code Chapter 3, "Domestic Relations," was adopted by the Papago Council on July 2, 1938 and approved by the Superintendent of the Sells Indian Agency on July 7, 1938; amended by Resolution No. 05-430 on August 2, 2005 (repealing Chapter 3, Section 7).

TITLE 9 – DOMESTIC RELATIONS

CHAPTER 1 – DOMESTIC RELATIONS

TABLE OF CONTENTS

Section 1 Recording of marriages and Divorces 1
Section 2 Who May Solemnize 1
Section 3 Minimum Age at Which Persons May Marry; Exception, Pregnancy 1
Section 4 Marriage Without a License 1
Section 5 Consent of Parents 2
Section 6 License and Return of Person Solemnizing to be Recorded 2
Section 7 Prohibited and Void Marriages 2
Section 8 Witnesses; Certificates Only Recognized 3
Section 9 Ceremonial Marriage Only Recognized 3
Section 10 Annulment of Marriage 3
Section 11 Divorce; Venue of Action Grounds 3
Section 12 Legitimacy of Children Not Affected; May Remarry After Decree of Divorce is Granted 4
Section 13 Permanent Alimony; Custody of Children; Costs; Changing Name 4
Section 14 Modification of Judgment Affecting Alimony and Children 4
Section 15 Determination of Paternity and Support 4
Section 16 Determination of Heirs 5
Section 17 Approval of Wills 5
Section 18 Adoption of Minors 6
Section 19 Non-Compliance with Code 6

DOMESTIC RELATIONS

Section 1. Recording of Marriages and Divorces

All marriages and dievorces, when either party is a member of the Papago Tribe shall be recorded within ninety (90) days at the Sells Indian Agency.

Section 2. Who May Solemnize

Regularly licensed or ordained clergymen or Judges of the Papago Tribal Court, District Judges or the Superintendent of Sells Indian Agency may solemnize the rites of matrimony between persons authorized to marry. Licensed or ordained clergymen, includes all ministers, elders or other persons who by the customs, rules and regulations of any religious society or sect are authorized or permitted to solemnize marriages or to officiate at marriage ceremonies.

Section 3. Minimum Age at Which Persons May Marry; Exception Pregnancy

Males under eighteen, or females under sixteen years of age shall not marry, where, however, a female under sixteen years of age is, or about to become the mother of a child, she may with the consent of the parents or the guardian having custody, and with the approval of any judge of the Papago Tribal Court or District Judge in this jurisdiction, marry the father of her child; any female who is or is about to become the mother of a child, may marry the father of the child under eighteen years of age, with the consent of his parents or guardian having his custody, and the approval of the judge of the Papago Tribal Court or any judge of the District Court. They may not marry if prohibited by the status relating to miscegenation.

Section 4. Marriage Without License

After January 1, 1943, no persons shall be joined in marriage within this jurisdiction until a license has been obtained for that purpose from the clerk of the Papago Tribal Court or any missionary authorized by the Court to issue marriage licenses, All persons desiring to secure marriage licenses prior to the above date will be encouraged to do so.

A person desirous of marrying may apply to the clerk of the Papago Tribal Court or authorized missionary who shall require such person to subscribe to an oath that he will truly depose and declare to name and age himself or herself, the place of residence, the race to which the parties belong and the relationship between the parties applying for such license.

The oath shall be filed by the clerk or missionary and he shall then issue to said applicants a license directed to the persons authorized by this code to solemnize the rites of matrimony which shall be sufficient authority for any one of such persons to solemnize such marriage. A fee of $1.00 shall be charged for each license.

Section 5. Consent of Parents

The clerk or authorized missionary shall not issue a license without the consent of the parents or guardians of the parties applying, unless the parties applying shall be the male, twenty-one years of age, and the female, eighteen years of age; when both parents are living, the consent of the father alone is sufficient except when the parents are living apart, and then the consent must be given by the one who has custody of the minor.

Section 6. License and Return of Person Solemnizing to be Recorded

The clerk shall record all licenses issued in a book kept for that purpose. The person solemnizing the rites of matrimony shall endorse the same on the license and make return thereof to the clerk of the Papago Tribal Clerk within twenty (20) days after the solemnization, which return shall also be recorded in the book kept by the clerk.

Section 7. Prohibited and Void Marriages

~~The marriage of persons of Papago Indian blood, or their descendants, with Negroes, Mongolians or Caucasians and their descendants, shall be null and void.~~ The marriage between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters, of the one-half as well as the whole blood, and between uncles and neices, aunts and nephews and between first cousins are incestous and void; children born out of wedlock, or the relations thereof are included within the prohibition.

Section 8. Witnesses; Certificates Only Recognized

The marriage ceremony shall be performed in the presence of the parties, of the officiating officer and at least two witnesses of the lawful age, and certificate of such marriage shall be signed by at least two witnesses.

