

# Contents

<b>Introduction</b> . . . . .	1
<b>The Term Beneficial Ownership</b> . . . . .	3
1. About Elephants . . . . .	3
a) “I Know Them When I See Them” . . . . .	3
b) The Blind Men and the Elephant . . . . .	6
2. Elements of the Analysis . . . . .	7
a) Perceptions . . . . .	7
b) Functionality . . . . .	10
c) History . . . . .	11
d) Experience . . . . .	12
e) Language . . . . .	15
f) Law and Economics . . . . .	18
3. The Term Beneficial Ownership in the Crosshairs . . . . .	20
a) English Version . . . . .	20
b) German Version . . . . .	22
c) Italian and French . . . . .	24
d) Observations and Conclusions . . . . .	25
<b>Beneficial Ownership as a Concept</b> . . . . .	29
1. About Concepts in General . . . . .	29
2. HOHFELD’s Fundamental Legal Conceptions . . . . .	31
a) Significance of the Conceptions . . . . .	31
b) The Conceptions . . . . .	32
3. Conclusion . . . . .	37
<b>Common Law, Equity, and Beneficial Ownership</b> . . . . .	39
1. Law, Anti-Law, . . . . .	39
2. . . .and Non-Law . . . . .	42
3. Conclusions . . . . .	43

**Beneficial Ownership in U.S. Supreme Court Decisions** . . . . . 45

1. Hellenic Lines, Ltd. v. Rhoditis . . . . . 45
2. Tooahnippah (Goombi) v. Hickel . . . . . 47
3. United States v. Algoma Lumber Co. et al. . . . . 49
4. United States v. Shoshone Tribe of Indians . . . . . 51
5. Handy & Harman v. Burnet . . . . . 52
6. Chicago, Milwaukee & St. Paul Railway Company  
v. Des Moines Union Railway Company . . . . . 55
7. Montana Catholic Missions v. Missoula County/Bothwell  
v. Bingham County . . . . . 57
  - a) Significance . . . . . 57
  - b) Facts . . . . . 58
  - c) Definition of Beneficial Ownership . . . . . 59
8. Wells v. Savannah . . . . . 66
9. Union Stock Yards Bank v. Gillespie . . . . . 69
10. Drexel v. Berney . . . . . 69
11. Laughlin v. Mitchell . . . . . 72
  - a) Contract: Lease . . . . . 74
  - b) Inheritance: Will . . . . . 74
  - c) Equity: Trust . . . . . 75
  - d) Beneficial Ownership . . . . . 75
12. National Bank v. Insurance Company . . . . . 77
13. Summary Findings . . . . . 79

**Fundamental Aspects of Federal Indian Law** . . . . . 81

1. Introductory Note on the Moral Aspect . . . . . 81
2. Why Federal Indian Law? . . . . . 82
3. Cultural Differences . . . . . 83
  - a) Stereotypes . . . . . 83
  - b) Lyng v. Northwest Indian Cemetery . . . . . 83
  - c) Indian Status . . . . . 85
  - d) Diversity and Uniformity . . . . . 87
4. Law, Property, and Language . . . . . 88
5. The Native American Property Concept . . . . . 89
  - a) Statements of Indians . . . . . 90
  - b) Canons of Construction . . . . . 91
  - c) Conclusions . . . . . 93
6. Historical Doctrines . . . . . 94
  - a) Basis . . . . . 94
  - b) The 1830s . . . . . 94
  - c) The Doctrine of Discovery: Johnson v. M’Intosh . . . . . 96
  - d) The Doctrine of Dependent Sovereign: Cherokee  
Nation v. Georgia . . . . . 100

- e) Doctrine of Independence from the States: Worcester v. Georgia . . . . . 107
- 7. Conclusion . . . . . 111
- The Beneficial Ownership Concept Applied in Federal Indian Law . . . . 113**
- 1. Physical Relations . . . . . 114
- 2. Communal and Individual Ownership . . . . . 116
  - a) Communal Tribal Ownership . . . . . 117
  - b) Individual Indian Ownership . . . . . 121
- 3. Aboriginal Title . . . . . 126
  - a) Origin, Significance, and Definition . . . . . 126
  - b) Right of Occupancy . . . . . 129
  - c) Limited Transferability . . . . . 130
  - d) Extinction of Indian Title . . . . . 132
  - e) Compensation . . . . . 135
- 4. Indian Trust Concepts . . . . . 137
  - a) Trust Title . . . . . 138
  - b) General Trust Responsibility . . . . . 141
  - c) Combination in Bryan v. Itasca County . . . . . 142
- 5. Conclusion . . . . . 144
- Epilogue . . . . . 145**
- Bibliography . . . . . 147**