Introduction

Initially, the entire area of the state of Oklahoma was set aside for Indian occupancy. In 1889, the western part of Oklahoma was opened to non-Indian settlers; title to most of those lands is derived from federal patents. Title to lands in eastern Oklahoma, in contrast, stems from allotments to individual tribal members pursuant to three general legislative schemes.

1. The treaties and statutes governing the lands of the Five Civilized Tribes, i.e., the Cherokee, Choctaw, Chickasaw, Creek and Seminole tribes;

2. The treaties and statutes governing the lands of the Osage Nation; and

3. The General Allotment Act which applies to all other tribes.

The legal basis for the federal government’s control of Indian lands is found in the Constitution of the United States. The federal government has complete jurisdiction over Indian tribes and their lands pursuant to Article I of the Constitution of the United States:

The Congress shall have power . . . . to regulate commerce with foreign Nations and among the several States, and with Indian Tribes . . . .

From the formation of the United States, the federal government held fee title to Indian lands as “guardian” for the tribes, subject to the right and use of the tribes. The Oklahoma Enabling Act and the Supremacy Clause found in Article II of the Constitution of the United States protected this federal power when the state of Oklahoma was formed. The general theme of Oklahoma Indian titles is that the federal government imposed restrictions on alienation of Indian lands to protect the Indian allottees.

Indian titles necessitate attention to detail and research in the several treatises on Indian land law. (See Appendix A for research information.) Title examiners typically find that Indian Law is more difficult than any other area of their practice. The laws are complex, were frequently changed, and are not codified in the usual manner, which makes research difficult. Even a slight violation of an Indian restriction may invalidate a transaction.

Indian titles derived through The Five Civilized Tribes

The lands allotted to the Five Civilized Tribes are approximately the eastern half of Oklahoma with the exception of Osage County, which was allotted to the Osage Tribe, and a small area in northeast Oklahoma which was allotted to the Quapaws, Delawares and a few other tribes. The allotment scheme for the Five Civilized Tribes developed in the 1890s with the movement to create the state of Oklahoma out of Indian Territory.

The lands of the Five Civilized Tribes in Indian Territory were held as tribal domains, and, pursuant to treaties, tribal consent was necessary to include the lands within the territorial limits of a state. In 1893, the Dawes Commission was created to negotiate agreements with the tribes regarding their rights under the treaties and to dissolve the tribal domains by allocating the tribal lands in severalty to tribal members. In order to determine who was entitled to share in the tribal domains, the Dawes Commission compiled tribal rolls. The Indians were classified according to amount of Indian blood and age, and a roll book was published in 1906.
For the Five Civilized Tribes, the overall scheme of allotment of lands was to give each Indian an equal share of the tribal lands or monetary compensation. W. F. Semple describes these allotments in his book, *Oklahoma Indian Land Titles* (see Appendix B). The allotments were accompanied by restrictions as to alienability which evolved over a period of time as numerous acts were adopted amending the restrictions. The justification for the restricted Indian ownership of land was to allow the Indians time to adapt to a different culture and to prepare for competent business dealings.

An Oklahoma title attorney or land person needs familiarity with a minimum of thirteen Acts of Congress in connection with determining ownership of lands descending from an allotment of a member of the Five Civilized Tribes. In addition, there are numerous treaties between the tribes and the United States which are important. The applicable Acts of Congress are printed in the public laws, which are the Acts of Congress printed in chronological order and usually found in law libraries. The applicable acts are also published in W. F. Semple's treatise, *Oklahoma Indian Land Titles*. Appendix C includes a brief synopsis of the principal Acts of Congress dealing with restrictions on alienation by allottees of the Five Civilized Tribes.

The most important rule in dealing with Indian titles is that a purported conveyance in violation of alienation of restrictions is void. Therefore, it is important to understand the scheme of the alienation restrictions. An initial step is to determine whether the inception of the Indian title is from an individual allotment or from unallotted Indian lands.

In addition to allotting lands to individual tribal members, the treaties with the tribes reserved lands from allotment. Lands used for cemeteries, churches and schools were not allotted but were reserved as common properties. Lots in existing towns were sold at auction and patents from the applicable tribe issued to purchasers. Other unallotted lands were sold at public auction under rules promulgated by the Secretary of the Interior, and purchasers took fee simple title under Unallotted Land Deeds, which were approved by the Secretary of Interior and signed by the appropriate tribal authority.

Title derived through individual allotments is much more complicated than that of the unallotted lands. The restriction scheme for allotted lands includes several important considerations, discussed below.