Section 9. Ceremonial Marriage Only Recognized

After January 1, 1943, no marriage may be contracted by agreement without marriage ceremony, and no marriage contracted within this jurisdiction shall be valid unless a license be issued as herein provided and marriage solemnized by a person authorized by law, or by someone purporting to act in such capacity and believed in good faith, by at least one of the parties.

Section 10. Annulment of Marriage

The Papago Tribal Court may dissolve a marriage, and may decree the marriage to be null and void, where the cause alleged shall be an impediment rendering such contract void.

Section 11. Divorce; Venue of Action Grounds

A divorce from the bonds of matrimony may be granted in any of the following cases: (1) When adultery has been committed by either party; (2) When one of the parties was physically incompetent at the time of the marriage and the same has been continued to the time of the commencement of the action; (3) When one of the parties has been convicted of felony and sentenced to imprisonment therefore in a prison, and such has not been convicted on the testimony of the other party, but such action may not be brought until one year after final judgment of conviction; a pardon shall not be a defense to such action; (4) When either party has wilfully deserted the other for the term of ninety days preceding the commencement of the action, or for habitual intemperance of either party; (5) Where the husband or wife is guilty of excesses, cruel treatment or outrage toward the other, whether by the use of personal violence or other means; (6) When the husband has neglected for the period of one year to provide his wife with the common necessities of life, having the ability to provide them or failing to do so by reason or his idleness, profligacy or dissipation; (7) When prior to the marriage either party shall have been convicted of a felony or infamous crime in any state, or country, without the knowledge of the other party of such fact at the time of such marriage; (8) In favor of the husband when the wife at the time of such a marriage was pregnant by a man other than the husband, and without the husband's knowledge at the time of such marriage.

Section 12. Legitimacy of Children Not Affected; May Remarry After Decree of Divorce is Granted

A divorce shall not affect the legitimacy of the children thereof. Either party to a divorce may marry immediately following the granting of a decree by the Papago Tribal Court.

Section 13. Permanent Alimony; Custody of Children; Costs; Changing Name

In the final decree of divorce the court may, in addition to the division of the common property of the parties, or in lieu thereof, direct the husband to pay the wife, and the minor children of the parties whose custody may be awarded to the wife as may be necessary or proper, and may decree that said amount may be paid in one sum or in installments and in such decree or disposition of, and provision for the minor children, as shall be most expedient under all circumstances, for their present comfort and future well-being. The court may award costs, and to the successful party, or order that each party shall pay their own costs, and may in the decree change the name of the wife if specially prayed for in her pleadings.

Section 14. Modification of Judgment Affecting Alimony and Children

The Court may, from time to time, after the entry of final decree on petition of either party, amend, revise and alter such portions of the decree as relate to the payment of money for the support and maintenance of the wife or the expenses of the proceedings, as may be just, and amend, change or alter any provision therein respecting the care, custody or maintenance of the parents and the welfare of the children may require.

Section 15. Determination of Paternity and Support

The Papago Tribal Court shall have jurisdiction of all suits brought to determine the paternity of a child and to obtain a judgment for the support of the child. A judgment of the Court establishing the identity of the father of the child shall be conclusive of the fact in all subsequent determinations of inheritance by the Department of the Interior or by the Papago Tribal Court.

Section 16. Determination of Heirs

When any member of the Tribe dies leaving property other than an allotment or other trust property subject to the jurisdiction of the United States, any member claiming to be an heir of the decedent may bring a suit in the Papago Tribal Court or any District Court to have the Court determine the heirs of the decedent and to divide among the heirs such property of the decedent.

No determination of heirs shall be made unless all the possible heirs known to the Court, to the Superintendent and to the claimant have been notified of the suit and given full opportunity to come before the Court and defend their interests. Possible heirs who are not residents of the reservation under the jurisdiction of the Court must be notified by mail and a copy of the notice must be preserved in the record of the case.

In the determination of the heirs the Court shall apply the custom of the Tribe as to inheritance.

Where the estate of the decedent includes any interest in restricted allotted lands or other property held in trust by the United States, over which the Examiner of Inheritance would have jurisdiction, the Papago Tribal Court or appropriate District Court may distribute only such property as does not come under the jurisdiction of the Examiner of Inheritance, and the determination of heirs by the Court may be reviewed, on appeal, and the judgment of Inheritance, with the approval of the Secretary of the Interior if law and justice so require.

Section 17. Approval of Wills

When any member of the tribe dies leaving a will disposing only of property other than an allotment or other trust property subject to the jurisdiction of the United States, the Papago Tribal Court or appropriate District Court shall, at the request of any member of the tribe named in the Will or any other interested party, determine the validity of the Will after giving notice and full opportunity to appear in court to all persons who might be heirs of the decedent as under Section 16 of this Chapter.

