

FITZPATRICK'S INDIAN TITLE CHART EXTENDED

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A NOTE OF APPRECIATION

Richard Gholston, Esquire, is now, August 11, 1980, the Resident Attorney for the Prudential Insurance Company of America in Dallas, Texas. For many years, he served the same company in Oklahoma City. While there, he became known as an expert on Indian titles. It was inevitable that he would see the need to extend the Fitzpatrick Charts.

While it is true that his extension was prepared in 1958, there has been no significant legislation in the area passed since then. But on the other hand a few cases decided since 1958 make an update of the work desirable. Further, new methods of reproduction have made it possible to add some additional details on the charts. But, perhaps of greatest importance is the necessity to expand some of the material to make it more suitable for a teaching tool. Seeing this necessity was the product of having taught the draft of this book in the fall of 1978. I regret that these factors dictate that I alter some of Mr. Gholston's work rather than merely supplementing it as I did in a draft edition of this work.

I say, in all sincerity, that the credit for that which is accurate and useful must go to Mr. Gholston. The blame for that which is inaccurate falls on me.

FITZPATRICK'S INDIAN TITLE CHART - EXTENDED

INTRODUCTION AND EXPLANATION

The charts and notes that follow are closely modeled after Fitzpatrick's Indian Tribe Chart, designed and written by Mr. Kirby Fitzpatrick and published in 1917 by the Harlow Publishing Company of Oklahoma City. Mr. Fitzpatrick's chart has been widely used by examiners of titles to lands of the Five Civilized Tribes in Oklahoma, and in fact is still used by a considerable number of lawyers today. The chart, however, has not been extended since the Act of May 27, 1908. The purpose of this work is to extend Mr. Fitzpatrick's chart so as to cover subsequent acts of Congress and court decisions that affect the rights of the members of the Five Civilized Tribes to alienate their lands.

Because certain decisions rendered by the courts since Mr. Fitzpatrick completed his chart made a few changes necessary in that portion dealing with the Act of May 27, 1908, it was felt desirable to begin this chart with that act. In addition, the May 27, 1908, act is the basic law affecting these Indians and subsequent acts are principally amendments. Furthermore, there were few conveyances prior to 1908.

Beginning with the Act of May 27, 1908, a separate chart has been prepared for each Act of Congress that affected these Indians' rights to alienate their lands, except for the Act of July 2, 1945, which is included in the January 27, 1933 chart. The specific acts covered by these charts are the Acts of May 27, 1908; April 12, 1926; May 10, 1928; January 27, 1933; August 4, 1947; and August 11, 1955. The date of the act covered by each chart is shown in the upper left margin and following it is an explanation of the effective dates.

In the left margin of each chart is a brief description of the relationship of the tribal member under investigation, to the property or to his successor or predecessor in title. In some instances this description is followed by a number indicating a reference to the numbered notes following the charts.

The wording in the center portion of the charts are statements of conditions under which members of the Five Civilized Tribes may alienate their land by deed or will.

The first four columns to the immediate right of the statement of conditions are numbered (1) (2) and (3).

(1), which has two columns, refers to the numbered notes following the chart. The purpose of these notes is to explain and justify the conclusions which are incorporated into the chart. In some cases, two or more numbers are shown indicating that more than one note applies.

(2) refers to the status of the tribal member as an adult, shown as "A", a minor, shown as "M" and both shown as "All". When land is shown to be alienable by a minor, it is to be understood that the minor must act through a guardian and by order of the county court. A minor is a male under 21 years and a female under 18.

(3) shows the character of the land, "H" indicating homestead, "S" indicating surplus and "All" indicating both homestead and surplus. The remaining six columns of the chart show the quantum of Indian blood by symbols as follows:

Full-blood Indian	
Three-fourths or more, but less than full-blood	
Half or more, but less than three-fourths blood	
Less than half-blood	
Intermarried white citizen	
Freedman	

Note : This information was pulled from the webpage at <http://thorpe.ou.edu/treatises/fitzpatrick/fitzchartext.html>. Only minor grammatical alterations were made. The notes referred to in the text and the charts were not found on the website.

