

SISSETON-WAHPETON SIOUX TRIBE

CHAPTER 34

DOMESTIC RELATIONS

S.W.S.T. CODE
 Amendment
 New Adoption
Judicial Approved

Council Adopted
02-03-82

34-01-01 RECOGNITION OF PREVIOUS MARRIAGES

Indian marriages consummated prior to the adoption of this Code whether according to State Law or Tribal custom, are declared valid subject to annulment as is provided in Section 34-12-01 of this Code.

34-02-01 RECOGNITION OF DEPARTMENT REGULATIONS FOR HEIRSHIP PURPOSES

For the purposes of determining heirship, the rules and regulations heretofore adopted by the Secretary of the Interior shall remain in effect on all questions that arose prior to the date of adoption of this Code.

34-03-01 MARRIAGES AND DIVORCES

The Sisseton-Wahpeton Sioux Tribal Court shall have jurisdiction over marriages and divorces of the members of the Sisseton-Wahpeton Sioux Tribe and other Indian Tribes.

34-04-01 MARRIAGE DEFINED

Marriage is a personal relationship arising out of a civil contract to which the consent of parties capable of making it is necessary. Consent alone will not constitute marriage. It must be followed by a solemnization.

34-05-01 SOLEMNIZATION OF MARRIAGE

A marriage may be solemnized by any recognized clergyman or Judge within the jurisdiction of the Indian Reservation only after issuance of a license.

34-06-01 MARRIAGE LICENSE AND MARRIAGE CEREMONY

Any member of the Sisseton-Wahpeton Sioux Tribe or other Indian Tribe, eligible by age and otherwise as hereinafter defined, may obtain a marriage license from the Clerk of Court, and marriages consummated by authority of such license shall be deemed legal in every respect.

34-06-02 Prior to the performance of any marriage ceremony, the Judge of the Tribal Court shall examine the compatibility, age, sex, health, blood relationship, and other pertinent matters of the applicants for marriage. After said examination, the Judge shall determine whether the requisites for marriage have been met.

34-07-01 VOIDABLE MARRIAGES

If either party to a marriage be incapable, from physical causes, of entering into the marriage state, or if the consent of either be obtained by fraud or force, the marriage is voidable.

34-08-01 SUBSEQUENT MARRIAGE ILLEGAL

A subsequent marriage contracted by any person during the life of a former husband or wife is illegal and void from the beginning, unless:

1. The former marriage has annulled or dissolved.
2. Such former husband or wife was absent and not known to such person to be living for the space of five (5) successive years immediately preceding such subsequent marriage, or was generally reputed and was believed by such person to be dead at the time such subsequent marriage was contracted. In either case, the subsequent marriage is valid until its nullity is adjudged by the Sisseton-Wahpeton Sioux Tribal Court, or by a competent Tribunal or Judge.

34-09-01 PARDON

A pardon granted to any person sentenced to imprisonment for life by a State or Federal Court may restore such person to the rights of any previous marriage, or to the guardianship of any issue of such marriage. The rights of any previous marriage, or the guardianship of any issue of such marriage. The rights of a previous marriage shall not be restored when such marriage has been legally dissolved by divorce or annulment.

34-10-01 VIOLATION - PENALTY

If the officer issuing a marriage license knowingly grants a license contrary to the provisions of the preceding paragraphs, he is guilty of an offense, and if a marriage is solemnized without such license being procured, the parties so married, and all persons knowingly aiding in such marriage are likewise guilty of a misdemeanor.

34-11-01 FAILURE TO MAKE RETURN - PENALTY

If a person solemnizing a marriage fails and neglects to make return thereof, in the manner provided and within ninety (90) days, to the Clerk of the Sisseton-Wahpeton Tribal Court, he shall be liable to a fine not exceeding fifty dollars (\$50.00).

34-12-01 ANNULMENT - GROUNDS FOR

A marriage may be annulled by an action in the Sisseton-Wahpeton Tribal Court to obtain a decree of nullity for any of the following causes existing at the time of the marriage:

1. The party in whose behalf it is sought to have the marriage annulled was under the age of legal consent, and such marriage was contracted without the consent of his/her parents or guardians, or person having charge of him/her, unless, after attaining the age of consent, such party for any time, freely cohabited with the other as husband and wife. The age of legal consent shall be eighteen (18) years of age for females and twenty-one (21) years of age for males.
2. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force.
3. That either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband and wife.
4. That the consent of either party was obtained by fraud, unless such party afterwards freely cohabited with the other as husband and wife, after knowing the full facts constituting the fraud.
5. That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband and wife.
6. That either party was, at the time of marriage, physically incapable of entering the marriage state, and such incapacity continues and appears to be incurable.

