



Diné Bi Beehaz'áanii
IN PRACTICE

Tribal Traditional Law in Practice

Indigenous Law Conference

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Early Choice of Law Statute

- 1958 – Navajo Courts replaced the Courts of Indian Offenses.
- 1959 – Title 7, Section 204 of the Navajo Tribal Code is amended:
 - (a) In all civil cases the Navajo Tribe shall apply any laws 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 laws.
 - (b) Where any doubt arises as to the customs and usages of the tribe the court may request the advice of counsellors familiar with these customs and usages.
 - (c) Any matters that are not covered by the traditional customs and usages of the tribe, or by applicable Federal laws and regulations, shall be decided by the Court of the Navajo Tribe according to the laws of the state in which the matter in dispute may lie.



Lente v. Notah, 3 Nav. R. 72 (Nav. Ct. App. 1982)

- “The danger in using Navajo custom and tradition lies in attempting to apply customary principles without understanding their application to a given situation. Navajo custom varies from place to place throughout the Navajo Nation; Old customs and practices may be followed by the individuals involved in the case or not; There may be a dispute as to what the custom is and how it is applied; or, A tradition of the Navajo may have so fallen out of use that it cannot any longer be considered a ‘custom.’” *Id* at 80.
- “What is a custom? It has been said to be practice and not an opinion...Since the courts are currently undertaking a complete study of how to use Navajo custom and tradition we will not decide that question here, but the obvious concern is that when applying custom, the courts should see whether a particular custom or tradition is generally accepted and applicable to the parties before the court.” *Id.*



Apache v. Republic National Life Ins. Co., 3 Nav. R. 250, (W.R. District 1982).

- “It is only where there is doubt regarding the custom or usage that the court need avail itself of experts in Navajo culture, and the statute permits the court to take judicial notice of Navajo traditional law. It is clear that a judge not only may, but must take judicial notice of local law. [Citations omitted] If one argues that custom and tradition are matters of factual evidence and not reading the law as it is printed, it is clear that this court can take judicial notice of customs as adjudicative facts. R. 5, Rules of Evidence. Thus, if the custom is generally known within the community, or it can be found by resort to accurate sources, it is proven.” *Id* at 251-252.
- “Navajo customs cannot be applied in a vacuum, and they must be applied with logic in accordance with present circumstances. It is not correct to say that Navajo custom cannot be applied to situations such as this, where there are contracts binding commercial entities from the outside that don’t understand local situations. That is nonsense, because Navajo custom and tradition is as much the law of the Navajo Nation as a tribal council resolution or a statute in the Navajo Tribal Code.” *Id* at 252.



n the Matter of the Estate of Belone, 5 Nav. R. 161, 165 (Nav. Sup Ct. 1987).

- “Navajo custom and tradition may be shown in several ways: it may be shown through recorded opinions and decisions of the Navajo courts or through learned treatises on the Navajo way; it may be judicially noticed; or it may be established by testimony of expert witnesses who have substantial knowledge of Navajo common law in an area relevant to the issue before the court.”
- [T]his court will adopt the ancient precedent that the Navajo common law is as the English common law:

The *lex non scripta*, or unwritten law, includes not only general customs, or the common law properly so called; but also the particular customs of certain parts of the kingdom; and likewise those particular laws, that are by custom observed only in certain courts and jurisdictions.” Blackstone, I Commentaries on the Law of England 62.

- The Navajo common law is making a transition into a written form, but the recorded decisions of the Navajo judges are still common law.



Bennett v. Navajo Board of Election Supervisors, 6 Nav. R. 319
(Nav. Sup. Ct. 1990).

- “The Navajo word for ‘law’ is *beehaz’aanii*. While we hear that word popularly used in the sense of laws enacted by the Navajo Nation Council or the United States (including federal regulations), it actually refers to a higher law. It means something which is ‘way at the top’; something written in stone so to speak; something which is absolutely there; and, something like the Anglo concept of natural law. In other words, Navajos believe in a higher law, and as it is expressed in Navajo, there is a concept similar to the idea of unwritten constitutional law.” *Id* at 324.



