

# American Indian Law Review

---

Volume 1 | Number 1

---

1-1-1973

## Taxation; Indian Country; Criminal Law; Damages

Follow this and additional works at: <https://digitalcommons.law.ou.edu/air>



Part of the [Indian and Aboriginal Law Commons](#)

---

### Recommended Citation

*Taxation; Indian Country; Criminal Law; Damages*, 1 AM. INDIAN L. REV. 89 (1973),  
<https://digitalcommons.law.ou.edu/air/vol1/iss1/11>

This Recent Developments is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian Law Review by an authorized editor of University of Oklahoma College of Law Digital Commons. For more information, please contact [darinfox@ou.edu](mailto:darinfox@ou.edu).

## RECENT DEVELOPMENTS

### TAXATION:

During the spring of 1973 the Supreme Court of the United States resolved three significant cases involving a state's power to tax revenue derived from both Indian-owned enterprises located outside the confines of the Indian reservation and income derived from sources solely within the boundaries of the reservation.

In *McClanahan v. State Tax Commission of Arizona*, 93 S.Ct. 1257 (1973), the Court held that by imposing a state income tax on a reservation Indian, the state had interfered with matters which relevant treaties and statutes left to the exclusive province of the federal government and the Indians themselves, and therefore the tax is unlawful when applied to reservation Indians whose income is derived wholly from reservation sources.

In *Mescalero Apache Tribe v. Jones*, 93 S.Ct. 1267 (1973), the Court, by a 6 to 3 margin held that the state of New Mexico could impose a gross receipts tax on income of the tribe derived from off-reservation land leased from the federal government under § 5 of the Indian Reorganization Act, 25 U.S.C. 465, but also held that personalty installed and permanently attached to the realty is not subject to the state's use tax which the state was attempting to impose.

In *Tonasket v. Washington*, 93 S.Ct. 1941 (1973), the Court vacated and remanded the state supreme court's judgment which held that the Colville Confederated Tribes, by consenting to criminal and civil jurisdiction of the state, impliedly agreed to the imposition of state excise taxes upon Indian commerce conducted within the boundaries of the reservation in accordance with its decision in *McClanahan v. State Tax Commission of Arizona*, 93 S.Ct. 1257 (1973).

### INDIAN COUNTRY:

In *Mattz v. Arnett*, 41 LW 4808 (1973), the Court, after tracing the history of the establishment of the Klamath Reservation held that, although the Klamath Reservation had been diminished by allotment and white settlement, it was not terminated by the Act of June 17, 1892, and the land within the reservation boundaries is still Indian country within the meaning of 18 U.S.C. § 1151.

### CRIMINAL LAW:

In *Keeble v. United States*, 41 LW 4722, 36 L.Ed.2d 844 (1973),

the petitioner was tried in the United States District Court in South Dakota for the crime of assault with intent to commit serious bodily harm. The Court refused to instruct the jury, as requested by the petitioner, that they might convict petitioner of simple assault. The United States Supreme Court reversed the District Court decision and held that where an Indian is prosecuted in federal Court under the provisions of the Major Crimes Act of 1885, the defendant is entitled to an instruction on a lesser included offense if the evidence would permit a jury rationally to find him guilty of the lesser offense and acquit him of the greater.

#### DAMAGES:

In *Vicenti v. United States*, 470 F.2d 845 (10th Cir. 1972), Indians sought to recover title and possession to certain allotments and for damages for loss of use, loss of income, and loss of improvements on the land. The Indians had been promised lieu lands in exchange for giving up their allotments by the federal government, but had never been given such land. The Supreme Court of the United States held that appellant Indians were to be given immediate and exclusive use of all allotments involved; however, the Court also held that in light of the fact that the United States had received no payments from the allotment lands there was no damage claim available.