Title 11.

Crimes and Punishments.

Cross references. — Alien Property — Penalties, 27 TTC § 4.

Communications — Penalties, 35 TTC § 6.

Consumer Protection Act — Penalties, 33 TTC § 363.

Controlled Substances — Penalties, 63 TTC §§ 291-299.

Elections — Penalties, 43 TTC § 9.

Export Meat Inspection Act — Unlawful Acts — Penalties, 25 TTC §§ 63, 71, 73 & 74.

Fire Control — Penalties, 63 TTC § 452.

Fish, Shellfish and Game — Penalties, 45 TTC § 5.

Foreign Investors Business Permit Act — Penalties, 33 TTC § 19.

Health Regulations — Penalties, 63 TTC § 103.

Historic Sites and Antiquities — Penalties, 67 TTC § 252.

Immigration Provisions — Penalties, 53 TTC § 62.

Land Markers — Penalties, 57 TTC § 253.

Land Surveyors — Penalties, 31 TTC § 8.

Licensure of Health Personnel — Penalties, 63 TTC § 156.

Notaries Public — Penalties, 31 TTC § 207.

Personal Property as Security — Penalties, 57 TTC § 4.

Quarantine Regulations — Penalties, 25 TTC § 10.

Resident Workers' Protection Act — Penalties, 49 TTC § 14.

Sanitary Regulations — Penalties, 63 TTC § 206.

Shipping — Regulation and Control — Penalties, 19 TTC §§ 106, 107.
Social Security — Penalties, 73 TTC § 5.
Taxation — Penalties, 77 TTC §§ 201, 202.
Unfair Business Practices — Penalties, 33 TTC § 306.
Usurious Transactions — Penalties, 33 TTC § 253.
Vehicles — Penalties, 83 TTC § 2.

CHAPTER 1.

General Provisions.

Sec.
1. Classification of crimes.
2. "Principal" defined.
3. Accessories.
4. Attempts.
5. Insanity as defense.
6. Presumption as to responsibility of children.
7. Limitation of prosecution.
8. Limitation of punishment for crimes in violation of native customs.

§ 1. Classification of crimes. — A felony is a crime or offense which may be punishable by imprisonment for a period of more than one year. Every other crime is a misdemeanor. (Code 1966, § 375; Code 1970, tit. 11, § 1.)

§ 2. "Principal" defined. — Every person is punishable as a principal who commits an offense against the Trust Territory or aids, abets, counsels, commands, induces, or procures its commission or who causes an act to be done, which, if directly performed by him, would be an offense against the Trust Territory. No distinction is made between principals in the first and second degrees, and no distinction is made between a principal and what has heretofore been called an accessory before the fact. (Code 1966, § 430; Code 1970, tit. 11, § 2.)

Distinction between principal and accessory of little significance. — Distinction between principal and accessory before the fact is technical one and of little practical significance. Accessory to criminal offense is equally guilty with person who committed crime, and he receives same punishment as principal. Ropon v. Trust Territory, 2 TTR 313 (1962).

No distinction between principal and accessory before the fact needed in prosecution for kidnapping and rape. — In prosecution for kidnapping and rape of girl by four men, defense argument that victim's testimony did not conclusively show she was raped by all four men was precluded by statute removing distinction between principals and accessories before the fact. Trust Territory v. Ngirmang, 6 TTR 117 (1972).

Defendant who never entered place burgled can still be principal as defined by statute. — Where defendant is charged with and convicted of burglary of a snack bar, and there is no evidence that he ever entered the snack bar, if his conviction is to be sustained on appeal, it must be on the theory that he acted as a principal as defined in statute. Trust Territory v. Macaranas (App. Div., April, 1976).

Wrongful conviction of principal as accessory not worthy of complaint. — Where person is convicted as accessory before the fact when he should have been convicted as principal, he has not suffered injustice of which he can complain. Ropon v. Trust Territory, 2 TTR 313 (1962).

Driving of car used in burglary constitutes aid in commission of the crime. — Where defendant is charged with burglary of a snack bar, the driving of an automobile by the defendant in the vicinity of the snack bar and parking it so that it would be inconspicuous constitutes aid in the commission of a burglary. Trust Territory v. Macaranas (App. Div., April, 1976).

§ 3. Accessories. — Every person who, knowing that an offense against the Trust Territory has been committed, receives, relieves, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment, is an accessory after the fact. An accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment or fined not more than one-half the maximum fine prescribed for punishment of the principal, or both; or if the principal is punishable by life imprisonment, the accessory shall be imprisoned not more than ten years. (Code 1966, § 430 (d); Code 1970, tit. 11, § 3.)

Accessory after the fact. — Whoever, knowing crime to have been committed, unlawfully receives, comforts, harbors, aids or advises or assists person he knows committed crime is accessory after the fact. Yangilemau v. Mahoburimalei, 1 TTR 429 (1958).

Under Trust Territory law defining accessory after the fact, words "comfort," "harbor," "aid," and "assist" might apply to otherwise innocent person living in same household and communing daily with couple allegedly guilty of incestuous relationship. Yangilemau v. Mahoburimalei, 1 TTR 429 (1958).

Failure to give information not enough. — One does not become accessory after the fact who, knowing crime has been committed, merely fails to give information thereof. Yangilemau v. Mahoburimalei, 1 TTR 429 (1958).

Distinction between principal and accessory of little significance. — Distinction between principal and accessory before the fact is technical one and of little practical significance. Accessory to criminal offense is equally guilty with person who committed crime, and he receives same punishment as principal. Ropon v. Trust Territory, 2 TTR 313 (1962).

Wrongful conviction of principal as accessory not worthy of complaint. — Where person is convicted as accessory before the fact when he should have been convicted as principal, he has not suffered injustice of which he can complain. Ropon v. Trust Territory, 2 TTR 313 (1962).

Family members aiding incestuous relationship. — Where family members are in position of aiding couple in continuance of incestuous relationship, they are exposed to possibility of prosecution for crime of accessory after the fact. Yangilemau v. Mahoburimalei, 1 TTR 429 (1958).

§ 4. Attempts. — (1) Except as otherwise provided in subsection (2) of this section, every person who shall unlawfully attempt to commit any of the crimes named in this title, or in any other title of this Code, which attempt shall fall short of actual commission of the crime itself, shall be guilty of attempt to commit the said crime, and where no separate provision is made by law for punishment upon conviction of such attempt, a person so convicted shall be punished by imprisonment for a term not exceeding one-half of the maximum term of imprisonment which may lawfully be imposed upon conviction for commission of the offense attempted, or by a fine in an amount not exceeding one-half of the fine which may lawfully be imposed upon conviction for commission of the offense attempted, or by both such fine and imprisonment.

(2) Every person who shall unlawfully attempt to commit murder, which attempt shall fall short of actual commission of the crime itself, shall be guilty of attempted murder, and shall be sentenced as follows:

(a) For attempted murder in the first degree, imprisonment for a term of thirty years; and

(b) For attempted murder in the second degree, imprisonment for a term of not less than thirty months nor more than thirty years. (Code 1966, § 431; Code 1970, tit. 11, § 4; P.L. No. 6-107, § 1.)

Attempted assault not a crime; assault defined. — It is the general rule that a criminal charge may not be made for attempted assault. Assault is an attempted battery, that is, it is an action which falls short of battery but includes an intent to inflict injury. Trust Territory v. Benemang, 5 TTR 32 (1970).

Charge of attempted battery improper. — A charge of attempted battery is improper as an attempted battery is an assault. Trust Territory v. Benemang, 5 TTR 32 (1970).

Misrepresentation of facts to obtain payment under construction contract is a crime. — Where defendant in criminal case submitted false statement of hours worked and amounts earned by his laborers in order to obtain payment under construction contract, he made deliberate misrepresentation as to past facts material to question of whether money should be paid out, and submission therefore constituted unity of intent and overt act required in attempt to commit crime. Elechuus v. Trust Territory, 3 TTR 297 (1967).

Obtaining money by false pretenses is crime under Trust Territory law, and finding of guilty of attempt to commit crime charged, as lesser included offense, is authorized by law. Elechuus v. Trust Territory, 3 TTR 297 (1967).

§ 5. Insanity as defense. — No person judged by competent medical authority to be insane can be convicted of any crime because of the presumption that such person cannot have criminal intent. (Code 1966, § 432; Code 1970, tit. 11, § 5.)

§ 6. Presumption as to responsibility of children. — Children under the age of ten are conclusively presumed to be incapable of committing any crime. Children between the ages of ten and fourteen are also conclusively presumed to be incapable of committing any crime, except the crimes of murder and rape, in which case the presumption is rebuttable. The provisions of this section, however, shall not prevent proceedings against and the disciplining of any person under eighteen years of age as a delinquent child. (Code 1966, § 432; Code 1970, tit. 11, § 6.)

Defendant between ages of 16 and 18. — A defendant between the age 16 and age 18 may be treated as an adult or may be afforded juvenile delinquent proceedings at the discretion of the court. Santos v. Trust Territory, 5 TTR 607 (1972).

Effect of failure to object to jurisdiction. — A minor between the ages of 16 and 18 may waive his right to be tried in a juvenile court by failing to object to the jurisdiction of the court in which he was charged. Santos v. Trust Territory, 5 TTR 607 (1972).

Court has no duty to investigate youth's age. — Where a defendant, being at least 16 years old, gives his age as 18 years old, the court is not charged with the responsibility of causing an independent investigation of the youth's age to be made. Santos v. Trust Territory, 5 TTR 607 (1972).

Competence of 15-year-old to commit petit larceny. — Fifteen-year-old defendant is competent under Trust Territory law so far as age is concerned to commit crime of petit larceny. Celis v. Trust Territory, 3 TTR 237 (1967).

§ 7. Limitation of prosecution. — No person shall be prosecuted, tried or punished for any crime, except murder in the first or second degree, unless the prosecution is commenced within three years next after such crime shall have been committed; provided, however, that nothing in this section shall bar any prosecution against any person who shall flee from justice, or absent himself from the Trust Territory, or so secrete himself that he cannot be found by the officers of the law, so that process cannot be served upon him. (Code 1966, § 433; Code 1970, tit. 11, § 7.)

§ 8. Limitation of punishment for crimes in violation of native customs. — The penalty for any act which is made a crime solely by generally respected native custom shall not exceed a fine of one hundred dollars, or six months imprisonment, or both. (Code 1966, § 434; Code 1970, tit. 11, § 8.)

Cross references. — Due recognition of local customs, 1 TTC 14.

Local customs and customary law, 1 TTC 102.

Recognition of custom in awarding sentences, 11 TTC 1451.

Recognition of local customs in regard to domestic relations, 39 TTC 4.

Custom violations as basis for civil damages. — Some violations of custom may form basis for civil damages without being crimes. Sechelong v. Trust Territory, 2 TTR 92 (1959).

Where violation of custom is charged, failure to specify warrants reversal. — Right to fair trial requires reversal where violation of local custom is stated as charge in criminal prosecution but government fails to state which custom was violated. Fred v. Trust Territory, 1 TTR 600 (App. Div. 1957).

Custom violations as crimes. — Every failure to observe nicest details of polite custom cannot fairly be considered a crime. Only those violations of custom which are so serious as to be clearly regarded by great mass of population concerned as deserving some punishment can properly be considered crimes without any legislation to define them. Sechelong v. Trust Territory, 2 TTR 92 (1959).

Attempt to personally settle dispute not a crime. — If accused in criminal prosecution under local custom fails to observe present-day Palauan practice by trying personally to settle dispute, he has not committed any crime in doing so. Sechelong v. Trust Territory, 2 TTR 92 (1959).