Diné Bi Beehaz'áanii – Navajo Fundamental Law
1 N.N.C. §201-§206 (2002)

- *Diyin Bits'áádeé' Beehaz'áanii* – “Diné Traditional Law”
Laws created by the Holy People or *Bitsé Siléí*
- *Diyin Diné'é Bits'áádeé' Beehaz'áanii* - Diné Customary Law
Our practice of the laws from the Holy People
- *Nahasdzáán dóó Yádiłhił Bitsa'áádeé' Beehaz'áanii* - Natural Law
Laws of *Shitaa' Yádiłhił* (Father Sky) *dóó* (and) *Shimá Nahasdzáán* (Mother Earth), including their relationship.
- *Diyin Nohookáá Diné Bi Beehaz'áanii* - Diné Common Law
Laws of the Diné (Holy Earth-surfaced People)



7 N.N.C. §204

since 2003

- A. In all cases the courts of the Navajo Nation shall first apply applicable Navajo Nation statutory laws and regulations to resolve matters in dispute before the courts. The Courts shall utilize Diné bi beenahaz'áanii (Navajo Traditional, Customary, Natural or Common Law) to guide the interpretation of Navajo Nation statutory laws and regulations. The courts shall also utilize Diné bi beenahaz'áanii whenever Navajo Nation statutes or regulations are silent on matters in dispute before the courts.
- B. To determine the appropriate utilization and interpretation of Diné bi beenahaz'áanii, the court shall request, as it deems necessary, advice from Navajo individuals widely recognized as being knowledgeable about Dine bi beenaz aanii.
- C. The courts of the Navajo Nation shall apply federal laws or regulations as may be applicable.
- D. Any matters not addressed by Navajo Nation statutory laws and regulations, Diné bi beenahaz'áanii or by applicable federal laws and regulations, may be decided according to comity with reference to the laws of the state in which the matter in dispute may have arisen.



Judy v. White, 8 Nav. R. 510 (Nav. Sup Ct. 2004).

- “Importantly, we do not suggest that common law be raised with reckless abandon wherever and whenever it strikes one’s fancy, nor that it be raised in dilatory fashion. We suggest that whenever common law is raised, and whether it is raised *sua sponte* or by a party, the parties should be given ample time and opportunity to address the issue.” *Id* at 536.
- “We do not, today, articulate specific rules of practice or procedure with respect to *Diné bi beenahaz’áanii* in our courts. As *Diné naat’áanii* our judges have always been guided by traditional principles; it is at the core of who we are, and a primary expectation of those who seek dispute resolution in Navajo Nation courts. With the legislative acknowledgment of *Diné bi beenahaz’áanii*, judges and justices will continue to be guided by these core principles, as must the legal practitioners and parties who elect to participate in our legal system. Over time, we are certain that rules and procedures will be developed to ensure the continued responsible use of *Diné bi beenahaz’áanii*.” *Id*.



In the Matter of S.R.E., 8 Nav. R. 866, 868 (Crwn. Dist. Ct. 2005).

- [The] Navajo Nation Supreme Court, in various cases, has found that the principle of *íishjání ádooniít*, also expressed as *doo naki nilííggóó*, *t'áá íishjánígó*, or *t'áá bééhozínigo*, requires that all statutes and rules must be clear so that people may understand them and can follow them, otherwise they are void for vagueness.



Shirley v. Morgan, 9 Nav. R. 325 (Nav. Sup. Ct. 2010)

- “The Fundamental law represents the cumulative knowledge which has accrued to the Diné from the time of creation until the present. It represents the lessons which were learned as the People traveled through the underworlds and emerged into the glittering world as the *bíla’ashdla’ii*. It’s conflicts that took place after the emergence, and how they were resolved. It includes what has transpired since the creation and the lessons taught to the People by the *Diyin Dine’é*. No single person knows all of the Fundamental Law but every single one of the *T’áá Diné* knows some of it.” *Amicus Curiae Brief of Eddie J. Arthur*, p.18.” *Id* at 333.
- “We take judicial notice that the Navajo People have long resisted the imposition of a written Constitution in the mold of the U.S. Constitution. The notion of a piece of writing, even if popularly “enacted” to serve as the higher law, has been anathema to our People for whom *Diné bi beenahaz’áanii*, the Fundamental Laws, are immutable as given to the *Diné* by *Nohookáá Dine’é Diyinii*, the Holy Ones.” *Id* at 334.

