

TITLE 2 - RULES OF PROCEDURE

CHAPTER 2-2 CIVIL ACTIONS, LIMITATIONS AND LIABILITY

2-2-0 CIVIL ACTIONS

2-2-1 No Merger of Civil and Criminal Actions

Actions are of two kinds, civil and criminal. A civil action is prosecuted by one party against another for the enforcement or protection of a right or the redress or prevention of a wrong. When the violation of a right admits of both a civil and criminal remedy, the right to prosecute the one is not merged in the other.

2-2-2 Availability of Civil Actions

(a) Civil actions are those causes, within the jurisdiction of the Tribal Court, originating in:

(1) Tribal law, including Tribal custom or tradition as defined by statute or by Tribal Court rule or decision,

(2) common law or equity, if not inconsistent with Tribal law, and

(3) Federal or Oregon statute, if the Tribal Court has the power to effectuate the statutory remedies, Provided that

(A) if the cause is one accepted by the United States for litigation in Federal court under the Federal Tort Claims Act, it may not be brought in Tribal Court;

(B) if State court or Federal court jurisdiction over the cause is concurrent with that of the Tribal Court and

(i) the cause is pending in the courts of the foreign jurisdiction, the Tribal Court shall stay any complaint with the same parties and raising the same issues as the foreign pending cause until jurisdiction issues are resolved between the Tribal and other courts; or

(ii) the cause was filed first or solely with the Tribal Court, but the interests of justice, of the parties, of judicial economy, and of comity are, in the judgment of the Court, paramount, the Tribal Court may stay or dismiss the action in deference to the more appropriate or convenient court of the foreign jurisdiction.

(b) If the cause arising under a Federal or Oregon statute replaces a common law or equitable cause in the law of such jurisdiction, the statutory rights and remedies will govern.

2-2-3 Bases for Civil Actions

A civil action arises out of:

(a) an obligation, which is a legal duty by which one person is bound to do nor not to do a certain thing and arises from contract or operation of law; or

(b) an injury, which may be to a person or to property. An injury to property consists in depriving its owner of the benefit of it, which is done by taking, withholding, deteriorating, or destroying it. Every other injury is an injury to the person.

2-2-4 Laws Applicable in Civil Actions

(a) In all civil actions, the Tribal Court shall first apply the applicable laws, Ordinances, customs and usages of the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians (Tribes) and then shall apply any applicable laws of the United States and authorized regulations of the Department of the Interior. Where doubt arises as to customs and usages of the Tribes, the Tribal Court may request the advice of the appropriate committee which is recognized in the community as being familiar with such customs and usages. Any matter not covered by Ordinances, customs and usages of the Tribes or by applicable federal laws and regulations may be decided by the Court according to the laws of the State of Oregon.

(b) Pursuant to 25 U.S.C.A. 483a(a), foreclosure or sale pursuant to terms of a mortgage or deed of trust to land shall be in accordance with the laws of Oregon, with the exception that under Tribal law a three hundred and sixty (360) day-period to redeem shall be available to debtors in foreclosure actions.

2-2-5 When Action Accrues and Commences

For the purposes of statutes relating to the time within which an action must be commenced:

(a) a claim or cause of action accrues when all elements of the claim or cause exist or have occurred and the right to maintain an action on the claim is complete; and

(b) an action is commenced when the complaint is filed.

2-2-6 Survival of Cause of Action and Action for Wrongful Death

(a) An action, cause of action, or defense does not abate because of the death or disability of a party or transfer of any interest therein, but whenever the cause of action or defense arose in favor of such party prior to his or her death or disability or transfer of interest, it survives and may be maintained by his or her successors in interest. If the action has not been begun or defense interposed, it may be commenced in the name of his or her successors in interest.

(b) When injuries to and the death of one person are caused by the wrongful act or neglect of another, the personal representative of the decedent's estate may maintain an action for damages against the person causing the death or, if such person be employed by another person who is responsible for his or her conduct, then also against such person.

(c) Actions brought under this section must be combined in one legal action, and any element of damages may be recovered only once.

2-2-7 Action by Parent or Guardian for Injury to Child or Ward

Either parent may maintain an action for an injury to a minor child and a guardian for injury to a ward when such injury is caused by the wrongful act or neglect of another. Such action may be maintained against the person causing the injury or, if such person is employed by another person who is responsible for his conduct, also against such other person. If a parent or guardian brings such an action on behalf of a child, the statute of limitations set out in section 2-2-22(a) is not tolled during the child's minority.

2-2-20 STATUTES OF LIMITATION

2-2-21 Period of Limitation on Civil Actions

(a) Except as otherwise provided by law, a civil action must be commenced within two (2) calendar years of the time the cause of action accrued.