**Classification of the Indian by degree of Indian blood.** Is the Indian a full-blood, half-blood, quarter-blood, intermarried white or freedman, i.e., a person who had formerly been a slave? The restriction scheme is more protective of tribal members with more Indian blood. When reviewing an Indian allotment, the patent will show the name of the tribe and the roll number of the allottee. The degree of blood of the allottee is determined by reference to the Dawes Commission roll. The rolls are available in the county law library or at the Bureau of Indian Affairs Office in Muskogee, Oklahoma.

**Classification of the land as homestead or surplus.** Each member of each tribe, except for the Choctaw and Chickasaw freedmen, received two allotments: a homestead allotment and a surplus allotment. The actual designation is shown on the patent. Choctaw and Chickasaw freedmen were allotted only surplus lands.

**Age of the allottee.** Whether the allottee has attained majority at the date of the conveyance may determine whether or not restrictions were removed by an Act of Congress. Under certain acts, a conveyance by a minor of allotted lands was prohibited. A convey-
ance by a guardian requires the determination that the guardian was appointed pursuant to proper authority and procedure.

**Entity with approval authority.** Does an Act of Congress delegate approval of the conveyance to the Oklahoma courts or to the Secretary of Interior? Was the proper approval obtained?

**Whether Indian is original allottee or an heir of the allottee.** The restriction scheme is different for an original allottee than for an heir of an allottee.

**Date of conveyance.** The date of the attempted conveyance is important to establish the scheme of restrictions imposed by the applicable act.

**Whether lands were subject to taxation.** If title descends from a tax deed, it must be determined that the lands were subject to taxation. If not, the tax sale and deeds are void, and title remains in the allottee.

Characteristically, the initial Indian instrument encountered when examining title is a sheet of Dawes Commission roll information for the allottee followed by an Allotment Patent designated either “Homestead” or “Surplus.” Subsequently, a deed or, more typically, several deeds out of the allottee, are recorded and perhaps a quiet title action. Examination of these instruments in the context of the restrictions regarding alienation of allotted lands have created recurring legal issues for Oklahoma’s title lawyers and oil and gas company land personnel. **In an Indian conveyance, whether the instrument is a deed or oil and gas lease the allotment restrictions must be satisfied.**

Restrictions affecting current conveyances, including oil and gas leases, apply to Indians of one-half or more blood. Restricted Indians of half-blood or more may convey their property if the Secretary of Interior or the district court removes restrictions. If the lands remain restricted, the restrictions are removed when the allottee dies, pursuant to the Act of August 4, 1947. Conveyances by an allottee’s heirs or devisees of one-half or more Indian blood are exceptions, when the land was restricted in the hand of the person from whom the heir or devisee acquired title. In these situations, a conveyance requires removal of restrictions or approval of the district court after completion of the following procedures:

1. File petition for approval in the district court where the land is located and set hearing not less than ten days from the date of filing.

2. The judge signs a notice which describes the land and recites the consideration. This is published one time in a newspaper of general circulation in the county and notice is given to the Area Director’s office at least ten days prior to the hearing. (Notice to the Area Director is required for the sale of an oil and gas lease, but not required for an agricultural lease.)

3. The grantor appears at the hearing unless he or she and the probate attorney consent otherwise.

4. The court must be satisfied that consideration is paid and that the conveyance is in the best interest of the Indian.

5. Evidence at the hearing must be transcribed and filed of record in the case.
6. The purchaser must pay all costs of the case.

7. Competitive bids may be taken at the hearing and the sale confirmed to the highest bidder.

After completing the court approval proceeding, the Indian is free to execute a commercial oil and gas lease or deed.

Tribal lands and Indian allottees whose restrictions have not been removed are leased under departmental forms of oil and gas leases. Forms for these leases and assignments are available from the Bureau of Indian Affairs at Muskogee, Oklahoma. A departmental lease cannot be assigned unless the Bureau of Indian Affairs approves. The provisions of these departmental leases do not die with the lessors/allottees but continue until the department relinquishes supervision. The Bureau of Indian Affairs in Muskogee will furnish a copy of departmental oil and gas leases and their status.

 Probably the most common title opinion requirement in the area of Indian titles is for a judicial determination of heirship of a deceased allottee. Although an order approving a deed usually sets out information of heirship, the order is not a judicial finding as to heirship because the judge is merely acting in an administrative capacity as delegated by the federal government. To determine heirship of a deceased allottee, it is necessary to use one of the following methods:

1. Section 1 of the Act of June 14, 1918, where the procedure is essentially administrative and not judicial;
2. Decree of final distribution where an estate is administered in probate court; or
3. Quiet title or partition action in district court.

Land personnel may decide to waive requirements for determination of heirship based on business judgment, especially in reliance upon an Affidavit of Heirship or a Proof of Death and Heirship from the files of the Bureau of Indian Affairs in Muskogee.