"Throwing away" of spouse not a crime. — Under Truk custom, marriage may be dissolved by either spouse at any time at will without action by any court, magistrate or official, and the "throwing away" of spouse does not constitute a crime. Lornis v. Trust Territory, 2 TTR 114 (1959).

Under Truk custom, "throwing away" of spouse does not constitute a crime and cannot be punished as a violation of criminal statute. Aisea v. Trust Territory, 1 TTR 245 (1955).

Under Trukese custom the "throwing away" of a spouse does not constitute a crime and it cannot be punished under this section regardless of whether it has been recorded or not. Purako v. Efou, 1 TTR 236 (1955).

"Throwing away" spouse and the presumption of adultery. — Presumption under Truk custom, that person who has "thrown away" spouse has committed adultery before the "throwing away," is not strong enough to make evidence of "throwing away" sufficient in itself to prove adultery beyond a reasonable doubt on part of one throwing spouse away. Lornis v. Trust Territory, 2 TTR 114 (1959).

Customary divorce and crime of adultery. — Since parties who are married under Truk custom cannot commit customary crime of adultery with each other, question as to whether intercourse occurred before or after customary divorce from former spouse is of utmost importance in prosecution for adultery. Lornis v. Trust Territory, 2 TTR 114 (1959).

Sufficiency of complaint concerning adultery. — Where complaint sufficiently charges persons accused with having committed adultery with each other, in violation of local custom and at place within jurisdiction of court and on date within statute of limitations, and complaint cites code section violated, accused could not have been misled to their prejudice. Lornis v. Trust Territory, 2 TTR 114 (1959).

CHAPTER 2.

ABORTION.

Sec.
51. Defined; punishment.

§ 51. Defined; punishment. — Every person who shall unlawfully cause the miscarriage or premature delivery of a woman, with the intent to do so, shall be guilty of abortion and upon conviction thereof shall be imprisoned for a period of not more than five years. (Code 1966, § 405; Code 1970, tit. 11, § 51.)

Provisions so vague and indefinite as to deny due process. — The provisions of the abortion statute were so vague and indefinite that enforcement of it in case in question would have constituted a denial of due process of law as to the defendant. Trust Territory v. Tarkong, 5 TTR 549 (1971).

Section 405 of the 1966 Code, relating to abortion, was so vague and indefinite that its attempted enforcement in case in question constituted a denial of due process and it was, therefore, invalid. Trust Territory v. Tarkong, 5 TTR 252 (1970).

Under the abortion section of this Code the persons liable are determinable by inference only and such indefiniteness and vagueness constitutes a denial of due process. Trust Territory v. Tarkong, 5 TTR 252 (1970).

Requirement of intent to cause abortion. — The only certainty contained in the abortion statute is that the intent to cause the abortion must present and this simply precludes abortion by accident. Trust Territory v. Tarkong, 5 TTR 252 (1970).

Abortion statutes not applicable to pregnant woman who is victim of the act. — Abortion statutes by their terms are applicable to the person causing the abortion and do not apply, without specific provision to the pregnant woman who is the victim of the act. Trust Territory v. Tarkong, 5 TTR 252 (1970).

As far as the woman herself is concerned, unless the abortion statute expressly makes her responsible, it is generally held, although the statute reads any "person," that she is not liable to any criminal prosecution, whether she solicits the act or performs it upon herself. Trust Territory v. Tarkong, 5 TTR 252 (1970).

CHAPTER 3.

ABUSE OF PROCESS.

Sec.

§ 101. Interference with service of process. — Every person who, knowlingly and wilfully obstructs, resists, or opposes any chief of police, policeman or other person duly authorized, in serving or executing, or attempting to serve or execute any process issued by any court or official authorized to issue the same, or whoever assaults, beats or wounds any chief of police, policeman, or other person duly authorized, knowing him to be such officer, or other person so duly authorized, in serving or executing any such process shall be guilty of obstructing justice and, upon conviction thereof, shall be imprisoned for a period of not more than one year, or fined not more than one thousand dollars, or both. (Code 1966, § 253(a); Code 1970, tit. 11, § 101.)

§ 102. Concealment, removal or alteration of record or process. — Every person who wilfully and unlawfully conceals, removes, takes away, mutilates, obliterates, alters, or destroys, or attempts to do so, or wilfully takes and carries away record or process in or from any court or official authorized to issue or serve the same, shall be guilty of tampering with judicial records or process, as the case may be, and upon conviction thereof, shall be imprisoned for not more than five years, or fined not more than one thousand dollars, or both. (Code 1966, § 253(b); Code 1970, tit. 11, § 202.)

CHAPTER 4.

ARSON.

Sec.
151. Defined; punishment.

§ 151. Defined; punishment. — (1) Every person who shall unlawfully, wilfully and maliciously set fire to or burn any office, warehouse, store, barn, shed, cookhouse, boat, canoe, lumber, copra or any other building or shelter, crop, timber or other property, shall be guilty of arson, and upon conviction thereof shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

(2) If the building is a dwelling or if the life of any person be placed in jeopardy, he shall be fined not more than five thousand dollars, or imprisoned not more than twenty years, or both. (Code 1966, § 390; Code 1970, tit. 11, § 151.)

Crime of arson supersedes custom. — As arson is a crime under the written law, it necessarily supersedes and replaces any applicable custom pursuant to section 102 of title 1 of this Code. Figir v. Trust Territory, 4 TTR 368 (1969).

Customary law not applicable in a habeas corpus proceeding concerning criminal arson statute. — While petitioner's argument that he should have been acquitted because the prosecution failed to meet its obligation to show beyond a reasonable doubt that petitioner's act was in violation of customary law may have been considered on an appeal, it was not appropriate in a habeas corpus proceeding to set aside a finding that petitioner violated, beyond a reasonable doubt, the criminal arson statute. Figir v. Trust Territory, 4 TTR 368 (1969).

CHAPTER 5.

ASSAULT AND BATTERY.

§ 201. Assault. — Every person who shall unlawfully offer or attempt, with force or violence, to strike, beat, wound, or to do bodily harm to another, shall be guilty of assault, and upon conviction thereof shall be imprisoned for a period of not more than six months, or fined not more than one hundred dollars, or both. (Code 1966, § 378; Code 1970, tit. 11, § 201.)

Assault defined. — Assault is an attempt or offer to beat another, without touching him. Amis v. Trust Territory, 2 TTR 364 (1962).

Elements of assault. — To constitute criminal assault, there must be overt act or attempt, or unequivocal appearance of attempt, with force and violence, to do physical injury to person of another. Nichig v. Trust Territory, 1 TTR 409 (1958).

Prerequisites to successful assault prosecution. — Before there can be successful prosecution for the crime of assault, it must appear there was attempt by force or violence to strike another or cause him bodily harm. Nichig v. Trust Territory, 1 TTR 409 (1958).

When victim of assault is aggressor. — If the victim of alleged criminal assault is the aggressor, a finding that the accused in a criminal case acted in self-defense is justified. Yaoch v. Trust Territory, 1 TTR 192 (1954).

Greater than necessary force in ejecting trespasser. — Use of greater force than is necessary to eject a trespasser will make an individual liable for assault for so much of such force as is excessive. Partridge v. Trust Territory, 1 TTR 265 (1955).

Facts which fail to constitute assault. — Where complainant of alleged assault remains in hiding and is not menaced by defendant's knife, and there is no attempt to frighten or hit him with the knife or other weapon, facts fail to make out case of assault. Nichig v. Trust Territory, 1 TTR 409 (1958).

Intent plus act of throwing a rock. — An intent to cause bodily harm plus the act of throwing a rock was sufficient to sustain a charge of assault even though the rock missed and no harm was done. Trust Territory v. Benemang, 5 TTR 32 (1970).

The fact that persons admitted throwing stones at complainant, one of which hit him, would sustain a charge of assault and battery with a dangerous weapon as well as an assault charge. Trust Territory v. Benemang, 5 TTR 32 (1970).

§ 202. Aggravated assault. — Every person who shall unlawfully assault, strike, beat, or wound another with a dangerous weapon, with intent to kill, rape, rob, inflict grievous bodily harm, or to commit any other felony against the person of another, shall be guilty of aggravated assault, and upon conviction thereof shall be imprisoned for a period of not more than ten years. (Code 1966, § 377; Code 1970, tit. 11, § 202.)

Elements of aggravated assault. — Aggravated assault is crime in which specific intent is element, and acts constituting crime must be done with intent to kill, rape, rob, inflict grievous bodily harm or to commit another felony. Ngeruangel v. Trust Territory, 2 TTR 620 (App. Div. 1960).

Unnecessary force may result in aggravated assault conviction. — Where accused in criminal prosecution used more force than was necessary to subdue disorderly and intoxicated victim, he may be convicted of aggravated assault. Ngirailengelang v. Trust Territory, 2 TTR 646 (App. Div. 1963).

Use of dangerous weapon not justified where there is no reasonable fear for life. — Where victim of assault and battery was intoxicated and persistently pursued appellant without success, appellant was not justified in using dangerous weapon because there was no reasonable basis for his being in fear of his life or grievous bodily harm. Ngeruangel v. Trust Territory, 2 TTR 620 (App. Div. 1960).

Intoxication of defendant may result in conviction of lesser included offense not requiring intent. — Where it appeared from the evidence that defendant charged with aggravated assault in that he drove at and hit

another person was so intoxicated as to be incapable of forming the requisite intent, he would be found guilty of lesser included offense, not requiring intent, of assault and battery with a dangerous weapon. Trust Territory v. Jima, 6 TTR 91 (1972).

§ 203. Assault and battery. — Every person who shall unlawfully strike, beat, wound or otherwise do bodily harm to another, shall be guilty of assault and battery, and upon conviction thereof shall be imprisoned for a period of not more than six months, or shall be fined not more than one hundred dollars, or both. (Code 1966, § 379; Code 1970, tit. 11, § 203.)

Distinction between assault and battery. — One act cannot be both an assault and a battery since assault is only an attempt to inflict harm whereas battery is the actual unlawful infliction or harm. Trust Territory v. Benemang, 5 TTR 32 (1970).

Attempted battery is an assault. — Attempted battery falls short of the crime and becomes an assault. Trust Territory v. Benemang, 5 TTR 32 (1970).

Separate blows do not constitute separate crimes. — In crime of assault and battery, each blow in one continuous beating does not constitute separate crime, nor does temporary lull in infliction of blows necessarily mean that next blow is separate offense. Paul v. Trust Territory, 2 TTR 603 (App. Div. 1959).

Physical harm not an essential element. — Physical harm, in sense of injury requiring medical treatment, is not essential element of assault and battery. Ngiralai v. Trust Territory, 2 TTR 445 (1963).

Requirement for battery is that force be unlawful. — Where the amount of force used in battery is unlawful, the degree of force which is used is immaterial. Partridge v. Trust Territory, 1 TTR 265 (1955).

Slight unlawful touching is sufficient. — Slightest unlawful touching of person of another may amount to assault and battery. Ngiralai v. Trust Territory, 2 TTR 445 (1963).

Defendant not prejudiced by meager coverage of details of beating. — Where defendant in criminal prosecution for assault and battery receives light sentence, he has not been prejudiced by meager coverage of exact details of beating or where it took place in regard to boundaries of premises controlled by him. Ngiralai v. Trust Territory, 2 TTR 445 (1963).