34-12-02 Every minister or clergyman or judge who solemnizes any marriage where either party is known to him to be under the age of legal consent, and without the consent of his/her parents or guardians, or person having charge of him/her, or where either party is known to him to be of unsound mind, or any marriage to which, within his knowledge a legal impediment exists, is guilty of an offense.

34-13-01 LIMITATION OF ACTION

An action to obtain a decree of nullity of marriage for cause mentioned in Section 34-12-01 above, must be commenced as follow:

1. For causes mentioned in subparagraph 1., by the party to the marriage who was married under the legal age of consent, or by a parent, guardian, or other person having charge of such non-aged person, at any time before such married minor has arrived at the age of legal consent.
2. For causes mentioned in subparagraph 2. by either party during the life of the other, or by such husband or wife.
3. For causes mentioned in subparagraph 3. by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party.
4. For causes mentioned in subparagraph 4. by the injured party within four (4) years after the discovery of the facts constituting the fraud.
5. For causes mentioned in subparagraph 5. by the injured party within four (4) years after the marriage.
6. For causes mentioned in subparagraph 6. by the injured party within four (4) years after the marriage.

34-14-01 CHILDREN LEGITIMATE

Where the marriage is annulled on the grounds that a former husband or wife was living, or on the grounds of insanity, children begotten before the judgement are legitimate and succeed to the estate of both parents.

34-15-01 CUSTODY OF CHILDREN

The Sisseton-Wahpeton Sioux Tribal Court must award the custody of the children of the marriage annulled on the grounds of fraud or force, to the innocent parent, and may also provide for their education and maintenance out of the property of the guilty party, unless the innocent party is completely unfit to have such custody.

34-16-01 EFFECT OF JUDGEMENT

A judgement of nullity of marriage is conclusive only as against the parties to the action and those claiming under them.

34-17-01 DIVORCE

The Sisseton-Wahpeton Sioux Tribal Court shall have authority to grant divorces to members of the Sisseton-Wahpeton Sioux Tribe or any Indian Tribe whether the marriage was consummated under marriage license issued by the Clerk of the Sisseton-Wahpeton Tribal Court, or under license issued by State or Tribal authority.

34-17-02 Marriage is dissolved only:

1. By the death of one of the parties; or
2. By the judgement of the Sisseton-Wahpeton Sioux Tribal Court decreeing a divorce of the parties where the parties are members of the Sisseton-Wahpeton Sioux Tribe or any Indian Tribe.

34-17-03 The effect of the judgement decreeing a divorce is to restore the parties to the state of unmarried persons.

34-18-01 **DIVORCE - GROUNDS FOR**

Divorce may be granted for any of the following reasons which shall be used solely as a guide for the Judge:

Adultery
Extreme Mental Cruelty
Wilful Desertion
Wilful Neglect
Habitual Intemperance
Mutual Consent

34-18-02 Adultery Defined - Adultery is the unlawful sexual intercourse of a married person with one of the opposite sex, and when the crime is committed between parties only of which married, both are guilty of adultery.

34-18-03 Extreme Cruelty Defined - Extreme Cruelty is the infliction of grievous bodily injury or grievous mental suffering upon the other, by one party of the marriage.

34-18-04 Desertion Defined - Wilful desertion is the voluntary separation of one of the married parties from the other with intent to desert.

Persistent refusal to have reasonable matrimonial intercourse as husband and wife, when health or physical condition does not make refusal reasonably necessary, or the refusal of either party to dwell in the same house with the other party, when there is no just cause for such refusal is desertion.

When one party is induced by the stratagem or fraud of the other to leave the dwelling place, or to be absent, and during the absence, the offending party departs with intent to desert the other, it is desertion by the party committing the stratagem or fraud, and not by the other.

Departure or absence of one party from the family dwelling place, caused by cruelty or by threats of bodily harm from which danger would be reasonably apprehended from the other is not desertion by the absent party, but it is desertion by the other party.

Separation by consent with or without the understanding that one of the parties will apply for a divorce, is not desertion.

Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed during such absence or separation.

Consent to a separation is a revocable act, and if one of the parties afterwards, in good faith, seeks a reconciliation and restoration, and the other refuses it, such refusal is desertion.

If one party deserts the other, and before the expiration of the statutory period required to make the desertion a good cause for divorce, returns and offers in good faith to fulfill the marriage contract, and solicits condonation, the desertion is cured. If the other party refuses such offer and condonation, the refusal shall be deemed and treated as desertion by such party from the time of refusal.

34-18-05 Wilful Neglect Defined - Wilful neglect is the neglect of the husband or wife to provide each other the common necessities of life, either one having the ability to do so.