To avoid expensive curative, if faced with a title requirement regarding Indian restrictions, always check with the Bureau of Indian Affairs Office to determine if Indian restrictions were removed from the subject land. The removal of restrictions may not be apparent to the examining attorney. In addition, do not assume that Oklahoma’s Marketable Record Title Act will cure the requirement. Generally the Marketable Record Title Act does not apply to Indians of the Five Civilized Tribes.

Indian titles derived through the Osage Nation

The Osage Indians were moved from Kansas and located within the boundaries of present day Osage County by the Act of Congress of June 5, 1872, 17 Stat. 228. The lands were held as tribal domain until passage of the Act of Congress of June 28, 1906, 34 Stat. 539. Pursuant to that act, the surface of the lands was allotted to individual tribal members, and the oil, gas, coal and other minerals were reserved to the tribe.

Oil and gas leases were negotiated with the Bureau of Indian Affairs at Pawhuska and are either oil leases or gas leases or a combination oil and gas lease. An examination of the records of Osage County is not necessary because all records are located at the Bureau of Indian Affairs. All royalties are paid to the Bureau of Indian Affairs and then transferred to the Osage Tribe. Royalties are calculated at the highest posted price by the major

31 OKLA. STAT. tit. 16, § 71
purchasers in Osage County, and the Bureau of Indian Affairs notifies lessees of the amount to remit. The income from this source is distributed to tribal members according to their headrights which is their pro rata share of the income. Upon the death of the original allottee, the headright is divided among the heirs.

The surface of the Osage Nation was allotted to individual tribal members by the Act of Congress of June 28, 1906. The homestead was inalienable and non-taxable. The surplus was inalienable for twenty-five years and non-taxable for three years or until a certificate of competency was issued. Inherited lands were alienable until passage of the Act of February 27, 1925, which made lands inherited by tribal members of one-half blood or more inalienable. The act of March 3, 1921, 42 Stat. 1249, removed restrictions as to adults of less than one-half blood.

Restricted Osage Indians may execute wills if the wills are approved by the Secretary of Interior. Oklahoma district courts have jurisdiction over estates of members of the Osage Nation.

Titles derived through the General Allotment Act
Unlike the restricted fee ownership allotment scheme of the Five Civilized Tribes, Indian allotments under the General Allotment Act (commonly referred to as the Dawes Act32) were made on the basis of trust-type ownership. Broadly speaking, the allottee has an equitable and present useable estate in land, but the legal title remains in the federal government and does not pass to the allottee or his heirs until the issuance of a fee patent. Tribes covered by the General Allotment Act include:
- Kiowa
- Comanche
- Apache (Kiowa-Apache)
- Wichita
- Caddo
- Delaware of Western Oklahoma
- Fort Sill Apache
- Cheyenne-Arapaho
- Kaw
- Pawnee
- Ponca
- Tonkawa
- Otoe-Missouria
- Eastern Shawnee
- Miami
- Seneca-Cayuga
- Peoria
- Wyandotte
- Quapaw
- Ottawa
- Modoc
- Absentee Shawnee
- Citizen Band Pottawatomie
- Iowa
- Kickapoo
- Sac and Fox

Working with lands allotted under the General Allotment Act requires examination of the records of the appropriate office of the Bureau of Indian Affairs. State recording statutes and curative acts have a limited effect on the rights of parties who could claim an interest in these lands. Unless restrictions are removed or federal law or regulation specifically refers to state law, federal law will control all aspects of ownership of these lands. Any contracts or conveyances made without the authority of federal law are void.

The general concept of the General Allotment Act was to divide tribal lands among eligible members of the tribes and to sell the excess lands. Trust patents were issued to individual allottees evidencing the right to use and occupancy of the premises with final title to

be issued at the end of the trust period. The early trust patents set out an initial trust period of 25 years, which have been extended pursuant to various executive orders up to the present time. The most recent extension was until January 1, 1994. Removal of restrictions and governmental trust supervision can be terminated in a variety of ways, including:

- competency determinations
- fee patents
- sales to non-trust status
- death of the allottee and the inheritance by non-Indians
- mortgages
- condemnations
- leasing
- easements

The Secretary of the Interior has broad powers in determining the effectiveness of wills and the heirship of a deceased allottee. (See Appendix C pertaining to Acts of Congress which dealt with the General Allotment Act.) Oklahoma state laws of descent and distribution are applied unless specifically otherwise provided by the Acts of Congress. Until such time that the land is no longer restricted, state courts have no jurisdiction. If the heirs of a deceased allottee were not determined during the trust period, and a trust patent has been withdrawn, a fee patent issued and the supervision of the government removed, the state district courts have jurisdiction to determine the heirs of the allottee.