Reduction of sentence because of provocation and justification. — Appellate court may reduce sentence on criminal appeal from conviction for assault and battery where there was extreme provocation and accused had some justification for actions. Fattun v. Trust Territory, 3 TTR 571 (App. Div. 1965).

When accused precipitates affray, participation of victim in affray does not excuse assault and battery. — In prosecution for assault and battery, even if evidence shows that complaining witness, in endeavoring to protect himself, participated in an affray, fact that accused's attack precipitated affray would not excuse the assault and battery. Timulch v. Trust Territory, 3 TTR 208 (1966).

Force in excess of that privileged in self-defense. — Where a person accused of assault and battery contends that he was acting in self-defense, and the evidence shows that he threw the victim to the ground and thereafter picked up a rock and struck the victim's head, he is held to have used force in excess of that which he is privileged to use in self-defense, e.g., only such force as one has reasonable grounds to believe is necessary to protect oneself from injury. Yaoch v. Trust Territory, 1 TTR 192 (1954).

Proprietor has no right to punish trespasser. — Proprietor may use only such force as reasonably necessary to expel trespasser, but has no right to punish trespasser, and if he attempts to do so, becomes wrongdoer against whom trespasser may defend himself so far as necessary to prevent bodily harm. Ngiralai v. Trust Territory, 2 TTR 445 (1963).

Proprietor has no right to punish trespasser or use force on him to supposedly protect his property after necessity for such protection is passed. Ngiralai v. Trust Territory, 2 TTR 445 (1963).

Reasonable force permitted to eject trespasser from public place. — Where a person in a public place or semi-public place becomes a trespasser and upon request to leave fails to depart within a reasonable time, the proprietor may use such force as is reasonably necessary to eject him, but if more force is used than is necessary, acts constitute assault and battery Partridge v. Trust Territory, 1 TTR 265 (1955).

Amount of force allowable. — Force which law allows in ejecting trespasser is only as much force as is necessary, or reasonably appears necessary, for putting trespasser off premises. Ngiralai v. Trust Territory, 2 TTR 445 (1963).

Trespasser entitled to time to leave premises peaceably. — Even if victim of

criminal assault and battery is trespasser, he is entitled to reasonable time in which to leave premises peaceably. Ngiralai v. Trust Territory, 2 TTR 445 (1963).

Right of teacher to physically punish child. — Teacher has right, in absence of statute forbidding it, to inflict physical punishment upon child under his tutelage. Dachuo v. Trust Territory, 2 TTR 286 (1961).

Presumption in favor of teacher. — When relation of schoolmaster and pupil is established in defense of prosecution for assault and battery on pupil, presumption is that chastisement was proper and burden of proving unreasonableness or excess of punishment is on prosecution. Dachuo v. Trust Territory, 2 TTR 286 (1961).

Right to punish not unlimited. — Right of teacher to inflict physical punishment on student is not unlimited, and excessive punishment makes teacher liable to both civil and criminal actions. Dachuo v. Trust Territory, 2 TTR 286 (1961).

Clearly excessive punishment. — Under strict rule of teacher liability, teacher may be guilty of assault and battery even if no permanent injury is inflicted, if he inflicts punishment which is clearly excessive. Dachuo v. Trust Territory, 2 TTR 286 (1961).

Temporary pain inflicted in good faith. — In some jurisdictions, parent or teacher exceeds limit of authority when he inflicts permanent injury even without malice, but is not guilty of assault and battery when he inflicts temporary pain in good faith for correction of child. Dachuo v. Trust Territory, 2 TTR 286 (1961).

§ 204. Assault and battery with a dangerous weapon. — Every person who shall unlawfully commit assault and battery upon another by means of a dangerous weapon shall be guilty of assault and battery with a dangerous weapon, and upon conviction thereof shall be imprisoned for a term of not more than five years, or fined not more than one thousand dollars, or both. (Code 1966, § 377-A; Code 1970, tit. 11, § 204.)

Indirect blow may constitute battery. — The application of force constituting a battery need not be a direct striking blow, but may be indirect. Trust Territory v. Lino, 6 TTR 7 (1972).

Test of what constitutes a dangerous weapon. — Test of what constitutes dangerous weapon is not dependent upon how serious or permanent injuries actually inflicted are, but upon likelihood or danger in natural course of things of death or great bodily harm. Ngiraibai v. Trust Territory, 2 TTR 522 (1964).

Dangerous weapon defined. — Dangerous weapon, within meaning of the statute defining assault and battery with a dangerous weapon, is weapon likely, in natural course of things, to produce death or great bodily harm, when used in manner in which it was used in particular case. Ngiraibai v. Trust Territory, 2 TTR 522 (1964).

Dangerous weapon as used in crime of assault and battery with a dangerous weapon means weapon which is likely, in natural course of things, to produce death or great bodily harm when used in manner in which it was used in this particular case in question. Paul v. Trust Territory, 2 TTR 603 (App. Div. 1959).

Wide variety of articles may be dangerous weapons. — Wide variety of articles may constitute dangerous weapons within definition used in connection with assaults. Ngiraibai v. Trust Territory, 2 TTR 522 (1964).

Leather shoe as dangerous weapon. — A leather shoe on the foot of a person who kicks an eye out of a victim's head is a dangerous weapon within the meaning of that term. Trust Territory v. Sokau, 4 TTR 434 (1969).

Automobile as dangerous weapon. — An automobile is a dangerous weapon, within meaning of statute making assault and battery with a dangerous weapon a criminal offense, when it is deliberately driven at someone. Trust Territory v. Jima, 6 TTR 91 (1972).

Throwing of stones; assault and battery. — The fact that persons admitted throwing stones at complainant, one of which hit him, would sustain a charge of assault and battery with a dangerous weapon as well as an assault charge. Trust Territory v. Benemang, 5 TTR 32 (1970).

Weapon which creates danger of only slight injury. — Weapon which, in manner used, creates danger of only slight or superficial probable injury, and in fact only causes such injury, does not constitute dangerous weapon as used in connection with crime of assault and battery with a dangerous weapon. Paul v. Trust Territory, 2 TTR 603 (App. Div. 1959).

Bottle and stick as dangerous weapons. — The district court is justified in considering bottle and stick to be dangerous weapons when bottle struck victim with such force it broke over his head, and stick broke arm of victim with which he was trying to protect himself. Ngiraibai v. Trust Territory, 2 TTR 522 (1964).

Where dangerous weapon not identified, evidence may be insufficient. — Where, in

criminal prosecution for assault and battery with a dangerous weapon, alleged dangerous weapon was not identified and must be inferred from injuries inflicted, which were superficial, court may deem evidence insufficient to find beyond reasonable doubt that dangerous weapon was used. Paul v. Trust Territory, 2 TTR 603 (App. Div. 1959).

Aggravated assault charge modified to show assault and battery with a dangerous weapon. — Where prosecution in criminal proceedings fails to show specific intent necessary to constitute aggravated assault, appellate court may modify conviction to assault and battery with a dangerous weapon. Ngeruangel v. Trust Territory, 2 TTR 620 (App. Div. 1959).

Prior conviction arising out of same act. — Prosecution for assault and battery with dangerous weapon may be barred by prior conviction for assault and battery arising out of same act. Paul v. Trust Territory, 2 TTR 603 (App. Div. 1959).

Double jeopardy when evidence on second complaint would have been admissible in first complaint. — Where appellant in criminal prosecution has been previously convicted in the district court of assault and battery based on same act as alleged in high court information for assault and battery with a dangerous weapon, and evidence supporting information would clearly have been admissible to support first complaint, appellant is in double jeopardy of punishment for assault alleged in information when he has already been convicted under prior complaint. Paul v. Trust Territory, 2 TTR 603 (App. Civ. 1959).

Defendant so intoxicated as to be unable to form requisite intent. — Where it appeared from the evidence that defendant charged with aggravated assault in that he drove at and hit another person was so intoxicated as to be incapable of forming the requisite intent, he would be found guilty of lesser included offense, not requiring intent, of assault and battery with a dangerous weapon. Trust Territory v. Jima, 6 TTR 91 (1972).

One who provokes fight cannot claim self-defense. — One who provokes fight runs risk of suffering normal results of such provocation and cannot claim self-defense as excuse for using dangerous weapon to resist such results. Asako v. Trust Territory, 3 TTR 191 (1966).

Invalid charge entitles defendant to dismissal. — A charge of attempted assault and battery with a dangerous weapon was an invalid charge and the defendant was entitled to a dismissal upon that count. Trust Territory v. Benemang, 5 TTR 32 (1970).

Where victim grabs defendant's machete in attempt to disarm him. — Where defendant, who had severely wounded a man, asked a group of nearby men who among them was a friend of wounded man and would help him, that a man grabbed defendant's machete in an attempt to disarm him was a normal response to the situation and such response was not a defense to assault and battery with a dangerous weapon, occurring when defendant pulled the machete from second victim's hand, thereby cutting him. Trust Territory v. Lino, 6 TTR 7 (1972).

Conviction is negligence per se. — This section provides a criminal penalty for unlawful assault and battery and commission of such an offense is negligence per se. Mechol v. Kyos, 5 TTR 262 (1970).

CHAPTER 6.

BIGAMY.

Sec.
251. Defined; punishment.

§ 251. Defined; punishment. — Every person who, being legally married, shall unlawfully and wilfully marry another during the tenure of the marriage contract shall be guilty of bigamy, and upon conviction thereof shall be imprisoned for a period of not more than five years; provided, however, that no person shall be found guilty of bigamy whose wife or husband has been absent for a period of five years, without being known by such person to be alive during that time. (Code 1966, § 406; Code 1970, tit. 11, § 251.)

Community court does not have jurisdiction of bigamy cases. — Community court has no jurisdiction to try any person for bigamy, and conviction of this offense in community court is void. Purako v. Efou, 1 TTR 236 (1955).

Meaning of "marry" in bigamy statute. — Word "marry" in bigamy statutes is used in peculiar sense and, as applied to second or bigamous marriage, does not mean to effect legal marriage, but merely to appear to marry. Umiich v. Trust Territory, 3 TTR 231 (1967).

Defects in alleged marriage immaterial. — To constitute bigamous marriage, it is immaterial whether alleged marriage is illegal or defective for some other reason in addition to prior and still-existing marriage of accused. Umiich v. Trust Territory, 3 TTR 231 (1967).

Invalid marriage is a marriage for purpose of bigamy prosecution. — In criminal prosecution for bigamy, trial court may find accused did "marry" his alleged bigamous wife, as term is used in the Trust Territory law defining bigamy, regardless of whether actions would have constituted legal marriage if accused's prior marriage to another were not in effect. Umiich v. Trust Territory, 3 TTR 231 (1967).

Common law marriage sufficient for bigamy prosecution. — Appearance of common-law marriage not involving any ceremony is sufficient to constitute appearance of marriage for purposes of bigamy statutes, in jurisdictions which still recognize common-law marriages. Umiich v. Trust Territory, 3 TTR 231 (1967).

Marriage under local custom sufficient for bigamy prosecution. — In Trust Territory, where marriages under local custom are expressly recognized, appearance of marriage under local custom is sufficient to constitute "marrying" within meaning of bigamy statute, even though no marriage ceremony is involved. Umiich v. Trust Territory, 3 TTR 231 (1967).

Appearance of marriage sufficient for bigamy statute. — Where accused and alleged bigamous spouses purported to marry and did all things required of them for marriage under Palauan custom, and were generally considered in community to be married, accused was "married" within meaning of statute defining bigamy. Umiich v. Trust Territory, 3 TTR 231 (1967).