Navajo Supreme Court 's Plea to the People

Whitethorne v. Navajo Board of Election Supervisors and Navajo Election Administration, No. SC-CV-68-14, Slip Op. at 9-10 (Nav. Sup. Ct. October 23, 2014)

- *“T’ahdoo dikwiil yilkaahaaqdaa’ (Ghaaji’ nahast’ eigoo yookaléedaa’) beehaz’ aanii bee haiidzii’; Diné Bizaad bił ninhi t’eelya aadóo t’aa haadida nihizaad nihił ch’aawóle’ lágo nihidoo’ niidne’ haalá nihi bee haz’ aanii at’é.*
- *Áko, k’ad éi baa saad hóló, hónáasdóo aniid naaghágáanii áni, “Shí hanii doo Diné nishłijida”. Akót’ éigo niha’ atchíní yiniinaa ak’é’ edlii dooleetigíi éi doo biniyé ahát’ ijda.*
- *Ákó, tséłkééh dóo ch’ikééh nohtinigíi t’aa anółtsxo éi niha’ atchíní nohłijigo nihaantsáhakees. Ako, t’áashjį aanii ashiilchínigíi dóo Diné bi naat’ áah bił haz’ áádéé’ nihinaanish bi’oh ádeiilyaandi, dóo éi biniinaa atł’ihwiit’ áahda dooleet, éi biniinaa aniid naagháhágii dóo náas silį’igíi áadoo at’ aago nihaantsáhakeesí. Hazhó’ ó nihizaad baa’ ahólyá, baantsókees, aadóo ááhaní’ nige’ at’ éigo bik’ I’ doohtijh dóo baa ákonohsin, dii baa nanhiikqah.*
- *Naat’ aanii dajilnigiishjį baa txijsh dookahgo, niha’ atchíní ináhwiidool’ áal dóo bizaad yaa’ ákonizin, yidiits’ a’ dóo yee yáłti’ dooleet hwiindzin yee’. Ana’ í/ Bilagáana binahat’ a’ yee nihi naashnish, bizaad yee nihishjizh, nihił hahodiilaago biniinaa nihizaad nihił ch’aa silį’ dóo nihił nantł’ a silį’; éi biniinaa nihi beehaz’ aanii, nihizaad dóo nihee’ ó’ ool’ ij éi ak’ I’ hahiiláago ándoolniit hwiindzin. Azhášhį akót’ éigo t’ahdii ana’ á k’ ehgo nihił haz’ aandi nihizaad éi doo nihił ch’aa dooleetda. Nee’ nijį’ t’aa’ ániit’ é nihizaad bee Diné nááneedlij dooleet. Hózhó Náhodoodleet.”*



Ánáhóót'i

(Problems-Issues)

- *Diné Bizaad* (Navajo language), degree of fluency, and interpretations.
- *iishjáni ádoolníít* (it will be done clearly; laws must be clearly understood) as an example for context.
- *Diné Bi Beehaz'áanii* (Navajo law) but which one? *Bitsé Siléí* (Traditional) or Custom or Common law?
- Much is still unwritten.
- *Joodlá* (believe) vs. non-traditionalists. Courts serve both.
- Non-Navajo Courts and Expert Testimony.
- *T'ááhó ájít'éigo* (can be done but it must be you).

Hozhó Náhadoodteet

(Restoring Harmony)

- *Yoolgai Asdzáán Bibeehaz'áanii* to describe a mother's responsibility:
 - a) *iiná yesdahí* – representing life, head of household;
 - b) *yódí yesdahí* – provider/caretaker;
 - c) *n'tłiz yesdahí* – caretaker of minerals;
 - d) *tsodizin yesdahí* – representing prayer. Women are keepers of clan line and land base and therefore are most logical person to receive land rights.

Riggs v. Attakai, 9 Nav. R. 119, 120 (Nav. Sup. Ct. 2007).
- “In Navajo teachings, when a child reaches puberty, a boy becomes a young man and a girl becomes a young woman. Young men and young women are able to speak to the court on the matter of further detention.” *In the Matter of M.C.*, 9 Nav. R. 571, 574-575 (Nav. Sup. Ct. 2012).



Ahe'hee'

(Thank you)