Prior to June 25, 1910, there were no statutes which allowed determination of heirship. Pursuant to the Act of May 27, 1902, the Secretary of the Interior could approve conveyances of adults and minors of inherited land, and the approval of the deed constituted a practical determination of the heirs. The Act of June 25, 1910, allowed the determination of heirship by the Secretary of the Interior. This grant of authority to the Secretary of the Interior is final in the absence of fraud, error of law, or gross mistake.

A record is kept in the Office of the Commissioner of Indian Affairs, Washington, D.C., of all determinations of heirship by the Department of the Interior. The local field office of the tribe to which the allottee belonged has information as to what determination was made by the Indian Office. Often, the information, including affidavits and other information, is conflicting. The Secretary of the Interior has the discretion to reopen a finding of heirship.

Statutes and regulations control the leasing of allotted lands for oil and gas. (See Appendix D for the text of the Act of March 3, 1909, 25 U.S.C. § 396.) This Act states that the allottee may negotiate a lease if it is deemed advisable by the Secretary of Interior or the Superintendent of the Bureau of Indian Affairs Agency as the Secretary’s authorized representative, subject to certain rules and regulations. If the allottee is deceased, however, and the heirs are not determined, or if some or all of the heirs are not located, the Secretary may not negotiate a lease but must offer the lease for bid. The Act of August 9, 1955, modifying the Act of March 3, 1909, provides for leasing by the Secretary if the allottee is deceased and the heirs have not been determined, or if determined, cannot be located. In order to lease, however, the Secretary must first give notice and advertise, and the lease is granted by competitive bidding. The regulations adopted under the Act of 1909 expand this to apply to all leases of allotted lands, not only those of heirs or unlocatables.

The 1938 Omnibus Leasing Act is the basic authority for leasing tribal lands. Many of the rules and regulations governing the leasing of

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33 25 U.S.C.A. § 372
34 25 C.F.R. § 1011
tribal lands for oil and gas are identical or substantially the same as those governing allotted lands; however, those few that differ can cause great problems. To avoid difficulties when dealing with tribal lands, the division order analyst needs to be aware of some general principles:

- Always determine the tribal officials which are authorized to act on behalf of the tribe with respect to the transaction. These differ among tribes.
- Although the Secretary of the Interior (or his or her authorized representative) may reject a lease, he or she cannot grant a lease on tribal lands of his or her own authority. The lease must be approved by the authorized tribal body.
- All leases must first be offered for competitive bid by advertisement in accordance with the regulations. Subject to this regulation, § 171.3 provides that leases may then be made through private negotiations. The title attorney must have evidence that the lease had first been advertised, such as the certified transcript of the prior advertised sale proceedings obtained from the Bureau of Indian Affairs agency having jurisdiction over the land.

Section 4 of the Omnibus Leasing Act makes all operations on Indian land under oil and gas leases covering Indian lands subject to rules and regulations promulgated by the Secretary of the Interior. The regulations are administered under the direction of the Bureau of Land Management. If the lease or agreement refers to any other agencies or offices (Supervisor or Conservation Manager, United States Geological Survey, Department or Conservation Division, etc.), these references should now be interpreted to refer to the Bureau of Land Management or the Mineral Management Service as appropriate.

The Federal Oil and Gas Royalty Management Act of 1982 (codified in scattered sections of 30 U.S.C. (1982)) greatly expanded the realm of the Department of Interior in accounting for and monitoring production. Operations may not be commenced on any tribal lease before it is approved by the Secretary of the Interior or his or her representative (usually the Superintendent of the appropriate Indian agency). After the lease has been approved, the lessee must obtain written permission from the Bureau of Land Management before commencing operations on the lease, and then the lessee must stay in compliance with all Bureau of Land Management regulations thereafter. If the lease covers allotted lands and not tribal lands, the regulations are very similar. The Department of Interior has long held that failure to put leased premises under production in paying quantities during the primary term results in the termination of the lease by its own terms. However, case law has held, based on Oklahoma law, that a well commenced during a primary term of an allotted lease with a standard habendum clause would extend the lease for a period sufficient to complete the well. Suffice it to say that no extension of the primary term of tribal leases beyond the ten-year statutory limit would be advisable.

All documents transferring any interest in or modifying the terms of the tribal or allotted oil and gas lease must be on forms prescribed by the Secretary of the Interior and must bear the Secretary’s approval. Assignments of overriding royalties need not be filed for approval or even made apparent to the Superintendent. Assignments of tribal leases issued under the Omnibus Leasing Act of 1938 can only be of either the entire interest or of a partial (undivided) interest in the whole lease.