CHAPTER 7.

BRIBERY.

Sec.

§ 301. Defined; punishment. — Every person who shall unlawfully and voluntarily give or receive anything of value in wrongful and corrupt payment for an official act done or not done, to be done or not to be done, shall be guilty of bribery, and upon conviction thereof shall be imprisoned for a period of not more than five years, and shall be fined three times the value of the payment received; or, if the value of the payment cannot be determined in dollars, shall be imprisoned for a period of not more than five years, and fined not more than one thousand dollars. (Code 1966, § 412; Code 1970, tit. 11, § 301.)

Cross reference. — Bribing of officials under the export meat inspection act, 25 TTC 63.

CHAPTER 8.

BURGLARY.

Sec.

351. Defined; punishment.

§ 351. Defined; punishment. — Every person who shall unlawfully and by force, or by stealth or trickery, enter a dwelling house or other building of another with the intent to commit a felony, petit larceny, an assault or an assault and battery therein, shall be guilty of burglary, and upon conviction thereof shall be imprisoned for a term of not more than ten years. (Code 1966, § 391; Code 1970, tit. 11, § 351.)

Construction of burglary law. — Trust Territory law on burglary should be construed in light of modern decisions and statutory changes in definition of burglary in various American jurisdictions. Trust Territory v. Peter, 3 TTR 251 (1967).

Actual breaking not required. — Trust Territory law on burglary does away with requirement of actual breaking in sense of destroying or damaging anything. Trust Territory v. Peter, 3 TTR 251 (1967).

Any force at all is sufficient to constitute that element of burglary. — In construing crime of burglary, tendency now is to hold that if any force at all is necessary to effect entrance into building, through any place of ingress, such entrance is sufficient to constitute burglary if other elements of offense are present. Trust Territory v. Peter, 3 TTR 251 (1967).

Principal as defined in statute. — Where defendant is charged with and convicted of burglary of a snack bar, and there is no evidence that he ever entered the snack bar, if his conviction is to be sustained on appeal, it must be on the theory that he acted as a principal as defined in statute. Trust Territory v. Macaranas (App. Div., April, 1976).

Intent element must be present. — Where there is substantial doubt as to whether accused had intent to commit felony at time he entered building, he cannot be found guilty of burglary. Trust Territory v. Peter, 3 TTR 251 (1967).

Crime includes entry by stealth. — Statutory crime of burglary in the Trust Territory is broader than common law definition, and includes entry by stealth. Trust Territory v. Peter, 3 TTR 251 (1967).

Proof of felony often part of intent proof. — Proof of larceny or other felony is often necessary part of proof of intent involved in burglary. Olber v. Trust Territory, 1 TTR 559 (App. Div. 1951).

Possession of stolen goods as proof. — Whenever goods are taken as part of criminal act, fact of subsequent possession is indication that possessor was taker and doer of whole crime. Nichig v. Trust Territory, 1 TTR 572 (App. Div. 1953).

When the taking was issue in burglary prosecution, accused cannot claim surprise. — Where taking of woman's underclothing was definitely an issue in prosecution for burglary, accused cannot properly claim any element of undue surprise or lack of opportunity to meet issue fully. Olber v. Trust Territory, 1 TTR 559 (App. Div. 1951).

Ability of victim to claim damages from burglary. — If goods are taken in what amounts to a burglary in a proper case in a civil suit for damages the victim might recover damages for the goods lost and also for the cost of repairing a broken building and other destruction during the burglary and in addition, in a proper case, if the victim has been made sick because of the violence of the burglary he might be entitled to damages for his illness. Yinug v. Googag, 4 TTR 156 (1968).

When act of burglary completed. — Act of accused in taking woman's underclothing from line after he enters house cannot technically constitute part of burglary, which is completed upon his unlawful entry with necessary force and intent. Olber v. Trust Territory, 1 TTR 559 (App. Div. 1951).

CHAPTER 9.

CONSPIRACY.

Sec.

§ 401. Defined; punishment. — If two or more persons conspire either to commit any crime against the Trust Territory, or to defraud the Trust Territory or the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be guilty of conspiracy, and upon conviction thereof shall be imprisoned for a period of not more than five years, or fined not more than two thousand dollars, or both. If, however, the offense, the commission of which is the object of conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum penalty provided for such misdemeanor. (Code 1966, § 414; Code 1970, tit. 11, § 401.)

CHAPTER 10.

CONTEMPT.

Sec.
451. Defined; punishment.

§ 451. Defined; punishment. — Every person who shall unlawfully, knowingly, and wilfully interfere directly with the operation and function of a court, by open defiance of an order, in or near the courtroom; or by disturbing the peace in or near the courtroom; or by speaking or writing in such a manner as to intimate that the court is unfair or corrupt; or, when a witness, by refusing to answer lawful questions; or shall resist or refuse, or fail to comply with a lawful order of the court; or shall interfere with an officer of the court in the pursuit of his official duties, shall be guilty of criminal contempt and upon conviction thereof shall be imprisoned for a period of not more than six months, or shall be fined not more than one hundred dollars, or both. (Code 1966, § 415; Code 1970, tit. 11, § 451.)

Essence of offense. — Essence of offense of contempt of court is wilful disregard of authority of court or disobedience to it. Ranipu v. Trust Territory, 2 TTR 167 (1961).

Intent important in cases where there was interference with court operation. — In doubtful situations where there is interference with operation of court, question of intent is important in determining whether interference was knowingly and wilfully accomplished or amounted to wilful disrespect. Ranipu v. Trust Territory, 2 TTR 167 (1961).

Accused must have known his acts would affect court operation. — Where conviction is sought on ground of interference with court by acts not intended to impede court as protest against it, person cannot be found guilty of criminal contempt unless it is shown he knew or should have known that acts were likely to affect operation of court. Ranipu v. Trust Territory, 2 TTR 167 (1961).

Court may punish violation of temporary restraining order. — The district court in the Trust Territory acts within its jurisdiction in issuing temporary restraining order regarding right to immediate possession of land, and may punish contemptuous violation of its order. Aimeliik People v. Remengesau, 2 TTR 320 (1962).

Violations of order of court with doubtful jurisdiction. — Where jurisdiction of court is doubtful and temporary order is issued, violations of order are punishable as criminal contempt. Aimeliik People v. Remengesau, 2 TTR 320 (1962).

Amount of punishment within discretion of court. — Determination of relative amount of punishment to be given each party convicted of criminal contempt, within limits of law, is matter resting within sound discretion of trial court. Aimeliik People v. Remengesau, 2 TTR 320 (1962).

Discretion not to treat contempt as separate case. — Trial court in Trust Territory has discretion not to handle criminal contempt matter as separate case entered in criminal docket. Aimeliik People v. Remengesau, 2 TTR 320 (1962).

Appellants not prejudiced by reduction of sentence. — Where trial court reduces sentences of appellants after they are imposed in criminal contempt proceedings, appellants are not prejudiced thereby and cannot fairly complain about it. Aimeliik People v. Remengesau, 2 TTR 320 (1962).

Prosecution for contempt by institution of new proceedings after trial. — A criminal defendant may be prosecuted for conduct in contempt of court, such conduct being in court or otherwise, during the course of the trial by the institution of new proceedings after the trial and verdict in accordance with any other criminal offense. Ennato v. Kintin, 5 TTR 243 (1970).

Contempt trial subject to rules applicable to any proceeding. — Bringing a complaint or information, arrest and trial for criminal contempt is subject to all of the rules applicable to trial of any other offense, commencing with the recitation in the charge of the specific acts, within the language of the statute, which are the subject of the complaint. Ennato v. Kintin, 5 TTR 243 (1970).

Protective provisions. — Upon the arrest on the charge of criminal contempt, the individual is subject to all of the protective provisions of this Code. Ennato v. Kintin, 5 TTR 243 (1971).

CHAPTER 11.

COUNTERFEITING.

Sec.
501. Defined; punishment.

§ 501. Defined; punishment. — (1) Every person who, with intent to defraud, falsely makes, forges, photographs, counterfeits or alters any currency of any country, shall be guilty of counterfeiting, and upon conviction thereof shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

(2) Every person who, with intent to defraud, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or with like intent bring into the Trust Territory or keeps in possession or conceals any falsely made, forged, photographed, counterfeited or altered currency of any country shall be guilty of counterfeiting, and upon conviction thereof shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

(3) Every person who knowingly buys, sells, exchanges, transfers, receives, or delivers any false, forged, photographed, counterfeited or altered currency of any country, with the intent that the same shall be passed, published, or used as true and genuine, shall be guilty of counterfeiting, and upon conviction thereof shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both. (Code 1966, § 394-A; Code 1970, tit. 11, § 501.)

Cross reference. — Definition of "forgery," 11 TTC 701.

Intent to defraud construed. — Where person accused of passing counterfeit bill did not admit or indicate that she knew the bill was counterfeit, and the prosecution did not prove she had such knowledge, there was no proof of the requisite intent to defraud and accused would be found not guilty. Trust Territory v. Remengesau, 6 TTR 94 (1972).

CHAPTER 12.

DISTURBANCES, RIOTS, AND OTHER CRIMES AGAINST THE PEACE.

§ 551. Disturbing the peace. — Every person who shall unlawfully and wilfully commit any acts which annoy or disturb other persons so that they are deprived of their right to peace and quiet, or which provoke a breach of the peace, shall be guilty of disturbing the peace, and upon conviction thereof shall be imprisoned for a period of not more than six months, or fined not more than fifty dollars, or both. (Code 1966, § 426; Code 1970, tit. 11, § 551.)

Disturbing the peace covers large range of activities. — Crime of disturbing the peace covers large range of activities which annoy and disturb people affected to such an extent as to deprive them of right to peace and quiet and to provoke breach of the peace. Oingerang v. Trust Territory, 2 TTR 385 (1963).

Frightening household in middle of night. — A defendant was guilty of disturbing the peace where he came to a house between 1:00 a.m. and 3:00 a.m., called to persons therein in a loud voice, and thereby frightened the entire household. Medewes v. Trust Territory, 1 TTR 214 (1954).

Accosting of woman ship passenger. — Where accused in criminal prosecution accosted woman ship passenger, even for purpose of obtaining liquor, in manner suggesting indecent request, actions were unjustifiable and may be found to have disturbed the peace of passengers concerned. Oingerang v. Trust Territory, 2 TTR 385 (1963).

Public disturbance insufficient to constitute contempt. — Public disturbance which is insufficient to constitute contempt of court may constitute offense of disturbing the peace. Ranipu v. Trust Territory, 2 TTR 167 (1961).

Words likely to bring about an altercation. — Words may constitute offense of disturbing the peace if they are likely to bring about an altercation. Oingerang v. Trust Territory, 2 TTR 385 (1963).

Motive of defendant not a defense. — Fact that defendant was actuated by good motive in uttering words is not a defense to charge of disturbing the peace. Oingerang v. Trust Territory, 2 TTR 385 (1963).

§ 552. Riot. — Whenever three or more persons shall assemble, and by force and violence or by loud noise and shoutings shall unlawfully place others in fear or danger, they shall be guilty of riot, and upon conviction thereof shall be imprisoned for a period of not more than six months or fined not more than fifty dollars, or both. (Code 1966, § 428; Code 1970, tit. 11, § 552.)

§ 553. Drunken and disorderly conduct. — Every person who is drunk and disorderly on any street, road, or other public place from the voluntary use of intoxicating liquor shall be guilty of drunken and disorderly conduct, and upon conviction thereof shall be imprisoned for a period of not more than six months, or fined not more than fifty dollars, or both. (Code 1966, § 427; Code 1970, tit. 11, § 553.)