Act of May 27, 1908, 34 Stat. 312. Effective as to conveyance from Allottees from July 27, 1908, otherwise effective from May 27, 1908
Chart effective until April 12, 1926

		Quantum of Blood									
		(1)	(1)	(2)	(3)						
By allottees effective 7/27/1908 (Note 3)	1 Unconditionally	1		all	all						F
"	2 Unconditionally	1		all	S						
"	3 Upon removal of restrictions by Secretary of Interior	1		all	H						
"	4 Upon removal of restrictions by Secretary of Interior	1		all	all						
"	5 Where land entirely freed from restrictions on 7/27/1908	2		A	S						
By heirs (Note 3) whether direct from allottee or remote (Note 3a) including heirs of grantees under Carney-Lacher Deed (Note 15)	1 Unconditionally*	3, 3b	11a	all	H						F
"	2 Unconditionally	3		all	S						F
"	3 When deed approved by county court	3	4	all	S						
"	4 Where no surviving child of an allottee of one-half or more Indian blood born after 3/4/1906	3	3b	all	H						
"	5 Where such surviving child or children born since 3/4/1906 dies	5		all	H						
"	6 Where such surviving child born since 3/4/1906, if Secretary of Interior removes restrictions	3		all	H						F
"	7 Where no such surviving child born since 3/4/1906, if county court approves deed	3		all	H						
"	8 Where land was unrestricted and alienable in the hands of the ancestor under Act of 1908.	6		all	all						
By devisees until 4/12/1926	1 Unconditionally	7		all	S						F
"	2 Where no such child born since 3/4/1906	7		all	H						F
"	3 Where no such surviving child or children born since 3/4/1906, dies before testator-allottee	7		all	H						F
"	4 Where such surviving child born since 3/4/1906, if Secretary of Interior removes restrictions	7		all	H						F
By will of original allottee or heirs	1 Unconditionally*	3	11a	A	H						F
"	2 Unconditionally	3		A	S						F
"	3 Where no surviving child born since 3/4/1906	3		A	H						
"	4 Where parent, spouse or child not disinherited	3	8	A	S						
"	5 Where parent, spouse or child disinherited if will approved by county court	3	9	A	S						
"	6 Where parent, spouse or child not disinherited and no such surviving child born since 3/4/1906	3		A	H						
"	7 Where parent, spouse or child disinherited and no surviving child born since 3/4/1906, if will approved by county court, U.S. judge or commissioner or if Secretary removes restrictions	3	9,1	A	H						
"	8 Where parent, spouse or child not disinherited but such surviving child born since 3/4/1906, if secretary removes restrictions	3		A	H						
"	9 Where parent, spouse or child disinherited and such surviving child born since 3/4/1906, if secretary removes restrictions	3	1	A	H						
"	10 Where land entirely freed from restrictions on 7/27/1908	2		A	S						

* Except where an allottee of one-half or more Indian blood leaves a surviving child born since March 4, 1906 for the life of the child or until April 26, 1931, (**Note 3**).

Act of April 12, 1926, 44 Stat. 239.

Chart effective from April 12, 1926, until April 26, 1931, except as affected by the Act of May 10, 1928