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35 25 C.F.R. Part 171 (UU 171.1 – 171.30)
36 found at 43 C.F.R. Part 3160
38 Moncrief v. Pazotex Petroleum Co., 280 F.2d 235 (10th Cir. 1960)
There has always been some question whether a lessee may assign a divided interest in a tribal lease because in some instances they have been approved and in other instances they have been rejected. Recent forms usually provide if a lease is divided by the assignment of an entire interest in any part, each part is considered a separate lease.

All assignments and conveyances of leasehold interests (other than overrides) must be filed with the superintendent within 30 days of execution. If a document is filed after this time but nonetheless is approved, this is not deemed a title defect. In many instances, where a prior assignment has not been approved, companies will use an assignment of operating rights as a document of transfer of an interest in the oil and gas lease. Under the regulations, assignments of operating rights must be approved in order to be effective under the applicable regulations; however, a 1956 Oklahoma court has indicated that the assignment of operating rights may be enforced between the parties regardless of whether approval had been granted. Because many companies do not seek approval of the assignment of operating rights, it is very important to review company files as well as Bureau of Indian Affairs and county records in determining title.

Interesting cases under the General Allotment Act

Estoril Producing Corporation v. Murdock, 822 P.2d 129 (Okla. Ct. App. 1991). Kah-Kah-to-the-Quah was a restricted Mexican Kickapoo Indian who received an allotment of 80 acres which was held in trust by the United States. On October 20, 1927, Mr. Quah executed a Warranty Deed to the C.R.I.&P. Railroad. However, the deed does not show the approval by the Secretary of the Interior, as required by the General Allotment Act.

On October 5, 1980, the heirs of Kah-Kah-to-the-Quah executed an oil and gas lease to defendants. The defendants claimed title through a 1986 oil and gas lease executed by the successors of the railroad.

The appeals court stated that the three basic requirements of the Act are:

1. The conveyance must be in such terms and conditions and under such rules and regulations as the Secretary may prescribe;
2. The conveyance must be under the supervision of the Commissioner of Indian Affairs; and
3. Approval of the conveyance must be made by the Secretary of Interior.

The warranty deed, on its face, fails to evidence that these three requirements were met. Since there was no approval, the deed is void. Because the deed is void, the oil and gas lease from the successors of the railroad is also void.

Cheyenne-Arapaho Tribes of Oklahoma vs. United States, 966 F.2d 583 (10th Cir. 1992). The Cheyenne-Arapaho Tribes executed six oil and gas leases, four with Woods Petroleum in May of 1976, and two with Reading & Bates in February of 1980. All leases were for a term of five years plus term of production and all were approved by the Area Superintendent.

In April, 1981, Reading & Bates and Woods sought to communitize these leases. The tribe refused to approve the communitization agreements on the four leases that were expiring in 1981 without renegotiation, which the lessees refused to do. The proposed communitization agreement was then

submitted to the area director of the Anadarko Office of the Bureau of Indian Affairs and was approved. The tribe appealed, but the area director’s decision was affirmed. The tribe sued in federal court, which ruled that the lack of tribal consent did not invalidate communitization agreements but held that the area director had breached his fiduciary responsibility by approving the agreements without studying the economic conditions prevailing at the time. Thus, the 1981 leases expired.

The Tenth Circuit agreed and concluded that the Secretary’s position as a trustee over tribal lands conveys with it fiduciary responsibilities and thus must consider the economic interests of Indian lessors and has a duty to maximize lease revenues.

The record revealed that the area director did not consider any evidence of the market value and marketability of a new lease. (The value of leases in the Deep Anadarko Basin had risen astronomically in the 1980s.) The Tenth Circuit concluded that the Secretary and his delegates’ actions were an “arbitrary and capricious abuse of discretion” and that the communitization agreements were not valid and that any leases upon which drilling had not commenced by May 10, 1981 had expired as of that date.
Appendix A: Useful Research Materials about Oklahoma Indian Land Titles

Books and Articles.

Semple, W. F., *Oklahoma Indian Land Titles Annotated*, Thomas Law Book Company (1952), (Supp. 1977). This book is out of print but is available at the Tulsa County Law Library, the University of Tulsa Law Library and the University of Oklahoma Law Library.


Cohen, Felix, U. S. Department of Interior, *Federal Indian Law*, (1958). This is a general treatise with an update by Rennard Strickland. It is available through the governmental printing office. It is particularly good for tribal matters. This book is also available at the University of Tulsa Law Library and the University of Oklahoma Law Library.

