

CHAPTER 2

CIVIL ACTION

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CHAPTER 2
CIVIL ACTION

Section 1. Jurisdiction.

The Tribal Court and the State shall have concurrent and not exclusive jurisdiction of all suits wherein the defendant is a member of the Tribe which is brought before the Courts. No judgment shall be given on any suit until the defendant has been given ample opportunity to appear in Court in his defense. Evidence of the receipt of notice shall be kept as part of the records in the case. In all civil suits the complainant may be required to deposit with the Clerk a fee or other security in reasonable amount to cover the cost and disbursements in the case.

Section 2. Law Applicable.

In all Civil cases and in all cases arising under Chapters 3 and 7, the Court shall apply any Law of the United States that may be applicable, any authorized regulations of the Interior Department, and any ordinances or customs of the Tribe, not prohibited by such Federal Law. Where any doubt arises as to the customs and usage of the Tribe, the Court may request the advice of counselors familiar with these customs and usages. Any matters that are not covered by the traditional customs or by ordinances of the Tribal Court, ^{shall be} according to the law of the State. The Tribal Court shall, in its discretion, turn over to other Courts of record such cases as it deems necessary.

Section 3. Judgment in Civil Action.

In all civil cases, the 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 may include an additional penalty upon the defendant, which additional penalty may run either in favor of the injured party or in favor of the Blackfeet Tribe. Where the injury was inflicted as the result of an accident, and where both the complainant and the defendant were at fault, the judgment may nevertheless compensate the injured party but the injured party's damages shall be reduced in proportion to such party's contributory negligence.

Section 4. Costs in Civil Actions.

The Court may assess the costs of a Civil case against the party or parties against whom judgment is given. Such costs shall consist of the expense of voluntary witnesses for which either party may be responsible under Section 7 of Chapter 1, the fees of jurors in those cases where a jury trial is held and such further incidental expense connected with the proceedings before the Court as the Court may direct.

Section 5. Payment of Judgments from Individual Indian Monies.

Whenever the Blackfeet Indian Court shall have ordered payment of money damages to an injured party and the losing party refused to make such payment within the time set for payment by the Court, and when the losing party has sufficient funds to his or her credit at the Tribal Offices or the Agency Office to pay all or part of such judgment, the Treasurer of the Tribe or the Superintendent of the Agency Office shall be requested to hold such income from trust property and pay them out

upon the order of the Court. Only monies of the individual and not his family may be held to pay such judgments. Accruals may also be held to pay for such charges.

Section 6. Period of Limitation Prescribed.

The period prescribed for commencement of Civil Action, other than for the recovery of real property, shall be within two (2) years from the date when plaintiff could first have filed suit in the Tribal Court.

Section 6A. Exemptions; Executions.

(1) In any judgment against a judgment debtor, such judgment debtor shall have the right to claim certain exemptions. This exemption procedure together with specific exemptions shall follow the procedure laid out in Section 39, Chapter 10 of this Code under Small Claims, including subsections A through C, and Sections 37 and 38 of Chapter 10 on Small Claims.

(2) Any judgment creditor receiving a judgment against any person under this Section, Part 1, shall have the right to satisfy such judgment by a Writ of Execution. Such procedure shall be the same as that laid out in Sections 33, 34 and 35 of Chapter 10 of this Code. The judgment creditor may also avail himself or herself of Examination of a Debtor provisions set out in Section 41, Chapter 10 of this Code.

(This Section was added by Ordinance #42, adopted by the Blackfeet Tribal Business Council on December 13, 1974).

Section 7. Imprisonment for Debt.

Imprisonment for debt in ordinary action has been abolished as a remedy of which debtor may avail himself. However, when it is made to appear to the satisfaction of the Court that a male judgment debtor has

been guilty of fraudulent behavior in contracting the obligations on which judgment was rendered, or is about to abscond from the Reservation, or has removed or concealed or is about to remove or conceal his property with the intent to defraud his creditors, he may be held in the Tribal Jail until appropriate bond has been posted.

Section 8. Ownership, Licensing, Inoculation and Control of Dogs.

Any person owning, maintaining or having in his own possession, any dog or dogs within the exterior boundaries of the Blackfeet Reservation shall cause such dog or dogs to be vaccinated annually for rabies by a veterinarian, license under the laws of the State of Montana, provided that dogs vaccinated with the type serum, which is effective for a period of three (3) years, shall be vaccinated every three (3) years thereafter and the owner or person or persons maintaining or in possession of any dog or dogs within the exterior boundaries of the Blackfeet Reservation, shall, at all times display upon each dog, a rabies vaccination tag and the person owning, possessing, or maintaining any dog or dogs shall procedure and obtain a vaccination certificate issued and signed by such a licensed veterinarian. Any dog which shall be within the exterior boundaries of the Blackfeet Reservation after the first (1st) day of July 1967, and which shall not have affixed to its collar such rabies vaccination tag, is hereby declared to be a nuisance, and any police officer or dog catcher appointed by the Blackfeet Tribal Council or the Superintendent of the Blackfeet Reservation shall have the right to capture such dog and, after making reasonable attempt to identify the owner of such dog, shall have the right to destroy such dog in the most humane manner feasible. Any person residing within the exterior boundaries of the

Blackfeet Reservation who shall own, possess or maintain any dog or dogs, shall pay a fee of Fifty Cents (\$.50) per year for a dog license for each dog or dogs owned, possessed or maintained. Such fee shall be paid to the Treasurer of the Blackfeet Tribal Business Council.