(b) Failure to commence an action within the time provided is a defense that may be waived by a party if not raised in the party's first pleading.

(c) Unless otherwise provided by statute, the period of limitation begins when the claim or cause of action accrues. Lack of knowledge of the claim or cause of action, or of its accrual, by the party to whom it has accrued does not postpone the beginning of the period of limitation.

(d) Where a right exists but a demand is necessary to entitle a person to maintain an action, the time within which the action must be commenced must be computed from the time when the demand is made, except that where the right grows out of

the receipt or detention of money or property by an agent, trustee, attorney, or other person acting in a fiduciary capacity, the time must be computed from the time when the person having the right to make the demand has actual knowledge of the facts upon which that right depends.

(e) The period of limitation does not begin on any claim or cause of action for an injury to person or property until the facts constituting the claim have been discovered or, in the exercise of due diligence, should have been discovered by the injured party if:

- (1) the facts constituting the claim are by their nature concealed or self-concealing; or
- (2) before, during, or after the act causing the injury, the defendant has taken action which prevents the injured party from discovering the injury or its cause.

2-2-22 Circumstances which Extend Period of Limitation

The period of limitation is extended in the following circumstances:

(a) If a person entitled to bring an action is, at the time the cause of action accrues, a minor, seriously mentally ill, or imprisoned on a criminal charge or under a sentence for a term less than for life, the time of such disability is not a part of the time limited for commencing the action. However, the time so limited cannot be extended more than 6 years by any such disability except minority. No person may avail himself of a disability unless it existed when his or her right of action accrued.

(b) When a cause of action accrues against a person who is subject to the jurisdiction of the Tribal Court but who is not found within the jurisdiction of the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians of Oregon and cannot be served with process, the action may be commenced within three (3) years after the defendant's return to the tribal jurisdiction. But if, after the cause of action accrues a defendant departs from the tribal jurisdiction and cannot be served with process, the time of his absence is not part of the time limited for the commencement of the action.

(c) If a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof and the cause of action survives, an action may be commenced by the personal representative after the expiration of that time and within one year from the person's death. If a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof and the cause of action survives, an action may be commenced against the personal representative after the expiration of that time and within one year after the appointment of the personal representative.

(d) When the commencement of an action is stayed by injunction or other order of the court or judge or statutory prohibition, the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action.

(e) A written acknowledgment, signed by the party to be charged thereby, or a witnessed oral acknowledgment, or the part payment of a debt is sufficient evidence to cause the statute of limitations to begin running anew. Part payment is any payment of principal or interest.

2-2-30 LIABILITY

2-2-31 Liability for Negligence as well as Willful Acts

Except as otherwise provided by law, everyone is responsible not only for the results of his willful acts but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person except so far as the latter has willfully or by want of ordinary care brought the injury upon himself or herself.

2-2-32 Comparative Negligence

Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or injury to person or property if such negligence was not greater than the negligence of the person or the combined negligence of all persons against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence of the person recovering.

2-2-33 Products Liability

(a) A person (including a manufacturer, wholesaler, or retailer) who sells a product in a defective condition unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to his property if:

(1) the manufacturer, wholesaler, or retailer, hereafter identified as "the seller", is engaged in the business of selling such a product; and

(2) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold, except that this subsection does not apply to a claim for relief based upon improper product design.

(b) The provisions of subsection (a) apply even if:

(1) the seller exercised all possible care in the preparation and sale of the product; and

(2) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(c) Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(1) the user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it; or

(2) the product was unreasonably misused by the user or consumer and such misuse caused or contributed to the injury.

(d) The affirmative defenses referred to in subsection (c) of this Section mitigate or bar recovery and must be applied in accordance with the principles of comparative negligence.

2-2-40 TRIBAL GOVERNMENT IMMUNITY

2-2-41 Immunity from Suit

The Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians of Oregon, as a sovereign government and landowner, and its elected Tribal Council in either their official or personal capacity, as well as Tribal officers, agents and employees acting within the scope of their authority, share sovereign immunity from suit and may not be made parties defendant to a lawsuit without the express, written action of the Tribal Council.

2-2-42 Limited Waivers of Immunity

(a) The Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians of Oregon, the Tribal Council, as well as its officers, agents and employees may be made a party defendant in a lawsuit in Tribal Court in the following circumstances:

(1) when a claim for injunctive, declaratory or mandamus relief is properly alleged for an abridgment or infringement by an action of Tribal government of

any civil or constitutional right of an individual arising under the Tribal Constitution and Bylaws or the Indian Civil Rights Act (25 U.S.C. § 1302); or

(2) when the Tribal Council enacts a Resolution or Ordinance providing a waiver of sovereign immunity for the purposes described therein or for judicial review of governmental implementation of the Resolution or Ordinance; or

(3) when the Tribal Council authorizes intervention as a party in a lawsuit between other parties, but such authorization does not waive immunity to a counter-claim; or

(4) when the Tribal Council enters into a written agreement with the United States pursuant to a federal law that requires the Tribes to purchase liability insurance, and thereby consents to a waiver of immunity to the policy limits; or

(5) when the Tribal Council enters into a written agreement:

(A) expressly waiving immunity,

(B) setting out procedures to be followed and remedies available in the event of default or breach by a party, or

(C) identifying Tribal Court as the forum for any dispute arising under the contract, or

(6) when the Tribal Council has entered into a contract of insurance providing coverage for the alleged civil claim and providing for a waiver of immunity in the policy to the limits of the policy.