Rarick, Joseph F., *Oklahoma Indian Land Titles*, University of Oklahoma (1982). This material can be viewed on the University of Oklahoma website at http://thorpe.ou.edu/treatises.html.


Rolls of the Dawes Commission. This material is available at the Rudisill North Regional Branch of the Tulsa County Library, the University of Tulsa Law Library and the University of Oklahoma Law Library.


Online Resources.
Indian Law Web Site
http://www.indianlaw.org

American Indian Law Review
http://hamilton.law.ou.edu/lawrevs/ailr

National Congress of American Indians
http://www.ncai.org

Bureau of Indian Affairs
http://www.the13thregion.com/bia.htm

University of Oklahoma Law Center – Native American Legal Resources
http://www.law.ou.edu/indian/
http://thorpe.ou.edu/treatises.html

Tribal Governments on the Internet
http://www.piperinfo.com/state/
[will redirect to] http://www.statelocalgov.net/index.cfm

Indian Land Working Group (General Allotment Act)
http://www.csusm.edu/nadp

Oklahoma Indian Affairs Commission
http://www.oiac.state.ok.us/tgo.html

Oklahoma Tribes and Officials
http://www.ywviusdinvnohii.net/OKTribes.htm

Appendix B: Allotment of Indian Lands

The allottees included:

- 3,119 Seminoles with average allotments of 120 acres, 40 acres of which were classified as homestead;
- 18,712 Creeks, including 6,807 freedmen, with allotments of 160 acres, 40 acres of which were classified as homestead;
- 40,196 Cherokees, including 4,924 freedmen, with average allotments of 110 acres, 40 acres of which were classified as homestead;
- 27,021 Choctaws and Chickasaws which average allotments of 320 acres, 160 acres of which were classified as homestead; and
- 10,657 Choctaw and Chickasaw freedmen to whom an average of 40 acres was allotted.

Source: Oklahoma Indian Land Titles
Appendix C:
Summary of Primary Acts of Congress Dealing with Restrictions on Alienation involving
The Five Civilized Tribes

**ACT OF APRIL 21, 1904**, 33 Stat. 189: This Act removed restrictions upon the surplus lands of whites and freedmen of majority age and provided that the Secretary of the Interior could remove restrictions as to other surplus lands of majority age owners if the removal of the restriction was in the best interest of the allottee.

**ACT OF APRIL 28, 1904**, 33 Stat. 573: This Act applied Arkansas law to Indian Territory and gave the district courts jurisdiction over estates of decedents and guardianships of allottees.

**ACT OF APRIL 26, 1906**, 34 Stat. 137: This Act provided that all patents and conveyance instruments affecting allotted lands shall be recorded in the office of the Commissioner of the FiveCivilized Tribes and when recorded shall convey legal title. The Act also provided that no full-blood shall sell or encumber his allotted lands for a period of twenty-five years unless the restrictions are removed. The Act exempted allotted lands from taxes as long as title remained in the original allottee and remained restricted and contained a provision authorizing Indians of the Five Civilized Tribes to make wills.

**ACT OF MAY 27, 1908**, 35 Stat. 312: This Act sets out the basic alienation scheme for allotted lands. The Act freed all lands of intermarried whites, freedmen and mixed bloods of less than half blood, including minors, from all restrictions. The surplus lands of mix-bloods of half blood or more and less than three-quarter blood were freed from restrictions and the homestead lands could be sold or encumbered if the Secretary of Interior removed restrictions. Lands of an allottee having more than three-quarters Indian blood were left fully restricted. An additional provision was that the death of an allottee removed all restrictions upon alienation except, as to full-blood heirs, the court having jurisdiction of the settlement of the estate of the deceased allottee must approve a conveyance by the heir.

**ACT OF JUNE 14, 1918**, 40 Stat. 606, 25 USCA 375: This Act allowed the probate courts of the State of Oklahoma to determine the heirship of any deceased allottee of the Five Civilized Tribes who died leaving restricted heirs. The Act also provided that the lands of full-bloods were made subject to Oklahoma partition laws.

**ACT OF AUGUST 24, 1922**, 42 Stat. 831: This Act validated approval of deeds by the Secretary of Interior and any prior order issued removing restrictions except those procured through fraud or duress.

**ACT OF APRIL 12, 1926**, 44 Stat. 239: This Act, often called the “Hastings Act,” provided that if a member of the Five Civilized Tribes of one-half or more Indian blood should die leaving children surviving born since March 4, 1906, the homestead of such deceased allottee remained inalienable unless restrictions were removed by the Secretary of the Interior. The provision was adopted to support the so-called “afterborn” children. Section 3 of the Act confers jurisdiction upon the courts of Oklahoma to try title to land in which the allottees of the Five Civilized Tribes or their heirs claim an interest as long as written notice of suit is served upon the Superintendent for the Five Civilized Tribes (now Area Director) who has
twenty days to remove the case to the federal courts. The Act also provided that Oklahoma statutes of limitation apply against all restricted Indians of the Five Civilized Tribes.