		Quantum of Blood									
		(1)	(1)	(2)	(3)						
By Allottees	1 Unconditionally	1		all	all						F
"	2 Unconditionally	1		all	S						
"	3 Upon removal of restrictions by Secretary of Interior	1		all	H						
"	4 Upon removal of restrictions by Secretary of Interior	1		all	all						
"	5 Where land entirely freed from restrictions on July 27, 1908	10		A	S						
By heirs whether direct or remote and devisees of allottees (Note 16). And heirs and devisees of grantees under Carney-Lacher Deed. (Note 15)	1 Unconditionally*										F
"	2 Unconditionally	11	11a	all	H						F
"	3 When deed approved by county court	11	12	all	S						
"	4 Where no surviving child of an allottee of one-half or more Indian blood born after 3/4/1906	11	11a	all	H						
"	5 Where such surviving child or children born since 3/4/1906, dies	13		all	H						
"	6 Where such surviving child born since 3/4/1906, if Secretary of Interior removes restrictions	11		all	H						F
"	7 Where no such surviving child born since 3/4/1906, if county court approves deed	11	12	all	H						
"	8 Where land was unrestricted and alienable in the hands of the ancestor under Act of 1908	6		all	all						
By will of original allottee, heir or devisee, effective until April 26, 1931 except as to provision permitting County Court to approve wills of full blood which was reestablished effective May 10, 1928. See Note 19.	1 Unconditionally*										F
"	2 Unconditionally	11		A	S						F
"	3 Where no surviving child born since 3/4/1906	11		A	H						
"	4 Where parent, spouse or child not disinherited	11	8	A	S						
"	5 Where parent, spouse or child disinherited if will approved by U.S. Judge or Commissioner	14		A	S						
"	6 Where parent, spouse or child not disinherited and no such surviving child born since 3/4/1906.	11		A	H						
"	7 Where parent, spouse or child disinherited and no such surviving child born since 3/4/1906, if will approved by U.S. Judge or Commissioner or if Secretary removes restrictions	11	14,1	A	H						
"	8 Where parent, spouse or child not disinherited, but such surviving child born since 3/4/1906, if Secretary removes restrictions	H		A	H						
"	9 Where parent, spouse or child disinherited and such surviving child born since 3/4/1906, if Secretary removes restrictions.	H	1	A	H						

* Except where an allottee of one-half or more Indian blood leaves a surviving child born since March 4, 1906 for the life of the child or until April 26, 1931 (Note 3).

Act of May 10, 1928, 45 Stat. 495

Chart effective as to allottees, heirs and devisees after April 26, 1931, until January 27, 1933, effective as to wills from April 26, 1931, except County Court permitted to approve wills of full-bloods, effective May 10, 1928. **Note 19**

		Quantum of Blood									
		(1)	(1)	(2)	(3)						
By Allottees effective from April 26, 1931 to April 26, 1956	1 Unconditionally	1		all	all						F
"	2 Unconditionally	1		all	S						
"	3 Upon removal of restrictions by Secretary of Interior	1		all	H						
"	4 Upon removal of restrictions by Secretary of Interior	1		all	all						
"	5 Where land entirely freed from restrictions	17		all	all						
By heirs whether direct or remote including devisees of allottees. Note 16 ; 18 Effective from April 26, 1931 to Jan. 27, 1933. Heirs of grantees under Carney-Lacher Deed. Note 15.	Unconditionally*										F
"	1	18		all	H						
"	2 Where deed approved in open county court	12	18	all	all						
"	3 Where land was unrestricted and alienable in the hands of the ancestor	6		all	all						
By will of original allottee, heir or devisee, effective until April 26, 1931, except where indicated See Note 19.	1 Unconditionally	18	19	A	all						F
"	2 Where parent, spouse or child not disinherited	19	8	A	all						
"	3 Where parent, spouse or child disinherited if will approved by county court (effective May 10, 1928) or U.S. Judge or Commissioner	19	9	A	all						
"	4 Where parent, spouse or child disinherited if Secretary removes restriction	19	9,1	A	all						
By grantees under Carney-Lacher Deed. (Land bought with restricted funds prior to April 26, 1931, and sold by such grantee after April 26, 1931 but prior to July 2, 1945)	Unconditionally	20		all	all						

Act of January 27, 1933, 47 Stat. 777, as affected by the validating Act of July 2, 1945, 59 Stat. 313, and the validating sections of the Act of Aug. 4, 1947, Section 7 and Section 9.