Requirements for prosecution for drunken and disorderly conduct. — All that is required to be shown in criminal prosecution for drunken and disorderly conduct under Trust Territory law is that accused was drunk and disorderly in any street, road or other public place from voluntary use of intoxicating liquor. Yinmed v. Trust Territory, 2 TTR 492 (1963).

To establish crime of drunken and disorderly conduct, prosecution must establish beyond reasonable doubt that accused was drunk and disorderly and that this conduct occurred on street, road or public place. Nokei v. Trust Territory, 2 TTR 329 (1962).

"Public" defined. — Any place may be made "public" by temporary assemblage,

especially when assemblage is gathered to witness exhibition for hire. Raimes v. Trust Territory, 1 TTR 262 (1955).

Public place. — A public place is any place, even though privately owned or controlled, where persons have assembled, through common usage or by general invitation, express or implied. Raimes v. Trust Territory, 1 TTR 262 (1955).

Room in which a movie is shown. — A room in which a movie is shown and in which people are assembled may be a public place within the meaning of this section. Raimes v. Trust Territory, 1 TTR 262 (1955).

Prosecution must prove that conduct occurred in public place. — Where no evidence is introduced to show that building in which offense of drunken and disorderly conduct allegedly occurred was "public place," prosecution failed to prove element of offense charged. Nokei v. Trust Territory, 2 TTC 329 (1962).

Disturbance of particular persons not an element. — Under Trust Territory law, disturbance of particular persons is not essential element of offense of drunken and disorderly conduct. Yinmed v. Trust Territory, 2 TTR 492 (1963).

Disturbance of particular persons may relate to seriousness of incident. — In criminal prosecution for drunken and disorderly conduct, disturbance of particular persons may be element to consider as to seriousness of particular incident. Yinmed v. Trust Territory, 2 TTR 492 (1963).

§ 554. Affray. — Every person who shall unlawfully and wilfully engage in altercation or fight with one or more persons in a public place, so that others are put in fear or danger, shall be guilty of affray, and upon conviction thereof shall be imprisoned for a period of not more than six months, or fined not more than fifty dollars, or both. (Code 1966, § 424; Code 1970, tit. 11, § 554.)

Essential element is placing of others in fear. — Placing of other persons in fear or danger is essential element of crime of affray. Tkoel v. Trust Territory, 2 TTR 513 (1964).

Prosecution must prove offense occurred in public place. — Where no evidence is introduced to show that building in which offense allegedly occurred was "public place," prosecution failed to prove element of offense charged. Nokei v. Trust Territory, 2 TTR 329 (1962).

§ 555. Security to keep the peace. — (1) A complaint may be made to any court that a person has threatened to commit an offense against the person or property of another. When such complaint is made, the court shall examine under oath the complainant and any witnesses he may produce, reduce the complaint to writing and cause it to be signed and sworn to by the complainant. If the court is satisfied that there is danger that such offense will be committed, the court shall issue a warrant to any policeman setting out the substance of the complaint and commanding the officer to apprehend the person complained of and bring him before the court at a certain time.

(2) When the person complained of is brought before the court, the testimony produced on both sides shall be heard if the charge is denied. If it appears that there is no just reason to fear the commission of the offense, the defendant shall be discharged; and if the judge is of the opinion that the prosecution was commenced maliciously without proper cause he may give judgment against the complainant for the costs of the prosecution. If, however, the court finds there is just reason to fear the commission of such offense, the person complained of may be required to enter into an undertaking in a sum fixed by the court, not exceeding one hundred dollars, to keep the peace toward the government of the Trust Territory and particularly toward the complainant. The defendant shall deposit the sum fixed in cash with the clerk of the courts or the court may grant him permission to give bond in the same amount with one or more sufficient sureties. The undertaking to keep the peace shall be valid and binding for six months, and may upon the renewal of the complaint be extended for a longer period.

(3) If the undertaking required in the preceding subsection is given, the defendant shall be discharged. If the defendant does not give such security, the

court shall commit the defendant to jail for a period not to exceed six months, specifying in the order of commitment the requirement to give security, the amount thereof, and the omission to give it. Any person committed to jail as above provided may be discharged upon giving the required undertaking.

(4) If the court finds, after hearing, that the defendant has violated his undertaking to keep the peace, the court may direct a forfeiture of the whole or such part of the deposit or bond as it appears that justice requires, and may enforce such forfeiture in the same manner as a forfeiture of bail in a criminal case.

(5) If the defendant fulfills his undertaking to keep the peace, he may claim his deposit from the clerk of courts upon presentation of receipt. (Code 1966, § 429; Code 1970, tit. 11, § 555.)

CHAPTER 13.

ESCAPE AND RESCUE.

Sec.

§ 601. Escape. — Every person who, being a law enforcement officer, or having lawful custody of a prisoner, shall unlawfully, wilfully or negligently allow said prisoner to depart from such custody, except by due process of law; or whosoever, being a prisoner, shall unlawfully and wilfully depart from such custody, shall be guilty of escape, and upon conviction thereof shall be imprisoned for not more than three years. (Code 1966, § 416; Code 1970, tit. 11, § 601.)

§ 602. Rescue. — Every person who shall unlawfully, knowingly, forcibly and wilfully rescue any prisoner from the custody of any person lawfully having custody thereof shall be guilty of rescue, and upon conviction thereof shall be imprisoned for not more than three years. (Code 1966, § 420; Code 1970, tit. 11, § 602.)

CHAPTER 14.

FALSE ARREST.

Sec.

651. Defined; punishment.

§ 651. Defined; punishment. — Every person who shall unlawfully detain another by force and against his will, then and there not being in possession of authority to do so, shall be guilty of false arrest, and upon conviction thereof shall be imprisoned for a period of not more than six months, or shall be fined not more than one hundred dollars, or both. (Code 1966, § 380; Code 1970, tit. 11, § 651.)

CHAPTER 15.

FORGERY.

Sec.
701. Defined; punishment.

§ 701. Defined; punishment. — Every person who shall unlawfully and falsely make or materially alter a writing or document of apparent legal weight and authenticity, with intent thereby to defraud, shall be guilty of forgery, and upon conviction thereof shall be imprisoned for a period of not more than five years. (Code 1966, § 394; Code 1970, tit. 11, § 701.)

Cross reference. — Counterfeiting, 11 TTC 501.

Material alteration requirement. — Crime of forgery requires material alteration of writing or document. Likauche v. Trust Territory, 2 TTR 375 (1963).

Forger to have substantial knowledge of law; forged document to meet legal requirements. — Technical interpretation of crime of forgery in some jurisdictions requires that forger have substantial knowledge of law and that document in form meets all legal requirements that would ordinarily be known to lawyers or those dealing with documents of that kind. Likauche v. Trust Territory, 2 TTR 375 (1963).

When forgery is obviously defective. — If forged instrument is obviously defective, law will not presume that it can accomplish fraud which is intended since law presumes competent knowledge to guard against such effect. Likauche v. Trust Territory, 2 TTR 375 (1963).

False document which does not meet forgery requirements constitutes cheating. — Use of false or altered document which does not meet requirements of forgery constitutes cheating, on theory that document cannot be considered forgery because it shows on its face that it does not meet legal requirement of form and could not defraud person knowing legal requirement. Likauche v. Trust Territory, 2 TTR 375 (1963).

Where unclear whether crime is cheating or forgery, prosecution should be for cheating. — Where it is unclear in criminal prosecution in the Trust Territory whether crime committed is cheating or forgery, prosecution should be for cheating or attempted cheating rather than for forgery. Likauche v. Trust Territory, 2 TTR 375 (1963).

Altering figures on check. — Under present state of Trust Territory law, unlawfully and falsely altering amount of check in figures, with intent thereby to defraud, constitutes forgery even though amount in words is not altered, since under conditions now existing in the Trust Territory figures on check are likely to have strong influence on those handling it and should be considered to constitute material part of check. Likauche v. Trust Territory, 2 TTR 375 (1963).

CHAPTER 16.

HOMICIDE.

§ 751. Murder in the first degree. — Every person who shall unlawfully take the life of another with malice aforethought by poison, lying in wait, torture, or any other kind of wilful, deliberate, malicious, and premeditated killing, or while in the perpetration of, or in the attempt to perpetrate, any arson, rape, burglary, or robbery, shall be guilty of murder in the first degree, and upon conviction thereof shall be sentenced to life imprisonment. (Code 1966, § 385; Code 1970, tit. 11, § 751.)

Requirements for first degree murder. — To be murder in the first degree the killing must be premeditated, except when done in perpetration of certain felonies; that is, the unlawful killing must be accompanied with a deliberate and clear intent to take life. Trust Territory v. Minor, 4 TTR 324 (1969).

Elements of corpus delicti. — The corpus delicti in a homicide consists of two elements, the first of which, the fact of death, is to be shown as a result of the second, that is, the criminal agency of another, and it must be shown beyond a reasonable doubt. Helgenberger v. Trust Territory, 4 TTR 530 (App. Div. 1969).

Malice element distinguishes murder and manslaughter. — The presence or absence of the required malice or mental condition marks the boundary which separates the two crimes of murder and manslaughter. Trust Territory v. Minor, 4 TTR 324 (1969).

Inference concerning malice. — Malice in connection with the crime of killing is but another name for a certain condition of a man's heart or mind; and as no one can look into the heart or mind of another, the only way to decide upon its condition at the time of the killing is to infer it from the surrounding facts, and that inference is one of fact. Trust Territory v. Minor, 4 TTR 324 (1969).

Accused acting under emotional stress. — Where accused in criminal prosecution was probably intoxicated and engaged in fight from which he received physical violence, it is reasonable to assume that he was acting under severe emotional stress and that there was no premeditation essential for conviction of first degree murder. Mendiola v. Trust Territory, 2 TTR 651 (App. Div. 1964).

Elements of murder by torture. — The elements of murder by torture are an intent to cause cruel suffering or intent to inflict pain, actual pain suffered, some protraction in time and the death must have been caused by the torture. Trust Territory v. Mad, 5 TTR 195 (1970).

Question of intent in murder by torture. — Under statute providing that "every person who shall unlawfully take the life of another with malice aforethought by poison, lying in wait, torture, or any other kind of wilful, deliberate, malicious and premeditated killing," shall be guilty of first degree murder, there does not have to be an intent to kill, but only an intent that the victim suffer for purposes of vengeance, extortion or some other evil propensity. Where unlawful killing of allegedly unfaithful wife with malice aforethought by torture was charged, the torture made other evidence of premeditation unnecessary. Mad v. Trust Territory, 6 TTR 550 (1973).

Motive not an element. — The purpose or motive for intending to inflict pain is not an element of the offense of murder by torture. Trust Territory v. Mad, 5 TTR 195 (1970).

Intent to kill not required. — The argument that no inference as to intent and malice may be drawn as a general rule when the killing is with bare hands is not applicable to murder charged by torture because an intent to kill, from which malice aforethought may be inferred, is not required. Trust Territory v. Mad, 5 TTR 195 (1970).

Effect of mandatory life imprisonment statute. — Under a statute making life imprisonment mandatory upon conviction the court is not authorized to diminish a sentence of life imprisonment by allowing bail or granting stay of execution pending appeal nor may the court reduce the penalty by ordering suspension of sentence after a fixed period of imprisonment. Trust Territory v. Mad, 5 TTR 195 (1970).