**Act of May 10, 1928.** 45 Stat. 495: This Act extended the restrictions against alienation for twenty-five years from April 26, 1931, and gave the Secretary of the Interior authority to remove the restrictions upon the application of the restricted Indian. The provisions protecting afterborns were deleted. The Act applied Oklahoma’s gross production taxes to all minerals produced from restricted allotted lands. The Act also limited the tax exemption of each restricted Indian to 160 acres.

**Act of January 27, 1933.** 47 Stat. 777: This Act restricted tax exempt lands inherited after January 27, 1933, by heirs and/or devisees of the half-blood Indian. The Act provided that approval of conveyances must be made in open court after notice in accord with the rules of procedure for probate matters adopted by the Supreme Court of Oklahoma in June 1914.

**Act of June 26, 1936.** 49 Stat. 1967, 25 USCA 501: This Act, known as the Oklahoma Welfare Act, provided that if restricted Indian land was sold, the Secretary of the Interior had a preferential right to purchase the land for any other Indian.

**Act of July 2, 1945.** 59 Stat. 313: This was a curative act which validated certain conveyances of lands that had been purchased for an Indian and which validated judgments in partition cases from June 14, 1918, to the date of the Act where the United States was not made a party. The Act also provided that all lands purchased by the Secretary for an Indian would be restricted. (Deeds to these purchased lands contain elaborate statements setting forth the requirements for sale and are called “Carney Lacher” deeds.)

**Act of August 4, 1947.** 61 Stat. 732: This Act provided that the death of a restricted allottee removed all restrictions from his lands except if the restricted land passed to an Indian heir or devisee of one-half or more Indian blood, a conveyance, including an oil and gas or mineral lease, required court approval. Notice must be given to the Area Director of all conveyances so that he may purchase the land under the Oklahoma Welfare Act. The Act also subjected all restricted lands of the Five Civilized Tribes to the oil and gas conservation laws of Oklahoma including orders of the Oklahoma Corporation Commission if approved by the Secretary of the Interior.

**Act of August 11, 1955.** 69 Stat. 666: This Act extended the period of restriction on lands belonging to Indians of the Five Civilized Tribes and set out methods for removing restrictions which are not covered by the Act of 1947.
Summary of Primary Acts of Congress Relating to the Osage Nation

ACT OF JUNE 28, 1906, FOR DIVISION OF LANDS AND FUNDS OF OSAGE INDIANS AND FOR OTHER PURPOSES. 34 Stat. 539: This is the basic Act for the allotment of the surface to the members of the Osage Tribe and the reservation of the coal, oil, gas and other minerals to the tribe.

ACT OF MARCH 3, 1921. 41 Stat. 1249: This Act reserved coal, oil, gas and other minerals to the tribe for 25 additional years.

ACT OF FEBRUARY 27, 1925. 43 Stat. 1008: This Act stated that Osage Indians of one-half blood or more were restricted and that only heirs of Indian blood could inherit from those who were one-half or more Indian blood. This Act did not apply to spouses who were under existing marriages as of the date of enactment.

ACT OF MARCH 2, 1929. 45 Stat. 1478: This Act applied restrictions to children born after July 1, 1907.

ACT OF JULY 25, 1947. 61 Stat. 459: This Act granted the authority to determine the bonus value of any tract offered for lease to the Osage tribal council.

ACT OF FEBRUARY 5, 1948. 62 Stat. 18: This Act declared that the Secretary of the Interior was to issue certificates of competency to all Osage Indians of less than one-half blood and who are 21 years of age or older.
Summary of Primary Acts of Congress Relating to Indian Allotments Under the General Allotment Act

**General Allotment Act of February 8, 1887.** 24 Stat. 388: This Act provided for the issuance of trust patents to individual Indian allottees which evidenced their right to the use and occupancy of a certain tract of land with a fee patent to be issued at the end of the trust period. The initial trust period was 25 years. Any conveyance of these lands without approval was declared absolutely null and void.

Numerous allotment agreements between the United States and individual tribes from March 3, 1891, to March 2, 1895. (See Semple, *Oklahoma Indian Land Titles*, Appendix Part III, pp. 862-915.)

**Act of May 27, 1902,** 32 Stat. 275: This Act sets out the basic alienation scheme for allotted lands. Adult heirs of deceased Indians who held restricted lands at the time of their death may sell or convey the inherited lands. If the heir was a minor, the interest could be sold only by a guardian duly appointed by the proper court and the sale had to be approved by the Secretary of the Interior. Such sold lands were then subject to taxation.

