

prepared for:

Association of Corporate Counsel

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Doing Business with Indian Tribes

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Topics Covered



- Relevant Indian Law History
- Contemporary Indian Country
- Doing Business with Indian Tribes

Truncated and Focused Review of Indian Law



- Inherent rights of Indian Nations
- Sovereignty and Jurisdiction
- Indian Country

Inherent Rights of Indian Nations



- Age of “Discovery” and the Theological and Royal Statements
- Marshall Trilogy
- Sovereignty and Jurisdiction
- Preeminence of tribal law and governance

Eras of Indian Law



- Treaty Period
(first settlement to 1871)
- Allotment and Assimilation Period
(1871 – 1934)
- Indian Reorganization Era
(1934 to 1940's)
- Termination Era (1940's to 1960's)
- Self-Determination Era
(1960's to current day)

Indian Country




- (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 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 throughout the same.
- 18 U.S.C. 1151

Review of Indian Law

– Indian Lands

- Jurisdiction and exercise of sovereignty
- General Allotment Act and the Allotment Era
- Indian Reorganization Act
- Checkerboard Reservations
- Defined by Federal Law

Doing Business with Indian Nations

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- Organization
 - Contracts and Contracting
 - Sovereign Immunity
 - Forums for Dispute Resolution
 - Tribal Employments Rights Ordinances

A good mind. A good heart. A strong fire.



Organization – tribal governments and business entities

- Tribes – government (IRA and Non-IRA)
- IRA Tribes – Section 16 and Section 17
- Tribally Chartered
- Tribal Entity/Division
- State Chartered (Incorporation / Limited Liability Companies)

Contracting with Indian Nations

- Contracting entity
 - Approval process
- State Civil Laws versus State Criminal Laws
 - Public Law 280
- Sovereign Immunity
 - Express Waiver
 - Arbitration Clauses

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Contracting with Indian Nations -- continued

- Governing Law
- Forum for Dispute Resolution -- State, Federal, Tribal
- Contractual forum selection
- Subject Matter Jurisdiction vs. Personal Jurisdiction
- Substantive Law of Contract
 - State Law

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Miscellaneous Items



- Federal Approval of Tribal Contracts
- Indian Preference

Last Slide



- Questions or Comments
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