In return for each fee paid, the owner shall receive a License tag which shall be affixed to the collar of the dog for which the tag is issued. Every dog which shall be within the exterior boundaries of the Blackfeet Reservation after the first day of July, 1967, and which shall not bear and have affixed to its collar, such license tag is hereby declared to be a nuisance, and any police officer or dog catcher appointed by the Blackfeet Tribal Council or the Superintendent of the Blackfeet Reservation shall have the right to capture such dog after an reasonable attempt has been made to identify and notify the owner of such dog, shall have the right to destroy such dog in the most humane manner feasible.

The Treasurer of the Blackfeet Tribal Council is authorized to procedure suitable license tags to be issued to all persons who are required to obtain a dog license. All funds paid to the Tribal Treasurer for issuance of such dog license shall be paid into the general fund of the Blackfeet Tribal Council.

NOTE: Any conflict between this Chapter and Chapter 9 of this Code on Rules of Procedure shall be resolved in favor of the provisions of Chapter 9.

CHAPTER 2. PART II.

REPOSSESSION OF PERSONAL PROPERTY

Section 1. Jurisdiction.

The Tribal Court shall have exclusive jurisdiction over all claims by creditors for return or repossession of personal property of residents of the Blackfeet Reservation when such property is located within the exterior boundaries of said Reservation and said resident has an established resident and/or business within the exterior boundaries of the Blackfeet Reservation.

Section 2. Commencing of an Action.

Any creditor desiring to repossess any personal property as described above, from a resident of the Blackfeet Reservation, unless such repossession is with the written consent of the resident-debtor, must file a complaint in the Blackfeet Tribal Court. The creditor may elect to either file a complaint asking for repossession of the property in question, or may file a complaint asking for money damages due on such property, but he may not use both remedies for the same property.

Section 3. Service of Process.

The complaint as described above, together with a summons issued by the Clerk of the Tribal Court shall be served upon the defendant in accordance with Chapter 9, Rules of Civil Procedure in this Code, EXCEPT, that the time for answering by the defendant may be shortened to not less than ten (10) days if the complaint demands repossession of property.

Section 4. Procedure before Judgment.

A plaintiff-creditor and the defendant-debtor in any repossession action shall comply with the Rules of Civil Procedure set out in Chapter 9 of this Code, including all time limitations, discovery procedure and motions. Both parties in such an action have the right to a jury trial upon request provided such request is made at least ten (10) days prior to the trial date.

Section 5. Judgment.

A. After a Hearing on the Merits. Upon the joining of an issue or issues and the subsequent trial or hearing of the case on the merits of all the pleadings, the judge or the jury shall render judgment in favor of either the plaintiff or the defendant. If judgment is rendered in favor of the plaintiff it must state specifically whether it is for money damages or for return of the personal property in question to the plaintiff.

B. On Default of Defendant. If the defendant has been properly served with the summons and complaint and fails to appear and answer the plaintiff's complaint on file within the time prescribed by law without notifying the Court or asking for a continuance, the plaintiff may ask the Court to order the defendant in default. If it appears to the satisfaction of the Court that the defendant has failed to appear without excuse within the prescribed time period set out in the summons, the Court will enter the default of the defendant and have judgment to the plaintiff, either in money damages or ordering return of property in question to the plaintiff.

The Court, in its discretion, may modify the prayer of the plaintiff in the judgment order if it appears to the Court that return

of the property will unjustly enrich the plaintiff due to the amount of equity of the defendant in the property. In this case, wherein the plaintiff has only asked for return of the property, the Court may give judgment for money damages in the alternative, in the amount owed by the defendant to the plaintiff on the property.

Section 6. Assignments.

Assignments are allowed in a proceeding for repossession of personal property or money damages as an alternative remedy. If an assignment is alleged in the complaint, the assignee must set out the amount of money paid to the original creditor for the assignment of the claim. The amount set out in the pleading must appear to be fair in light of the value of the claim so assigned and no future agreement between assignee and assignor for a percentage of any recovery on the claim will operate to validate an assignment. The assignment by the assignee with the sum certain paid for such assignment so stated and verified by the assignee. If an assignment is alleged without the required complaint amended to show the real property in interest and ask to have the assignee dismissed as the plaintiff.

Section 7. Supplementary Proceedings.

