Other treaties provide for reimbursement to the Indian for damages to his personality. For example, Article 4 of the Treaty of 1832 with the Potawatamies contains a schedule listing the names of various Indians whom the United States agrees to reimburse for horses stolen from them during a war between the United States and the Sac and Foxes.

- In accordance with treaties and acts of this type, Congress has various times caused to be paid to Indians sums for property taken from them.

Among the regulations are found several which provide that certain payments of money may be made to the Indian for his unrestricted use. The purpose of this is stated to be the encouragement of personal responsibility, self-reliance, and business experience which will enable the Indian to become an independent and progressive member of the community.

The regulations authorize the expenditure of money for educational and agricultural purposes. Further regulations provide that disbursing agents may pay necessary medical and funeral expenses, within specified maximum limits. Administrative practice permits the superintendent to apply restricted funds of an Indian toward the support of an illegitimate child of such Indian.

Debts of Indians will not be paid from funds under the control of the United States unless previously authorized by the Superintendent, except in emergency cases necessitating medical treatment or in the payment of last illness or funeral expenses, and any other exceptional cases where specific authority is granted by the Indian Office.

In the case of United States v. O’Gorman, under a regulation such as the above, the superintendent of the Winnebago Agency bought several horses with the trust money held by him for an incompetent Indian. The bill of sale, which was promptly recorded, recited that the horses were bought with trust funds, and that the sale was made to the superintendent. The Indian was permitted to have the use of the team of horses and hired the defendant to care for it. When he failed to receive payment for his services, the defendant asserted a claim of lien against the team. The court held that as trustee, the United States could maintain an action of replevin to recover the team from the possession of the defendant.
SECTION 9. DEPOSITS OF INDIVIDUAL INDIAN MONEYS

Ordinarily, restricted Indian funds are held in the custody of a Government official. Several statutes, however, authorize the deposit of such funds under prescribed conditions.

Section 1 of the Act of June 25, 1910, provided that any "Indian agent, superintendent or other disbursing agent of the Indian Service" might "deposit Indian moneys, individual or tribal, coming into his hands as custodian, in such bank or banks as he may select," subject to certain bond requirements.

The Appropriation Act of May 25, 1918, provided for the segregation of tribal funds to the credit of the individual member. The funds so segregated were to be deposited to the individual's credit in any bank selected by the Secretary of the Interior, in the state or states in which the tribe is located. The act contained general legislation in the form of a proviso:

That no individual Indian money shall be deposited in any bank unless such bank shall have agreed to pay interest thereon at a reasonable rate and shall have furnished an acceptable bond or collateral security therefor, and that United States bonds may be furnished as collateral security for individual funds so deposited, in lieu of surety bonds: Provided further, That the Secretary of the Interior may invest the trust funds of any individual Indian in United States Government bonds:

The Act of June 24, 1938, superseding section 2 of the Act of June 25, 1910, and section 29 of the Appropriation Act of May 25, 1918, provides that the Secretary of the Interior may deposit individual trust moneys in banks selected by him, under such rules and regulations as he may prescribe, provided that the bank agrees to pay a reasonable rate of interest thereon and to furnish security of a specified type. The Secretary of the Interior may waive interest on demand deposits. The act also permits the Secretary, if he deems it for the best interest of the Indian, to invest the Indian moneys in any federal public-debt obligations and in any other obligations which are unconditionally guaranteed both as to interest and principal by the United States.

In practice, the deposit of individual Indian moneys is made in the name of the United States; the disbursing agent keeps account of the amounts due the various individuals; the bank in which the funds are deposited has no account with the various individuals on whose behalf the funds were deposited.

Though these funds are deposited by the United States in its representative capacity, yet in case the bank fails, such deposits, being debts due to the United States, are entitled to priority under R.S. Sec. 3466. In the case of Bramwell v. United States Fidelity & Guarantee Co., the court under R.S. Sec. 3466, giving the United States priority in payment of claims against an insolvent estate, granted priority to deposits of Indian moneys, individual and tribal, made by the superintendent of the Klamath Reservation.

In enforcing the terms laid down by Congress for the deposit of Indian funds, the Department of the Interior issued regulations governing deposits. Under regulations approved March 6, 1938, a bank seeking to qualify as a depository must file an application showing its financial condition, the amounts of money it will accept, the rate of interest that will be paid and the type of security that will be furnished. The regulations provide for deposits in the name of the disbursing agent and interest is payable semiannually. Monthly statements of receipts and checks on the Indian money account and other statements of information shall be furnished when required. Definite provisions as to the type of security, such as bonds of corporations, individuals or of the United States are made.