A Will shall be deemed to be valid if the decedent had a sane mind and understood what he was doing when he made the Will and was not subject to any undue influence or any kind from another person, and if the Will was made in accordance with the proved Tribal custom or made in writing and signed by the decedent in the presence of two witnesses who also signed the Will.

If the court determines the will to be validly executed it shall order the property described in the Will to be given to the persons named in the Will or to their heirs; but no distribution of property shall be made in violation of the proved Tribal custom which restricts the privilege of the Tribal members to distribute property by Will.

Section 18. Adoption of Minors

When a person dies intestate, unmarried, and with issue, or survived by a spouse not a parent of the decedent issue, the blood relative of the decedent shall decide as to the adoption of the minor children of the decedent. In the event of a dispute among the relatives as to who shall adopt, as provided herein, any dissatified relative may appeal to the Papago Tribal Court, and the said Court after due notice and hearing, may render a decision, and such decision shall be final and conclusive.

Section 19. Non-Compliance with Code

Any person who shall violate any of the provisions of this chapter shall be deemed guilty of any offense and upon convition shall be sentenced to labor for a period of not to exceed 30 days or a fine of not to exceed $30.00 or both such imprisonment and fine.

ADOPTION OF LAW AND ORDER CODE

The foregoing Ordinance Chapter Three was on July 2, 1938, duly adopted by a vote of 14 for, 0 against, by the Papago Council, pursuant to authority vested in it by Section 2, part (i), Article V; of the Constitution of the Papago Tribe, ratified by the Tribe on December 12, 1936, pursuant to Section 16, of the Act of June 18, 1934. (48 Stat. 984). Said Ordinance is effective as of the date of its approval by the Superintendent of the Sells Agency. This Chapter is not subject to review by the Secretary of the Interior.

/s/ Jose Ignacio
Chairman, Papago Tribal Council

/s/ Ida N. Wilso
Secretary, Papago Tribal Council

Approved: July 7, 1938

/s/ T.B. Hall
Superintendent, Sells Indian
Agency
Sells, Arizona

Approved: See Letter of 6-27-45

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Repealing Chapter 3, Section 7 Law and Order Code Ban on Interracial Marriages)

RESOLUTION NO. 05-430

WHEREAS, the Constitution of the Tohono O'odham Nation provides that the Nation's government "shall not deny to any member of the Tohono O'odham Nation the equal protection of its laws or deprive any member of liberty or property without due process of law." (Constitution, Article III, Section 1); and

WHEREAS, pursuant to Article III, Section 4 of the Constitution, the enumeration of rights contained in Article III "shall not be construed as denying or abridging other fundamental rights of the people guaranteed by Title II of the Indian Civil Rights Act," which similarly provides that no Indian tribe shall "deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law" (25 U.S.C. § 1302(8)); and

WHEREAS, race-based limitations on the right to marry have been held unconstitutional in other jurisdictions as a violation of the right to due process and to equal protection; and

WHEREAS, the Nation's Law and Order Code provides that "The marriage of persons of Papago Indian blood, or their descendants, with Negroes, Mongolians or Caucasians and their descendants, shall be null and void." (Law and Order Code Chapter 3, Section 7); and

WHEREAS, as written, the first sentence of this section prohibits certain marriages based upon racial classifications; and

WHEREAS, if enforced, this provision would also prevent certain members of the Nation who are not 4/4 Tohono O'odham from marrying other members of the Nation; and

WHEREAS, it is in the best interest of the Nation to repeal the first sentence of Law and Order Code Chapter 3, Section 7.

NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council hereby repeals the first sentence of Chapter 3, Section 7 of the Law and Order Code.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 01ST. Day of AUGUST, 2005 at a meeting at which a quorum was present with a vote of 2,401.45 FOR;93.35 AGAINST; -0- NOT VOTING; and [-0-] ABSENT, pursuant to the powers vested in the Council by Section 1 (c)(1)(3) & (6) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Evelyn B. Juan Manuel, Legislative Chairwoman

1st day of August, 2005

ATTEST:

Lucille Lopez, Acting Legislative Secretary

1st day of August, 2005.

Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono O'Odham Nation on the 1st day of August, 2005 at 4:00 o'clock, P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon her approval or upon her failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Evelyn B. Juan Manuel, Legislative Chairwoman

[✓] APPROVED on the 2 day of August, 2005

[ ] DISAPPROVED at 3:12 o'clock, P.M.

VIVIAN JUAN-SAUNDERS, CHAIRWOMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 03rd day of August, 2005, at 8:40 o'clock, A.M.

Lucille Lopez, Acting Legislative Secretary