**Act of June 21, 1906,** 34 Stat. 327: This Act exempted allotted lands from satisfaction of any debt prior to issuance of the final patent in fee.

**Act of March 1, 1907,** 34 Stat. 1018: This Act pertained to the sale of allotments of noncompetent Indians.

**Act of June 25, 1910,** 36 Stat. 855: This Act provided that the Secretary of the Interior had the exclusive jurisdiction for determining the heirs of an Indian with land whose trust period had not expired and who did not have a fee simple patent on the property. The Secretary was authorized to issue certificates of competency upon application to any Indian or his heirs at his discretion and such certificates would have the effect of removing the restrictions. (See Act of April 30, 1934.)

**Act of February 14, 1913,** 37 Stat. 678: This Act granted Indians over age 21 with allotments held in trust the right to dispose of the property by will. The will had to have been approved by the Secretary of the Interior. Approval could be granted even after the death of the testator.

All lands allotted to Indians in severalty, except allotments made to members of the Five Civilized Tribes and Osage Indians in Oklahoma, may by said allottee be leased for mining purposes for any term of years as may be deemed advisable by the Secretary of the Interior; and the Secretary of Interior is authorized to perform any and all acts and make such rules and regulations as may be necessary for the purpose of carrying the provision of this section into full force and effect: Provided, that if the said allottee is deceased and the heirs to or devisees of any interest in the allotment have not been determined, or, if determined, some or all of them cannot be located, the Secretary of the Interior may offer for sale leases for mining purposes to the highest responsible qualified bidder, at public auction, or on sealed bids, after notice and advertisement, upon such terms and conditions as the Secretary of the Interior may prescribe. The Secretary of the Interior shall have the right to reject all bids whenever in his judgment the interests of the Indians will be served by so doing, and to re-advertise such lease for sale.

Appendix E: Comparison of the Three Major Groups of Oklahoma Indian Tribes

<table>
<thead>
<tr>
<th>Five Civilized Tribes</th>
<th>Osage Tribe</th>
<th>General Allotment Act</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Allotment</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allotment Patent</td>
<td>Generally the same as Five Civilized Tribes</td>
<td>Trust Patent, followed by Fee Simple Patent</td>
</tr>
<tr>
<td>• homestead</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• surplus</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Ability to Alienate Lands</strong></td>
<td></td>
<td>Restrictions run with the land until removed</td>
</tr>
<tr>
<td>Restrictions depend on</td>
<td>Restrictions depend on</td>
<td></td>
</tr>
<tr>
<td>• age</td>
<td>• age</td>
<td></td>
</tr>
<tr>
<td>• degree of Indian blood</td>
<td>• degree of Indian blood</td>
<td></td>
</tr>
<tr>
<td>• homestead/surplus classification</td>
<td>• homestead/surplus classification</td>
<td></td>
</tr>
<tr>
<td>• method by which land was acquired</td>
<td>• method by which land was acquired</td>
<td></td>
</tr>
<tr>
<td>Must look to statutes at the time of alienation</td>
<td>Must look to statutes at the time of alienation</td>
<td>Restrictions may be removed by the Secretary of Interior</td>
</tr>
<tr>
<td>• absolute prohibition</td>
<td>• removal by Secretary of Interior</td>
<td>• Fee Simple Patent</td>
</tr>
<tr>
<td>• removal by Secretary of Interior</td>
<td>• Certificate of Competency issued by the Secretary of Interior</td>
<td>• Certificate of Competency</td>
</tr>
<tr>
<td>• court approval</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Successor and Heirship:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Laws of descent and distribution</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Tribal law until 1904</td>
<td>Oklahoma law</td>
<td>Oklahoma law</td>
</tr>
<tr>
<td>• Arkansas law 1904-1907</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Oklahoma law after 1907</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Successor and Heirship:</strong> Jurisdiction to determine heirs</td>
<td>Various county and district courts; required notice to the Secretary of Interior</td>
<td>County courts under Act of April 18, 1912</td>
</tr>
<tr>
<td><strong>Successor and Heirship:</strong> Devise</td>
<td>Devisable after 1906 Exception: full-blood wills had to be approved</td>
<td>Devisable after 1912 by competent adult, subject to Secretary of Interior approval of will before or after death</td>
</tr>
<tr>
<td><strong>Judicial Proceedings Affecting Restricted Lands</strong></td>
<td>Notice of Pendency of Action must be served on Area Director</td>
<td>Government is a necessary party; no general consent to suit</td>
</tr>
</tbody>
</table>