August 23, 1935, 49 Stat. 684, 714, 715, The Act of May 25, 1918, had limited the class of eligible depositories of Indian funds to those paying reasonable interest. But under the 1935 act, as interpreted by the Solicitor of the Department of the Interior (Op. Sol. 1. D. M. 28231, March 12, 1934), banks which are members of the Federal Reserve System or of the Federal Deposit Insurance Corporation are prohibited from paying any interest on demand deposits and all statutory requirements inconsistent with this prohibition are repealed. Following a parallel opinion of the Attorney General in the case of postal savings funds, the Solicitor of the Interior Department held that deposits might be made without interest in banks prohibited. Under the 1935 Act, as interpreted by regulations approved March 6, 1938, a bank seeking to qualify as a depository must file an application showing its financial condition, the amounts of money it will accept, the rate of interest that will be paid and the type of security that will be furnished. The regulations provide for deposits in the name of the disbursing agent and interest is payable semiannually. Monthly statements of receipts and checks on the Indian money account and other statements of information shall be furnished when required. Definite provisions as to the type of security, such as bonds of corporations, individuals or of the United States are made.

SECTION 10. BEQUEST, DESCENT, AND DISTRIBUTION OF PERSONAL PROPERTY

A. IN THE ABSENCE OF FEDERAL LEGISLATION

In the absence of federal legislation, the bequest, descent, and distribution of the Indian's personality is subject to tribal rules and custom.

Because the inheritance of allotted lands is governed on substantive questions by state law, the Indians of allotted reservations have, in some cases, adopted the state law as their own with respect to the descent of personality, thus achieving the advantage of having a single body of law determine the descent of real and personal property. A typical body of rules governing descent and distribution of unrestricted personalty is that set forth in the Code of Ordinances of the Gila River Pima-Maricopa Tribe.

\( ^{107} \) See Chapter 7, sec. 6. Cf. Trujillo v. Prince, 42 N. M. 337. 78 P. 2d 145 (1938), holding that the state court has power to appoint an administrator for a deceased Indian to enforce a right of action created by a state wrongful death statute.

\( ^{108} \) See Chapter 11, sec. 6.

\( ^{109} \) See Chapter 7, sec. 6. Cf. Trujillo v. Prince, 42 N. M. 337. 78 P. 2d 145 (1938), holding that the state court has power to appoint an administrator for a deceased Indian to enforce a right of action created by a state wrongful death statute.

\( ^{110} \) See Chapter 11, sec. 6.
Indian Community, adopted June 3, 1936; approved August 24, 1936. The governing ordinance provides that after the payment of the debts and funeral expenses, the remainder passes to the surviving spouse. If no spouse survives, then the property descends to the children or grandchildren of the deceased. If none of these exist, then the property goes to the parents or parent of the deceased. And if no parents survive, the nearest relatives take. The code provides that, if there is more than one heir, the heirs are to meet and decide among themselves what share each shall take and file their decision with the tribal court. If these heirs cannot agree, upon petition by any one of them, the tribal court will pass upon the distribution.

B. UNDER FEDERAL ACTS

By virtue of its power over Indian property, Congress may provide for a system of bequest, descent, and distribution of an Indian's personality.

1. Descent—Congress has never enacted general legislation governing the descent of an Indian's personal property, and this is a matter, therefore, that remains generally subject to tribal jurisdiction. Congress has provided, however, that upon the death, intestate, of "any Indian to whom an allotment of land has been made... before the expiration of the trust period and before the issuance of a fee simple patent," the Secretary of the Interior shall determine the heirs of the allottee, and his decision shall be final. Although this statute is directed primarily to the problem of the Inheritance of allotments, it is discussed in more detail, in connection with that subject, the Interior Department has construed the power to determine heirs in the cases specified, as a power to determine heirs for all purposes. Thus, in determining the heirs of an allottee, the Secretary of the Interior actually rules on the descent of personal property in the decedent's estate. This practice probably has the force of law, with respect to the estates of allottees, and it may be argued that an established course of administrative construction has extended the power of the Department to persons who are not within the language of the statute because they are not Indians "to whom an allotment of land has been made."

The regulations of the Interior Department refer to "an Indian of any allotted reservation," which obviously defines a broader class than the class defined by the statute, since there are many Indians on allotted reservations who were born too late to receive allotments. The regulations of the Interior Department do not provide for departmental distribution of estates on unallotted reservations, although this practice is occasionally resorted to with the consent of all parties in interest where tribal judicial agencies are unavailable.

Under the Law and Order Regulations of the Indian Service, the Court of Indian Offenses determines heirship with respect to "property other than an allotment or other trust property subject to the jurisdiction of the United States."

Tribal courts of organized tribes sometimes exercise like jurisdiction over all personal property.

In some cases, tribal councils have requested the Interior Department to handle estates involving personal property, and the Department has done so.