§ 752. Murder in the second degree. — Every person who shall unlawfully take the life of another with malice aforethought, or while in the perpetration of, or in the attempt to perpetrate, any felony other than those enumerated in section 751 of this chapter, shall be guilty of murder in the second degree, and upon conviction thereof shall be imprisoned for a period of not less than five years or for life. (Code 1966, § 386; Code 1970, tit. 11, § 752.)

Requirements for second degree murder. — In order to support a conviction of murder in the second degree, it is not necessary to find premeditation but it is essential there be a finding, also necessary for sustaining murder in the first degree, that the killing was malicious as well as unlawful and wilful. Trust Territory v. Minor, 4 TTR 324 (1969).

Malice element distinguishes murder and manslaughter. — The presence or absence of the required malice or mental condition marks the boundary which separates the two crimes of murder and manslaughter. Trust Territory v. Minor, 4 TTR 324 (1969).

Showing of malice rather than premeditation. — Where prosecution fails to show premeditation essential to first degree murder but does show malice, appellate court may modify conviction to second degree murder and direct trial court to resentence accused. Mendiola v. Trust Territory, 2 TTR 651 (App. Div. 1964).

Determination of malice. — Malice in connection with the crime of killing is but another name for a certain condition of a man's heart or mind; and as no one can look into the heart or mind of another, the only way to decide upon its condition at the time of the killing is to infer it from the surrounding facts, and that inference is one of fact. Trust Territory v. Minor, 4 TTR 324 (1969).

Suspension of mandatory term of imprisonment. — Trial judge has the authority to suspend a mandatory term of imprisonment provided by statute unless there is legislative intent to the contrary. Here there is no such legislative intent and therefore where trial court made it clear at the time of sentencing that sentence was imposed on defendant because the court considered it to be a mandatory minimum and thus not subject to suspension by the court, the trial court should be given the opportunity to consider whether any of the sentence should be suspended. Trust Territory v. Sechur (App. Div., June, 1976).

§ 753. Voluntary manslaughter. — Every person who shall unlawfully take the life of another without malice aforethought, upon a sudden quarrel or heat of passion, shall be guilty of voluntary manslaughter, and upon conviction thereof shall be imprisoned for a term of not more than ten years. (Code 1966, § 384; Code 1970, tit. 11, § 753.)

Elements of corpus delicti. — The corpus delicti in a homicide consists of two elements, the first of which, the fact of death, is to be shown as a result of the second, that is, the criminal agency of another. Debesol v. Trust Territory, 4 TTR 556 (App. Div. 1969).

Infliction of injury contributing to death. — One who inflicts injury on another is deemed by law to be guilty of homicide if injury contributes mediately or immediately to death of another. Kirispin v. Trust Territory, 2 TTR 628 (App. Div. 1960).

Prerequisite for self-defense claim. — In order that accused in homicide prosecution may claim right of self-defense, he must be free from blame in provoking difficulty. Santiago v. Trust Territory, 3 TTR 575 (App. Div. 1965).

Aggressor cannot claim self-defense. — Where accused in criminal prosecution was aggressor in struggle, having to move 15 feet in order to stab victim who was on ground, accused cannot claim right of self-defense. Santiago v. Trust Territory, 3 TTR 575 (App. Div. 1965).

Aggressor who provokes attack upon himself, brings on quarrel with victim, or produces occasion which makes it necessary to take victim's life, cannot assert that he acted in self-defense and thus excuse or justify homicide which he has committed. Santiago v. Trust Territory, 3 TTR 575 (App. Div. 1965).

Requirements for voluntary manslaughter. — A conviction of voluntary manslaughter may not be sustained without evidence that the killing was done upon a sudden quarrel or heat of passion. Debesol v. Trust Territory, 4 TTR 556 (App. Div. 1969).

Confused and contradictory evidence may warrant remand. — Where evidence is confused and contradictory concerning actions of accused and victim as related to alleged voluntary manslaughter, court may remand for new trial to be held after emotions have subsided and more definite evidence may be obtained. Decena v. Trust Territory, 3 TTR 601 (App. Div. 1966).

§ 754. Involuntary manslaughter. — Every person who shall unlawfully take the life of another without malice, in the commission of an unlawful act not amounting to a felony, or in the commission of a lawful act which might produce death in an unlawful manner, or without due caution and circumspection, shall be guilty of involuntary manslaughter, and upon conviction thereof shall be sentenced to imprisonment for a term of not more than three years or fined not exceeding one thousand dollars, or both. (Code 1966, § 383; Code 1970, tit. 11, § 754.)

Requirement of single unlawful act not amounting to a felony. — Under the Trust Territory statute, involuntary manslaughter consists of commission of an unlawful act not amounting to a felony and a single act is all that is required. Trust Territory v. Rasa, 5 TTR 276 (1970).

Negligent act in manslaughter case. — To render a person guilty of manslaughter the negligent act which caused the death must have been the personal act of the party charged and not the act of another. Trust Territory v. Rasa, 5 TTR 276 (1970).

Exceeding speed limit sufficient for involuntary manslaughter finding. — A determination by the court that the defendant was exceeding the speed limit when she lost control of her car with death resulting would be sufficient to find the defendant guilty of involuntary manslaughter. Trust Territory v. Rasa, 5 TTR 276 (1970).

Acts constituting unlawful driving will sustain manslaughter conviction. — While criminal negligence is not an element of the Trust Territory statute on manslaughter, culpable or so-called criminal negligence, when it is defined as either a substantial deviation from the standards of due care or gross, wilful or wanton disregard of the lives and safety of the public, constitutes unlawful driving under 83 TTC 551 and either or both of those unlawful acts will sustain a manslaughter conviction. Trust Territory v. Rasa, 5 TTR 276 (1970).

Violation of code section concerning passing sufficient for involuntary manslaughter finding. — A finding that in attempting to pass another car the defendant violated the provisions of 83 TTC 301 of this Code with death resulting would suffice to sustain a verdict of guilty of involuntary manslaughter. Trust Territory v. Rasa, 5 TTR 276 (1970).

Fine and sentence for involuntary manslaughter within court's discretion. — Two hundred and fifty dollar fine and suspended two-year sentence for involuntary manslaughter, well below the maximum allowable sentence, were within court's discretion, and the fine was not excessive, or the sentence cruel and unusual punishment. Rasa v. Trust Territory, 6 TTR 535 (1973).

CHAPTER 17.

KIDNAPPING.

Sec.

§ 801. Defined; punishment. — Every person who forcibly or fraudulently and deceitfully, and without authority by law, imprisons, seizes, detains, or inveigles away any person (other than his minor child), with intent to cause such person to be secreted within the Trust Territory against his will, or sent out of the Trust Territory against his will, or sold or held as a slave or for ransom, shall be guilty of kidnapping, and upon conviction thereof shall be imprisoned for a period of not more than ten years. (Code 1966, § 381; Code 1970, tit. 11, § 801.)

CHAPTER 18.

LARCENY.

§ 851. Petit larceny. — Every person who shall unlawfully steal, take and carry away personal property of another, of the value of less than fifty dollars, without the owner's knowledge or consent, and with the intent to permanently convert it to his own use, shall be guilty of petit larceny, and upon conviction thereof shall be imprisoned for a period of not more than six months, or fined not more than one hundred dollars, or both. (Code 1966, § 397; Code 1970, tit. 11, § 851.)

Taken in good faith not guilty of larceny. — One who takes property in good faith, under color of claim or title, honestly believing he is owner and has right to possession, is not guilty of larceny even though he is mistaken in such belief. Niforongu v. Trust Territory, 1 TTR 549 (1958).

Absolution from felonious intent. — Taking of property openly in honest belief of ownership absolves one from felonious intent. Niforongu v. Trust Territory, 1 TTR 549 (1958).

Mere impression of claim to property does not negate felonious intent. — Mere impression that taker had claim to property in goods taken will not negate felonious intent in criminal prosecution for larceny. Marbou v. Trust Territory, 1 TTR 269 (1955).

Determination of property rights not function of criminal code. — Criminal code should not be used to determine conflicting claims to property. Niforongu v. Trust Territory, 1 TTR 549 (1958).

No custom to convert property is supported in law. — Although custom and usage in community may bear upon intent in criminal prosecution for larceny, no custom or usage to take another's property and convert it to one's own use without consent or giving of an equivalent can find support in law. Marbou v. Trust Territory, 1 TTR 269 (1955).

Prosecution which fails to cover an essential point. — When prosecution in a criminal case rests without having covered an essential point on which it appears probable that evidence is available, e.g., proof of intent to steal and proof of the corpus delicti, the court should re-open the prosecution and take testimony on the point not covered where it appears that the point was overlooked through inadvertence or misunderstanding and it is probable that there is no great dispute about the facts involved. Ngirmidol v. Trust Territory, 1 TTR 273 (1955).

Evidence justifying petit larceny conviction. — Where evidence shows taking of personal property worth less than fifty dollars from home of another with intent to convert it to accused's own use, trial court is justified in finding accused guilty of petit larceny. Fanamthin v. Trust Territory, 1 TTR 412 (1958).

Findings of trial judge concerning values of merchandise will be followed on appeal. — In criminal prosecution for petit larceny, since trial judge is assumed to have sufficient acquaintance with local values of new and used merchandise, his findings in this regard will be followed by appellate court. Fanamthin v. Trust Territory, 1 TTR 412 (1958).

In petit larceny prosecution intent of accused goes only to question of blame. — In criminal prosecution for petit larceny, intent of accused, or his honest belief that no one would complain of his taking damaged radiator, go only to question of blame, that is, amount of sentence, a factor to be considered by trial court. Ebas v. Trust Territory, 2 TTR 95 (1959).

Knowledge presumed on part of accused. — In criminal prosecution for petit larceny, even if accused intended to give detached radiator to purchaser of weapons carrier, he knew or ought to have known that he had no right to do this. Ebas v. Trust Territory, 2 TTR 95 (1959).

Fifteen-year-old competent to commit petit larceny. — Fifteen-year-old defendant is competent under Trust Territory law so far as age is concerned to commit crime of petit larceny. Celis v. Trust Territory, 3 TTR 237 (1967).

Petit larceny sentence found to be high. — In conviction for petit larceny, where one defendant is 15 years old and other defendant has made restitution, and neither has previous

criminal record, sentences of four months imprisonment with all except first two and one half months suspended, are high. Celis v. Trust Territory, 3 TTR 237 (1967).

§ 852. Grand larceny. — Every person who shall unlawfully steal, take and carry away personal property of another, of the value of fifty dollars or more, without the owner's knowledge or consent, and with the intent to permanently convert it to his own use, shall be guilty of grand larceny, and upon conviction thereof shall be imprisoned for a period of not more than five years, or fined not more than one thousand dollars, or both. (Code 1966, § 395; Code 1970, tit. 11, § 852.)

Elements of grand larceny. — The crime of grand larceny requires the stealing, taking and carrying away of the personal property of another, of the value of $50 or more, without the owner's knowledge or consent with the intent to permanently convert that property to his own use. Trust Territory v. Mick, 4 TTR 147 (1968).

Necessity of proving all essential elements. — In order for one to be convicted of embezzlement or grand larceny, it is necessary that the government prove beyond a reasonable doubt all of the essential elements of such crimes. Trust Territory v. Mick, 4 TTR 147 (1968).

Factors to be considered in determining whether criminal intent is present. — Evidence that there was no concealment or secrecy on the part of the defendant and no active subterfuge, lack of proof that he received any personal or private gain from his misappropriation and evidence that he offered to make complete restitution of all materials are facts to be taken into consideration in determining whether or not the necessary criminal intent is present to prove embezzlement or grand larceny. Trust Territory v. Mick, 4 TTR 147 (1968).