This chart applies from January 27, 1933 to August 4, 1947

		Quantum of Blood									
		(1)	(1)	(2)	(3)						
By Allottees	1 Unconditionally	21		all	all						F
"	2 Unconditionally	21		all	S						
"	3 Upon removal of restrictions by Secretary of Interior	21		all	H						
"	4 Upon removal of restrictions by Secretary of Interior	21		all	all						
"	5 Where land previously been entirely freed of restrictions	22		all	all						
By heirs, whether direct from allottee or remote, and devisees (Note 16a), or acquired by gift or bought with restricted funds (Note 23). Heirs under Carney-Lacher Deed (Note 15).	Unconditionally*										
1		24		all	all						F
"	2 Where interest of ancestor was unrestricted at the time of acquisition	25		all	all						
"	3 Where deed approved in open (county) court or by the Secretary of the Interior	26		all	all						
"	4 Where land is not tax exempt	27	16a	all	all						
"	5 Where any one of the heirs or devisees is less than 1/2-blood	27		all	all						
"	6 Where death of allottee occurred before the Act of January 27, 1933*	28		all	all						
By will of original allottee, heir or devisee.	1 Unconditionally	29		all	all						F
"	2 Where parent, spouse or child not disinherited	29	8	A	all						
"	3 Where parent, spouse or child disinherited if will approved by county court	29	9	A	all						
"	4 Where parent, spouse or child disinherited if Secretary removes restriction	29		A	all						
Grantees under Carney-Lacher Deed. Land bought with restricted funds prior to April 26, 1931, and sold prior to July 2, 1945	Unconditionally	20		all	all						

*Unless the heir or devisee in point took after January 27, 1933 from a full-blood heir or devisee, immediate or remote, of the allottee

Act of August 4, 1947, 61 Stat. 731

Chart effective from August 4, 1947, to August 11, 1955

		Quantum of Blood									
		(1)	(1)	(2)	(3)						
By Allottees effective	1 Unconditionally	1		all	all					●	○
"	2 Unconditionally	1		all	S					●	○
"	3 Upon removal of restrictions by Secretary of Interior	1		all	H					●	○
"	4 Upon removal of restrictions by Secretary of Interior	1		all	all	●	●	●	●	○	○
"	5 Where land entirely freed from restrictions	30		all	all	●	●	●	●	○	○
By heirs and devisees as to all land restricted in the hands of the ancestor and without regard to whether they were acquired by allotment, inheritance, devise, gift, exchange, partition or purchased with restricted funds.	Unconditionally*									●	○
"	1	31		all	all					●	○
"	2 Where deed approved in open (county court)	32		all	all	●	●	●	●	○	○
"	3 Where interest of ancestor was unrestricted at the time of acquisition	25		all	all	●	●	●	●	○	○
By will of original allottee, heir or devisee	1 Unconditionally	33		A	all	●	●	●	●	○	○
"	2 Where parent, spouse or child not disinherited	33	8	A	all	●					
"	3 Where parent, spouse or child disinherited if will approved by county court	33	9	A	all	●					
"	4 Where parent, spouse or child disinherited if Secretary removes restriction	33		A	all	●					
Grantees under Carney-Lacher type of deed.	Deeds executed after July 2, 1945, if approved by Secretary of Interior	20		all	all	●	●	●	●	○	○

Act of August 11, 1955, 69 Stat. 666

Chart effective from August 11, 1955, until present

		Quantum of Blood									
		(1)	(1)	(2)	(3)						
By allottees	1 Unconditionally	34		all	all					●	○ F
"	2 Unconditionally	34		all	S					●	
"	3 Upon removal of restrictions by Secretary of Interior or by the county court	34		all	H					●	
"	4 Upon removal of restrictions by Secretary of Interior or by the county court	34		all	all	●	●				
"	5 Where land had previously been entirely freed from restrictions.	35		all	all	●	●	●			
By heirs and devisees as to all land restricted in the hands of the ancestor and whether they were acquired by allotment, inheritance, devise, gift, exchange, partition or purchased with restricted funds.	1 Unconditionally*									●	○ F
"	2 Where deed approved in open (county) court	36		all	all	●	●	●			
"	3 Upon removal of restrictions by Secretary of Interior or by the county court	34		all	all	●	●	●			
"	4 Where interest of ancestor was unrestricted at the time of acquisition	25		all	all	●	●	●			
By will of original allottee, heir or devisee.	1 Unconditionally	38		A	all	●	●	●		○	F
"	2 Where parent, spouse or child not disinherited	38	8	A	all	●					
"	3 Where parent, spouse or child disinherited if will approved by county court	38	9	A	all	●					
"	4 Where parent, spouse or child disinherited if Secretary removes restriction	38		A	All	●					
Grantees under Carney-Lacher type of deed.	Deeds executed after July 2, 1945, if approved by Secretary of Interior	20		all	all	●	●	●			