The question of what law applies to an estate of personal property should be distinguished from the question of what agency shall administer the estate. The Secretary of the Interior may apply tribal custom and the tribal councils may apply state law.

As a matter of practice, the examiners of inheritance, acting for the Interior Department, and applying state law, to the determination of the inheritance of real property, commonly apply the same rules to the inheritance of personal property. Where, however, the record shows a discrepancy between tribal custom and state law, a determination by an examiner of the descent of the personal estate of an unallotted Indian, in accordance with state law, and in violation of, tribal custom has been held illegal.

I believe that this conclusion is unjustified either as a matter of strict law or as a matter of policy. On the legal question I call your attention to the following paragraphs in the opinion of this Department, approved October 25, 1934, on "Powers of Indian Tribes" (M-27781).

With respect to all property other than allotments of land made under the General Allotment Act, the inheritance laws and customs of the Indian tribe are still of supreme authority.

On the policy question involved I can see no necessity for departmental regulation of title thereto of personal property of Navajo Indians. The recently promulgated departmental regulations relating to the determination of heirs and the approval of wills specifically restrict departmental supervision over the inheritance of personal property to reservations which have been allotted. (Sections 13 and 22.) Likewise, the recently approved law and order regulations provide that Indian judges shall apply tribal custom in the distribution of personal property.

I therefore recommend that instead of returning this case for the purpose of redistributing in accordance with Arizona law the personal property which has been distributed in accordance with tribal custom, it should be returned so that the entire estate may be distributed in accordance with tribal custom. The Examiner of Inheritance should take testimony as to such customs of inheritance, in their application to the facts of this case, and submit a revised order determining heirs for departmental approval.

2. Bequest. The power to bequeath personalty is specifically granted by Act of February 14, 1913, amending the Act of June 15, 1910. It provides that any person of the age of 21 years or over may dispose of his interest in any restricted allotment, trust moneys, or other property held in trust by the United States before expiration of the regrettive period, by will in accordance with regulations prescribed by the Secretary of the Interior. To be valid, the will must be approved by the Secretary of the Interior. The act provides further:

That the Secretary of the Interior may approve or disapprove the will either before or after the death of the testator, and in case where a will has been approved and it is subsequently discovered that there has been fraud in


See Chapter 7, sec. 6.

55 I. D. 425, 427-429 (1935). Also see Chapter 7, sec. 6.


30 Stat. 855.
connection with the execution or procurement of the will the Secretary of the Interior is hereby authorized. to cancel the approval of the will, and the property of the testator shall thereupon descend or be distributed in accordance with the laws of the State wherein the property is located: 172, 173.

In the case of Blaine v. Cardin, 174 the Supreme Court held that a will by a Quapaw allottee disposing of his moneys derived from her restricted lands and which were held in trust by the United States is governed by the 1913 act. The Court held that a statute of the State of Oklahoma regulating the portion of an estate that may be transferred by will, stating that the will is valid if approved by the Secretary of the Interior and executed in accordance with his regulations.

172 The act provides also that the death of testator and the approval of the will does not terminate the trust, and that the Secretary of the Interior may, in his discretion regulate the distribution and expenditure of the money belonging to thelegate.


174 C. Ore. 1911 (1922).

**SECTION 11. INDIVIDUAL RIGHTS IN PERSONALITY-CROPS**

Early in its dealings with the Indians, the government sought, by granting them agricultural aids, to encourage them in peaceful pursuits, that would provide a means of subsistence. 175

As has been observed elsewhere in this chapter, when the Indian was compelled to vacate his land, provision was made for his reimbursement for the property he could not take with him, including crops. 176 Where possible, the Indian may have been permitted to remain on the land until he harvested his growing crops. 177

Problems arising today concern chiefly the Indian’s rights to dispose of all or some of his interest in his crops grown on restricted lands.

The law is not settled as to whether an Indian may without departmental approval, sell or mortgage crops grown on restricted lands, but severed therefrom. A memorandum of the Solicitor of the Department of the Interior presents the argument.

The right of the Indian to bequeath his shares in a tribal corporation organized under the Wheeler-Howard Act is limited to the extent that he can give them only to his heirs, to tribal members, or to the tribal corporation. 178

Since the statute governing the bequest of restricted personality does not apply to unrestricted personality, the tribal law on testamentary disposition of unrestricted personality is supreme. 179 Even though the bequest of restricted personality be subject to the rules and regulations of the Secretary of the Interior, nevertheless such rules and regulations 180 implicitly authorize approval of wills made in accord with tribal customs or tribal laws regarding testamentary disposition where there has been no compliance with state law. 181

175 For restrictions on the power to contract, see Chapter 8, sec. 7.

176 See sec. 6 supra.

177 Treaty with Cherokees, February 27, 1819, 7 Stat. 195, 197.

178 For the sale or mortgage of the crops before severance, the case of United States v. First Nat. Bank, 282 Fed. 330 (D.C. E.D. Wash. 1922), holds that the United States may enjoin the foreclosure sale of mortgaged crops. The mortgagees have been made on growing crops and crops to be grown during that year. Memo. Sol. I.D., March 25, 1938.