Evidence concerning larceny of a pig. — Where evidence at grand larceny trial showed defendants knew pig belonged to another, that pig had a value twice that of the minimum required for grand larceny, that defendants, having no right to do so, took it without owner's consent, and that defendants cooked the pig and ate it, making it difficult to conceive of a clearer case of permanent conversion, there was no reasonable doubt as to guilt. Trust Territory v. Elias, 6 TTR 364 (1973).

§ 853. Cheating. — Every person who shall unlawfully obtain the property or money of another by false pretenses, knowing the pretenses to be false, and with the intent thereby to permanently defraud the owner thereof, shall be guilty of cheating, and, if the value of the property thus obtained be fifty dollars or more, shall be imprisoned for a period of not more than five years; or if the value of the property thus obtained be less than fifty dollars, shall be imprisoned for a period of not more than six months, or fined not more than one hundred dollars, or both. (Code 1966, § 392; Code 1970, tit. 11, § 853.)

Altering figures on check is attempted cheating. — Altering figures on check or money order without altering writing, and then endeavoring to cash it constitutes crime of attempted cheating. Likauche v. Trust Territory, 2 TTR 375 (1963).

Where unclear whether crime is cheating or forgery, prosecution should be for cheating. — Where it is unclear in criminal prosecution in the Trust Territory whether crime committed is cheating or forgery, prosecution should be for cheating or attempted cheating rather than for forgery. Likauche v. Trust Territory, 2 TTR 375 (1963).

False statement of hours worked by laborers in order to obtain payment under construction contract. — Where defendant in criminal case submitted false statement of hours worked and amounts earned by his laborers in order to obtain payment under construction contract, he made deliberate misrepresentation as to past facts material to question of whether money should be paid out, and submission therefore constituted unity of intent and overt act required in attempt to commit crime. Elechuus v. Trust Territory, 3 TTR 297 (1967).

Submission by defendant in criminal case of false statement of hours worked and amounts earned by his laborers under construction contract constitutes false pretense, regardless of what was due him under contract. Elechuus v. Trust Territory, 3 TTR 297 (1967).

§ 854. Embezzlement. — Every person who, after having lawfully obtained possession of the personal property of another, shall take and carry away said property without the owner's knowledge and consent, and with the intent to permanently convert it to his own use shall be guilty of embezzlement, and, if the value of said property be fifty dollars or more, shall be imprisoned for a period of not more than five years, or fined not more than one thousand dollars, or both; or if the value of the property thus obtained be less than fifty dollars, shall be imprisoned for a period of not more than six months, or fined not more than one hundred dollars, or both. (Code 1966, § 393; Code 1970, tit. 11, § 854.)

Elements of embezzlement. — The elements of embezzlement are: lawfully obtaining personal property of another; taking and carrying away that personal property without the owner's knowledge or consent; and taking and carrying away of that personal property with the intent to permanently convert it to his own use. Trust Territory v. Mick, 4 TTR 147 (1968).

Essential elements of embezzlement. — Essential elements of crime of embezzlement are taking and carrying away without owner's knowledge or consent the personal property of another with intent to permanently convert it to one's own use. Willianter v. Trust Territory, 3 TTR 227 (1966).

Necessity of proving all essential elements. — In order for one to be convicted of embezzlement or grand larceny, it is necessary that the government prove beyond a reasonable doubt all of the essential elements of such crimes. Trust Territory v. Mick, 4 TTR 147 (1968).

Factors in proving criminal intent in embezzlement or grand larceny. — Evidence that there was no concealment or secrecy on the part of the defendant and no active subterfuge, lack of proof that he received any personal or private gain from his misappropriation and evidence that he offered to make complete restitution of all materials are facts to be taken into consideration in determining whether or not the necessary criminal intent is present to prove embezzlement or grand larceny. Trust Territory v. Mick, 4 TTR 147 (1968).

Evidence sufficient to establish intent to defraud government. — Evidence of failure to report cash disbursements, and of unaccountable shortage from special and petty cash funds is sufficient to establish intent to defraud government and to permanently convert money so withheld to accused's own use. Paul v. Trust Territory, 2 TTR 238 (1961).

Intent to replace amounts taken is not a valid defense. — Fact that person accused of embezzlement may have intended to replace amounts taken or may have received no personal profit nor have intended to profit from taking, is not valid defense. Paul v. Trust Territory, 2 TTR 238 (1961).

Unnecessary to prove that exact amount alleged was actually embezzled. — In criminal prosecution for embezzlement, it is not necessary for government to prove exact amount alleged in information has been embezzled. Paul v. Trust Territory, 2 TTR 238 (1961).

Court to consider amount taken in exercising its discretion as to punishment. — Although maximum penalty which is imposed for embezzlement depends on whether amount involved is less than or greater than fifty dollars, actual amount beyond fifty dollars is matter for court to consider in exercising discretion as to punishment to be imposed within limits of law. Paul v. Trust Territory, 2 TTR 238 (1961).

§ 855. Receiving stolen goods. — Every person who shall unlawfully take into his possession, with the consent of the donor, stolen or embezzled property, then and there knowing said property to have been stolen or embezzled, with fraudulent intent thereby or to aid in the theft, shall be guilty of receiving stolen goods, and upon conviction thereof shall be imprisoned for a period of not more than one year, or fined not more than one hundred dollars, or both. (Code 1966, § 399; Code 1970, tit. 11, § 855.)

§ 856. Unlawful issuance of bank checks or drafts. — (1) Every person who, for the procurement of any article or thing of value, with intent to defraud or, for the payment of any past due obligation, or for any other purpose, with intent to deceive, makes, draws, utters, or delivers any check, draft, or order for payment of money upon a bank or other depository, knowing at the time

that the maker or drawer has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of that check, draft, or order in full upon its presentment, shall be guilty of cheating and, if the value of the property thus obtained be fifty dollars or more, shall be imprisoned for a period of not more than five years; or if the value of the property thus obtained be less than fifty dollars, shall be imprisoned for a period of not more than six months, or fined not more than one hundred dollars, or both.

(2) The making, drawing, uttering, or deliverying by a maker or drawer of a check, draft, or order, payment of which is refused by the drawee because of insufficent funds of the maker or drawer in the drawee's possession or control, is prima facie evidence of his intent to defraud or deceive and of his knowledge of insufficient funds in, or credit with, that bank or other depository, unless the maker or drawer pays the holder the amount due within five days after receiving notice, orally or in writing, that the check, draft, or order was not paid on presentment.

(3) In this section, the word "credit" means an arrangement or an understanding expressed or implied, with the bank or other depository for the payment of that check, draft, or order. (Code 1966, § 403; Code 1970, tit. 11, § 856.)

§ 857. Larceny from a dwelling house. — Every person who shall unlawfully steal, take and carry away the personal property of another, of any value whatsoever, from his or another's dwelling house, without the owner's knowledge or consent, and with the intent to permanently convert it to his own use, but without the force necessary to constitute a burglary, shall be guilty of larceny from a dwelling house, and upon conviction thereof shall be imprisoned for a period of not more than five years. (Code 1966, § 396; Code 1970, tit. 11, § 857.)

CHAPTER 19.

LIBEL.

Sec.
901. Defined; punishment.

§ 901. Defined; punishment. — Every person who shall unlawfully, wilfully, and maliciously, speak, write, print, or in any other manner publish material which exposes another person to hatred, contempt, or ridicule, shall be guilty of criminal libel, and upon conviction thereof shall be imprisoned for a period of not more than six months, or shall be fined not more than fifty dollars, or both. (Code 1966, § 425; Code 1970, tit. 11, § 901.)

Criminal libel defined. — Criminal libel is a crime which affects public peace by publication of defamatory matter concerning another, not because of injury to reputation but because it is calculated to corrupt public morals, incite to violations of criminal law or provoke breach of the peace. Uto v. Trust Territory, 2 TTR 209 (1961).

Intent of criminal libel statute. — Intent of statute on criminal libel is to protect people from irritation and provocation to retaliate, regardless of whether reputation of person defamed is impaired. Uto v. Trust Territory, 2 TTR 209 (1961).

Criminal libel includes oral statements. — Offense of criminal libel under this Code is based on common law principles, except that it has been extended to include oral statements. Uto v. Trust Territory, 2 TTR 209 (1961).

Actual damage not necessary. — In complaint for criminal libel, it is not necessary to allege actual damage to complainant. Uto v. Trust Territory, 2 TTR 209 (1961).

Malice, an essential element, may be implied. — Malice is essential element of criminal libel but it may be implied malice as distinguished from express malice and is inferred from making of libelous statement. Uto v. Trust Territory, 2 TTR 209 (1961).

Actual damages not required. — Trust Territory statute on criminal libel requires only exposure to hatred, contempt or ridicule, as opposed to actual damage by it. Uto v. Trust Territory, 2 TTR 209 (1961).

Natural tendency of words determinative. — Person may be exposed to hatred, contempt or ridicule by words which naturally tend to create hatred, contempt or ridicule, and in prosecuting crime of criminal libel, it is not necessary to prove hatred, contempt or ridicule has actually been aroused. Uto v. Trust Territory, 2 TTR 209 (1961).

Fair criticism is privileged; unfounded charges are not. — Accurate and fair criticism of judicial and other public officers is privileged, but unfounded charges of crime and misconduct in office are not. Uto v. Trust Territory, 2 TTR 209 (1961).

CHAPTER 20.

MALICIOUS MISCHIEF.

Sec.
951. Defined; punishment.

§ 951. Defined; punishment. — Every person who shall unlawfully destroy, damage, or otherwise injure property belonging to another, including the property of the Trust Territory or any district or municipality thereof, or shall unlawfully throw, discard, or scatter upon any public road, street or ground or other land owned, reserved, controlled or maintained, for any purpose other than a public dumping ground, by the government of the Trust Territory or any district, municipality or other subdivision thereof, any waste material, garbage or other debris, in any form or substance, or otherwise carelessly or wilfully litter such places, shall be guilty of malicious mischief, and upon conviction thereof shall be imprisoned for not more than six months, or fined not more than one hundred dollars, or both. (Code 1966, § 398; Code 1970, tit. 11, § 951.)

Inference of wilfulness and malice. — In trial for a crime of malicious mischief, wilfulness and malice may be inferred from circumstances just as intent may be inferred in larceny cases. Bisente v. Trust Territory, 1 TTR 327 (1957).

Where act is done in good faith and under honest claim of right. — In criminal prosecution for malicious mischief, there is no malice where act is done in good faith and under honest claim of right. Aliwis v. Trust Territory, 2 TTR 223 (1961).

Where accused believes he is owner of property which he injures. — Where accused, charged with malicious mischief, acts in honest belief that he is owner of property which he injures, malice has not been shown beyond reasonable doubt. Aliwis v. Trust Territory, 2 TTR 223 (1961).

Unlawfulness substituted for element of malice. — Where statute defining malicious mischief has been amended to eliminate element of malice, substituting that of mere "unlawfulness," no special malice need be shown thereafter, although criminal statute should not be used as substitute for civil remedies for trespass. Aliwis v. Trust Territory, 2 TTR 223 (1961).

Statements of courts regarding malice not applicable to amended section. — Where express reference to "malice" has been eliminated from statute covering malicious mischief, previous remarks of court regarding meaning of statute as it stood before amendment, and similar remarks of text writers and other courts, are not directly applicable to amended section so far as malice is concerned. Firetamag v. Trust Territory, 2 TTR 413 (1963).