(n) Corporations owned, in whole or in part, by the Tribes are authorized to sue and be sued according to the term of their enabling acts, articles of incorporation or charter.

2-2-50 DEFENSE AND INDEMNIFICATION OF TRIBAL OFFICERS, AGENTS AND EMPLOYEES

2-2-51 Purpose

The purpose of this Part is to provide for the defense and indemnification of Tribal Council members, Tribal officers, agents, and employees civilly sued for their actions taken within the course and scope of their employment or official duties. As used hereafter in this Part, "employee" means Tribal Council members, Tribal officers, agents, and employees, but shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the Tribes.

2-2-52 Scope

In a noncriminal action brought against any employee for a negligent act, error, or omission, including alleged violations of any civil or constitutional right arising under the Tribal Constitution and Bylaws or the Indian Civil Rights Act, 25 U.S.C. § 1302, or other actionable conduct committed while acting within the course and scope of the employee's office or employment, the Tribes, except as provided in 2-2-56, shall defend the action on behalf of the employee and indemnify employee.

2-2-53 Procedure

Upon receiving service of a summons and complaint in a noncriminal action against him or her, the employee shall give prompt written notice to the supervisor, or to the Tribal Council in the case of elected or appointed employees, requesting a defense to the action. Except as provided in 2-2-56, the Tribes shall offer a defense to the action on behalf of the employee. The defense may consist of a defense provided directly by the Tribes. Within ten (10) days after receipt of notice, the Tribes shall notify the employee as to whether they will provide a direct defense. If the Tribes refuse or are unable to provide a direct defense, the defendant employee may retain other legal counsel. Except as provided in 2-2-56, the Tribes shall pay all reasonable expenses relating to the retained defense and pay any judgment for damages entered in the action that may be otherwise payable hereunder.

2-2-54 Indemnification

In any noncriminal action in which a Tribal government employee is a party defendant, the Tribes shall indemnify the employee for any money judgments or legal expenses, including attorney fees, either incurred by the employee or awarded to the claimant or both, to which the employee may be subject as a result of the suit, unless the employee's conduct falls within the exclusions provided in 2-2-56.

2-2-55 Bar to Other Actions on Same Subject

Recovery from the Tribes under the provisions of this Title constitutes a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error or omission or other actionable conduct gave rise to the claim. In any such action against the Tribes, the employee whose conduct gave rise to the suit in whole or in part is immune from liability for the same subject matter if the Tribes acknowledge or are bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee's employment, unless the claim constitutes an exclusion provided in (b) through (d) of 2-2-56.

2-2-56 Conduct Not Indemnified

In a noncriminal action in which a Tribal employee is a party defendant, the Tribes shall neither defend nor indemnify the employee for any money judgment or legal expenses, including attorney fees, to which the employee may be subject as a result of the suit if a judicial determination is made that:

- (a) the conduct upon which the claim is based constitutes oppression, fraud, or malice, or for any other reason does not arise out of the course and scope of the employee's employment;
- (b) the conduct of the employee constitutes a criminal offense;
- (c) the employee compromised or settled the claim without the consent of the Tribes; or
- (d) the employee did not cooperate in the defense of the case.

2-2-57 Disputed Exclusions

If no judicial determination has been made applying the exclusions described in 2-2-56, the Tribes may determine whether those exclusions apply. If there is a dispute as to whether the exclusions should apply and the Tribes decide they must clarify their obligation to the employee arising under this section by commencing declaratory judgment action or other legal action, the Tribes shall provide a defense or assume the cost of the defense of the employee until a final judgment is rendered in such action holding that the Tribes had no obligation to defend the employee.

APPENDIX A
LEGISLATIVE HISTORY AND EDITORIAL CHANGES

CIVIL ACTIONS

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the "Civil Actions" Code, Resolution No. 01-075, Ordinance No. 028, at a special Tribal Council meeting on September 24, 2001. Vote was 6 (for), 0 (against) and 0 (abstaining).

This Code was attached with the "Tribal Court" Code (1-1-20) and passed with the same Resolution No. 01-075 and Ordinance No. 028.