34-18-06 Habitual Intemperance Defined - Habitual intemperance is that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of time from properly attending to business or which would reasonably inflict great mental anguish upon the innocent party.

34-18-07 Mutual Consent Defined - Mutual consent is an agreement between husband and wife to terminate their marital relationship. Consent obtained by fraud or force, is not mutual.

34-18-08 Willful desertion, wilful neglect, habitual intemperance, or mutual consent must continue for six (6) months before either is grounds for divorce.

34-19-01 DIVORCE MAY DENIED UPON SHOWING

1. Recrimination.

2. Limitation and lapse of time.

(a) Recrimination defined - Recrimination is a showing by the defendant of any cause of divorce against the plaintiff.

(b) An action for divorce must be commenced within one (1) year after time of knowledge of a cause for divorce.

- 34-20-01 ADULTERY BY HUSBAND - CHILDREN LEGITIMATE**
When a divorce is granted for the adultery of the husband, the legitimacy of children of the marriage begotten of the wife before the commencement of the action is not affected.
- 34-21-01 ADULTERY OF WIFE - PRESUMPTION OF LEGITIMACY**
When a divorce is granted for adultery of the wife, the paternity of children begotten of her before the commission of the adultery is not affected, but the paternity of other children of the wife may be determined by the Sisseton-Wahpeton Sioux Tribal Court upon the evidence in the case. In every such case, all children begotten before the commencement of the action are to be presumed legitimate until the contrary is shown.
- 34-22-01 SEPARATE MAINTENANCE AND ALIMONY**
- 34-22-02 Maintenance** - Though judgement of divorce is denied, the Court may in an action for divorce, provide for maintenance of the wife and her children, or any of them, by the husband.
- 34-22-03 Temporary Alimony** - While an action for divorce is pending, the Sisseton-Wahpeton Sioux Tribal Court, may in its discretion, require the husband to pay any alimony, any money, necessary to enable the wife to support herself, or to prosecute or defend the action.
- 34-22-04 Support** - Where a divorce is granted for an offense of the husband, the Sisseton-Wahpeton Sioux Tribal Court may compel him to provide for the maintenance of the children of the marriage, and to make such suitable allowance to the wife for her support during her life or for a shorter period as the Sisseton-Wahpeton Sioux Tribal Court may deem just, having regard for the circumstances of the parties respectively; and the Sisseton-Wahpeton Sioux Tribal Court, may from time to time modify its orders in these respects.
- 34-23-01 PROCEDURE FOR ANNULMENT AND DIVORCE**
Any person applying for annulment or divorce shall deposit with the Clerk of the Sisseton-Wahpeton Sioux Tribal Court, twenty-five dollars (\$25.00) at the time of action. In case the defendant files a cross-complaint, the Clerk may with the approval of the Court require the defendant to pay into Court a fee of like amount.
- 34-23-02** The complaining party shall file with the Clerk a certified complaint, stating his or her cause of action, and thereupon, the Clerk shall issue a summons in the name of the Sisseton-Wahpeton Sioux Tribe to the defendant, informing him or her of the pendency of the action, and the summons shall concisely state the grounds upon which annulment or divorce is asked.

- 34-23-03 The summons, when issued together with a copy of the complaint, shall be delivered to the law and order department of the Tribe for service and shall immediately be served if service can be had. When served, the Tribal officer shall make return, showing the time of service of the summons, to the Clerk.
- 34-23-04 In case service cannot be made upon the Reservation, the summons, together with a copy of the complaint shall be forwarded to the law and order department of the Reservation where the defendant is enrolled, or the law and order department of the jurisdiction of the defendant's last known address and there served.
- 34-23-05 If service cannot be made personally either on the Lake Traverse Reservation or on the Reservation where the defendant is enrolled, a return shall be made to the Clerk showing said facts; thereupon the Clerk shall cause to be posted at the Agency and courthouse of both Reservations a copy of the summons and complaint; and also mail a copy of the summons and complaint to the last known post office address of the defendant and service shall be deemed complete. The defendant shall be given thirty (30) days in which to answer the complaint, either personally or by mail.
- 34-23-06 If the defendant fails to appear and answer within the time required, the case may be heard by the Judge at any time thereafter, but if the defendant answers the complaint, then the trial of action shall be placed on the calendar by the Clerk and tried by the Court at the next regular court session, unless adjourned by application of either party upon sufficient grounds.

34-24-01 SEVERABILITY

If any clause, sentence, paragraph, section, or part of this code shall, for any reason be adjudicated by any Court of competent jurisdiction, to be invalid or unconstitutional, such judgement shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which the judgement shall have been rendered.

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