179 Dated January 5, 1938.


181 See supra.

182 Treaty with Cherokee Indians, February 27, 1819, 7 Stat. 195, 197.

183 As for the sale or mortgage of the crops before severance, the case of United States v. First Nat. Bank, 282 Fed. 330 (D.C. E.D. Wash. 1922), holds that the United States may enjoin the foreclosure sale of mortgaged crops. The mortgagees have been made on growing crops and crops to be grown during that year. Memo. Sol. I.D., March 25, 1938.

184 Dated January 5, 1938.

**SECTION 12. INDIVIDUAL RIGHTS IN PERSONALITY-LIVESTOCK**

To induce Indians to adopt agricultural pursuits, treaties with Indians frequently contained a promise by the United States that it would furnish livestock to them. 185 When these promises were fulfilled, the livestock remained the property of the United States, the Indian having the right to possession and use. 186

Livestock was also purchased by the United States for the Indian with his own money. 187

185 E.g., Treaty with the Sioux, April 29, 1868, Art. 10, 15 Stat. 635, 639.


In the Appropriation Act of July 4, 1884, Congress prohibited the sale of any cattle or their Increase, in possession or control of an Indian, which were purchased by the Government, to any son not belonging to the tribe to which said Indian belonged or to any citizen of the United States, except with the written consent of the agent of the tribe to which said Indian belonged, in the case of United States v. Anderson, 188 the Court held that this act applied to cattle purchased by the Government even with the Indian’s funds. It has also been held that the Act of 1884 is not limited in application to cattle in possession of Indians.
at the time of its enactment.\textsuperscript{143} Since a sale cannot be made without the written consent of the agent, a mortgage on the cattle without such consent has been held void.\textsuperscript{144}

However, a sale or other disposition of the livestock to non-members of the tribe, even with the consent of the agent, may be made illegal, as where the statute making the appropriation specifically states that no sales to such outsiders shall be made.\textsuperscript{156}

The Appropriation Act of June 30, 1919,\textsuperscript{145} also restricted the disposition of livestock purchased or issued by the United-States and any increase. It provided that such animals could not be sold, mortgaged, or otherwise disposed of, except with the written consent of the federal officer in charge of the tribe; any transaction in violation of the statute would be void. \textsuperscript{156} It was further provided that all such stock was to be branded with the initials I. O. (referring to Interior Department) or with the reservation brand and could not be removed from the Indian country without the consent of the federal officer or by order of the Secretary of War in connection with troop movements.

\textsuperscript{143}Kider v. La Clair, 77. Wash. 488, 138 Pac. 5 (1914).
\textsuperscript{144}Ibid.
\textsuperscript{145}Appropriation Act of March 2, 1889, sec. 17, 25 Stat. 888, 894 making provision for distribution of livestock among Sioux. Effect of this act upon Act of 1834 is discussed in Fisher v. United States, 226 Fed. 156 (C. C. A. 8; 1915). \textsuperscript{156}
\textsuperscript{146}Sec. 1, 41 stat. 3, 9, 25 U. S. C. 163.

An additional act affecting an Indian's interest in his livestock is the Appropriation Act of March 3, 1885,\textsuperscript{147} which permits an Indian agent to sell livestock belonging to Indians which is not needed for subsistence. The sale is to be under rules and regulations prescribed by the Secretary of the Interior and the proceeds used for the benefit of the Indian.

In accordance with the federal policy of encouraging Indians in peaceful agricultural pursuits and of providing them with a means of livelihood and subsistence, the Secretary of the Interior has provided for certain preferential rights to Indians in the acquisition of grazing permits on Indian lands for his livestock.\textsuperscript{156}

On reservations where sufficient tribal land is available, free grazing privileges maybe granted to Indians by the tribal authorities, as an encouragement for the breeding and raising of livestock.\textsuperscript{156}

The Indian is protected in his care of livestock by regulations seeking to prevent the spread of contagious diseases among stock on Indian lands.\textsuperscript{156}

\textsuperscript{147}Sec. 9,13 Stat 541,583, 25 U. S. C. 192. See Chapter 4, sec. 9.
\textsuperscript{148}25 C. F. R. 71.11, 71.13, 72.8.
\textsuperscript{156}Ibid., 71.9.
\textsuperscript{150}Ibid., 71.22, 72.10.