If the judgment is rendered in favor of the plaintiff, the plaintiff has all the rights and remedies available to him under Chapter 9, Rules of Civil Procedure of this Code, if he elects a money judgment, including the right to have a Writ of Execution issued out of the Tribal Court against any property of the judgment debtor, that is not exempt from execution.

Section 8. Claim of Exemption.

If the judgment rendered against the defendant in a repossession proceeding is for money damages, the defendant has the right to submit to the court within ten (10) days after judgment, a Claim of Exemption, conforming to the Exemption Schedule set out in Chapter 10, Small Claims Court, Section 39. The Clerk of the Tribal Court shall cause the Claim so filed to be served upon the judgment creditor. The judgment creditor then has five (5) days after service in the judgment debtor's claim. If such protest is so filed in Tribal Court, the Clerk shall set a hearing and the Court will determine which of the judgment debtor's property, if any, is exempt from execution. If the judgment creditor does not file a protest to the judgment debtor's Claim of Exemption, the Court shall allow such exemption, except that the Court in its discretion, may raise or lower certain amounts contained in such claim.

Thereafter, any Claim of Exemption so approved by the Court shall be entered in the record of the case and no property listed in such claim may be executed upon.

Section 9. Pre-Judgment Attachment, Garnishment and Repossession.

There shall be no pre-judgment attachment, garnishment or repossession in the Tribal Court upon a claim filed under this Chapter, with the exception that if the plaintiff-creditor can show to the Court that certain property which is the subject matter of the complaint, is in imminent danger of leaving the jurisdiction or being destroyed, the Court may order such property picked up and held in a neutral place under the care and custody of the Tribal Chief of Police, until such time as the issue concerning such property, the plaintiff-creditor must

submit a written affidavit to the Court stating the facts as he believes them. The Court may then either order the defendant to come into Court to show cause why the property should not be picked up and held, or may order the property picked up immediately. Any time after such immediate repossession occurs without giving the defendant benefit of a hearing, the defendant may request a hearing on the matter of this emergency repossession and the Court must allow the defendant to appear with notice to the plaintiff of such hearing. If the defendant demonstrates to the satisfaction of the Court that the property is in no danger, the Court may order the Chief of Police to release the property back into the possession of the defendant with attendant orders to the defendant that in the event the property is either destroyed or leaves the jurisdiction of the Court, that the defendant will be held on criminal contempt charges.

Section 10. Repossession Order.

Upon judgment in favor of the plaintiff ordering that the property in dispute be returned to the possession of the plaintiff, the Court shall prepare a judgment order stating that such property is to be returned to the possession of the plaintiff and cause such an order to be served upon the defendant. The defendant has ten (10) days in which to comply with such order. If the defendant has not returned the property to the judgment creditor within the time allowed, without filing an appeal, the Court shall order the Chief of Police to pick up said property and hold it for the judgment creditor. If the judgment debtor appeals the decision of the Tribal Court within this ten (10) day period the judgment of the Tribal Court shall be stayed pending such appeal.

Section 11. Appeal.

Both the plaintiff and the defendant have the right to appeal the decision of the Tribal Court to the Blackfeet Appeals Board within ten (10) days after judgment is rendered by said Court, unless the judgment is by default, in which case the defendant has no right of appeal. If judgment with the Clerk of the Tribal Court an amount of money equal to the present value of the personal property that is the subject of the judgment. In the alternative, a defendant-appellant may procure the signature of a surety or sureties on an undertaking on appeal. The surety or sureties must file an affidavit with the Court stating that he is worth, over and above all his debts and liabilities and exemptions an amount equal to the money judgment plus costs on appeal, or to the present value of the property in question, that he is a resident of the Blackfeet Reservation, that in the event judgment is affirmed or the appeal is dismissed and the judgment debtor fails to pay the judgment within twenty (20) days, either the money judgment or the present value of the property in question, after such dismissal or affirmance, the surety will pay the judgment together with any costs, disbursements, interest and/or attorney's fees, as the case may be.

In the event an appeal is dismissed, or the judgment is affirmed and the judgment debtor does not pay the judgment within the time period set out above, the judgment creditor may proceed against the surety or sureties for collection of the judgment.

In the event a cash deposit, if the appeal is dismissed or the judgment affirmed, the judgment creditor may apply to the Tribal Court for payment of the deposit made by the judgment creditor would prefer

the personal property returned to him, he may move the Court for such an order.

Upon appeal, if the judgment is for return of the personal property to the judgment debtor to hold such property in obedience and neither pending the outcome of the appeal. If an appeal is not heard within six (6) months from the time of the application for appeal, the judgment creditor may move the Court for an order vacating the appeal.

Upon granting of such order, the judgment creditor may then proceed to satisfy the Tribal Court Judgment.

Section 12. Execution.

Execution on a money judgment shall proceed in the same manner as in Chapter 10, Section 33 through 35, Small Claims Court.

(This Section adopted by the Blackfeet Tribal Business Council by Ordinance No. 27 on the 21st day of August, 1973).