Malice element entirely eliminated. — Element of malice is entirely eliminated from offense of malicious mischief in Trust Territory. Figir v. Trust Territory, 3 TTR 127 (1966).

Proof of separate offenses in trespass and malicious mischief prosecutions. — In criminal prosecution for trespass and malicious mischief, where evidence of accused having caused any damage in leaving premises after trespass is not at all clear, there is no proof beyond reasonable doubt of separate offense of malicious mischief. Figir v. Trust Territory, 3 TTR 127 (1966).

Defendant granted new trial because of trial court error. — Where trial court erred in finding defendant guilty of both crimes of trespass and malicious mischief, and sentence imposed was no greater than he could have reasonably and in his discretion imposed on one of charges alone, defendant is still entitled to a new trial if he so desires. Bisente v. Trust Territory, 1 TTR 327 (1957).

Same act may not constitute trespass and malicious mischief. — If judge in criminal trial finds all elements of malicious mischief are proved, he cannot properly find all elements of trespass are proved, as it is legally impossible under Trust Territory law for the same act to constitute both trespass and malicious mischief where there is no break in incident or change of intention of accused. Bisente v. Trust Territory, 1 TTR 327 (1957).

Requirement of break in incident or change of intention. — Where there is no indication of any break in incident or change of intention by accused during actions constituting crime of malicious mischief, he cannot also properly be found guilty of trespass. Bisente v. Trust Territory, 1 TTR 327 (1957).

Malicious mischief may be committed immediately following trespass. — It is possible under Trust Territory law for person to commit act of malicious mischief immediately after committing crime of trespass. Figir v. Trust Territory, 3 TTR 127 (1966).

Defendant may show justification or excuse. — One accused of malicious mischief may show in defense of act, circumstances of justification or excuse. Aliwis v. Trust Territory, 2 TTR 223 (1961).

CHAPTER 21.

MAYHEM.

Sec.

§ 1001. Defined; punishment. — Every person who, with intent to maim or disfigure, shall cut, bite, or slit the nose, ear, or lip, or cut off or disable the tongue, or put out or destroy an eye, or cut off or disable a limb or any member of another person, shall be guilty of mayhem and upon conviction thereof shall be imprisoned for a period of not more than seven years, or fined not more than one thousand dollars, or both. (Code 1966, § 382; Code 1970, tit. 11, § 1001.)

Whether injury constitutes disfigurement is fact best determined by trial judge. — Question of whether injury to victim is noticeable enough to constitute permanent disfigurement within meaning of statute defining mayhem is question of fact which trial judge is in best position to determine. Romber v. Trust Territory, 1 TTR 591 (App. Div. 1954).

CHAPTER 22.

MISCONDUCT IN PUBLIC OFFICE.

Sec.
1051. Defined; punishment.

§ 1051. Defined; punishment. — Every person who, being a public official, shall do any illegal acts under the color of office, or wilfully neglect to perform the duties of his office as provided by law, shall be guilty of misconduct in public office, and upon conviction thereof shall be imprisoned for a period of not more than one year, or fined not more than one thousand dollars, or both. (Code 1966, § 417; Code 1970, tit. 11, § 1051.)

Cross reference. — Bribery of officials, 25 TTC 63.

CHAPTER 23.

NUISANCE.

Sec.
1101. Defined; punishment.

§ 1101. Defined; punishment. — Every person who shall unlawfully maintain or allow to be maintained a condition of things which is prejudicial to the health, comfort, safety, property, sense of decency, or morals of the people of the Trust Territory by an illegal act, or by neglect of legal duty, shall be guilty of maintaining a nuisance, and upon conviction thereof shall be imprisoned for a period of not more than six months, or fined not more than one hundred dollars, or both. (Code 1966, § 408; Code 1970, tit. 11, § 1101.)

Application of nuisance law. — Trust Territory law regarding maintenance of a nuisance, in referring to "a condition of things which is prejudicial to the health, safety, property, sense of decency or morals of the people of the Trust Territory," applies only to a public nuisance, sometimes called a common nuisance. Zakios v. Trust Territory, 2 TTR 102 (1959).

Exact limits of nuisance cannot be defined. — Exact limits of legal meaning of nuisance cannot be stated or explained on any comprehensive basis. Zakios v. Trust Territory, 2 TTR 102 (1959).

Unlawful acts do not necessarily constitute a nuisance. — All crimes are not necessarily public nuisances, and every unlawful act in violation of written law does not necessarily constitute a public nuisance. Zakios v. Trust Territory, 2 TTR 102 (1959).

Violations of sanitation law do not necessarily constitute a nuisance. — Every violation of Trust Territory law regarding sanitation does not necessarily create a public nuisance. Public nuisance involved in violation of Trust Territory law regarding sanitation would have to arise from condition created by accused's failure to comply with sanitarian's notice. Zakios v. Trust Territory, 2 TTR 102 (1959).

Necessity of proving nuisance itself. — In order for violations of Trust Territory law regarding sanitation to create public nuisance and to warrant conviction of maintaining a nuisance, nuisance itself must be proved. Zakios v. Trust Territory, 2 TTR 102 (1959).

Failure to comply with sanitarian's notice does not constitute nuisance. — Failure to comply with sanitarian's notice is clearly insufficient, in and of itself, to constitute public nuisance. Zakios v. Trust Territory, 2 TTR 102 (1959).

Sanitary law violations are independent crimes not belonging with this title. — Since violations of the Trust Territory law regarding sanitation constitute independent crimes, there is no need to bring such offenses under any of crimes set forth in this title. Zakios v. Trust Territory, 2 TTR 102 (1959).

Inhaling gasoline vapors by a child not a nuisance. — Inhaling gasoline vapors by a child does not constitute committing a nuisance under this section. In re Ichiro, 3 TTR 406 (1968).

CHAPTER 24.

OBSTRUCTING JUSTICE.

Sec.
1151. Defined; punishment.

§ 1151. Defined; punishment. — Every person who shall unlawfully resist or interfere with any law enforcement officer in the lawful pursuit of his duties, or shall unlawfully tamper with witnesses or payment or attempt to prevent their attendance at trials, shall be guilty of obstructing justice, and upon conviction thereof shall be imprisoned for a period of not more than one year, or shall be fined not more than one thousand dollars, or both. (Code 1966, § 418; Code 1970, tit. 11, § 1151.)

Cross reference. — Obstructing enforcement of the export meat inspection act, 25 TTC 73.

Prevention of arrest not required. — In order to commit crime of obstructing justice it is not necessary to prevent arrest by policeman of third party nor is it material whether policeman could have made arrest if he had been more persistent. Arokoy v. Trust Territory, 1 TTR 426 (1958).

Actual violence or threats not required. — Actual violence or threats are not required in order for acts to constitute crime of obstructing justice. Arokoy v. Trust Territory, 1 TTR 426 (1958).

Resisting policeman while he arrests third party. — Resisting policeman while he is arresting third party is sufficient to constitute offense of obstructing justice. Arokoy v. Trust Territory, 1 TTR 426 (1958).

Advantage of trial court in weighing evidence. — Trial judge in criminal prosecution is in better position than appellate court to weigh conflicting evidence and determine whether actions of accused constituted obstruction of justice. Arokoy v. Trust Territory, 1 TTR 426 (1958).

CHAPTER 25.

PERJURY.

Sec.
1201. Defined; punishment.

§ 1201. Defined; punishment. — Every person who takes an oath or any legal substitute therefor before a competent tribunal, officer, or person, in any case in which a law of the Trust Territory authorizes an oath or any legal substitute therefor to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, deposition, or certificate by him subscribed is true, and who wilfully and contrary to such oath or legal substitute therefor states or subscribes any material which he does not believe to be true, shall be guilty of perjury, and upon conviction thereof shall be imprisoned for a period of not more than five years. (Code 1966, § 419; Code 1970, tit. 11, § 1201.)

CHAPTER 26.

ROBBERY.

Sec.

§ 1251. Defined; punishment. — Every person who shall unlawfully steal, take and carry away the personal property of another, of whatever value, from his person or in his presence and against his will, by the use of force or intimidation, with the intent to permanently convert said property to his own use, shall be guilty of robbery, and upon conviction thereof shall be imprisoned for not more than ten years. (Code 1966, § 400; Code 1970, tit. 11, § 1251.)

CHAPTER 27.

SEX CRIMES.

Sec.
1301. Incest.
1302. Rape.
1303. Sodomy.

§ 1301. Incest. — Every person who shall unlawfully engage in sexual intercourse with another of such a close blood relationship or affinity that marriage between the two who so engage is prohibited by law or custom, shall be guilty of incest, and upon conviction thereof shall be imprisoned for a period of not more than five years; provided, however, that the burden of proof of such relationship or affinity shall rest with the prosecution. (Code 1966, § 407; Code 1970, tit. 11, § 1301.)

Relatives who aid incestuous couple in continuance of relationship. — Where family members are in position of aiding couple in continuance of incestuous relationship, they are exposed to possibility of prosecution for crime of accessory after the fact. Yangilemau v. Mahoburimalei, 1 TTR 429 (1958).

§ 1302. Rape. — Every person who shall unlawfully have sexual intercourse with a female, not his wife, by force and against her will, shall be guilty of rape, and upon conviction thereof shall be imprisoned for a period of not more than twenty-five years. (Code 1966, § 387; Code 1970, tit. 11, § 1302.)

Elements; necessity of proving beyond a reasonable doubt. — Elements of the crime of rape in the Trust Territory are that the act of sexual intercourse must be unlawful, by force, and against the will of the female, and all of the elements must be proved beyond a reasonable doubt in order to sustain a conviction. Trust Territory v. Manalo, 5 TTR 208 (1970).

Proof that the act was against the female's will. — In order for the crime of rape to be established it must be shown beyond a reasonable doubt that the act was accomplished against the will of the female and in the usual case this may be shown by some form of resistance on the part of the female or that because of threats or harm the female was so placed in fear for her safety that she felt resistance to be useless. Trust Territory v. Manalo, 5 TTR 208 (1970).

Absence of physical resistance. — The absence of physical resistance does not establish consent. Trust Territory v. Ngiraitpang, 5 TTR 282 (1970).

Utmost resistance doctrine not applied. — The utmost resistance doctrine will not be applied in the Trust Territory and certainly not in a case where the woman is placed in such fear of personal violence that her will is overcome. Trust Territory v. Manalo, 5 TTR 208 (1970).

Force is relative. — In a rape case force is a relative matter because the law implies force when the female does not consent and the act need be accomplished only with sufficient force to be against the woman's consent. Trust Territory v. Ona, 5 TTR 634 (1972).

Attacked woman allowed a choice as to resistance by law. — It is primarily for the woman who is attacked to decide to what extent, if at all, she can safely resist and the law allows a woman a free choice of what she may consider the lesser of two evils. Trust Territory v. Ngiraitpang, 5 TTR 282 (1970).

Corroboration requirement. — Corroboration is necessary even though the Trust Territory statute relating to rape does not require corroboration. Trust Territory v. Ona, 5 TTR 634 (1972).

Element of corroboration is how soon victim reports rape. — One of the elements of corroboration the courts invariably look for in rape cases is how soon the alleged victim reports what happened. Trust Territory v. Ona, 5 TTR 634 (1972).

Acts of victim on same day of rape seen as corroboration. — Where alleged victim of rape made complaint to her mother, reported to the police who took and retained her torn clothing and submitted to medical examination all on the same day the offense occurred, all of that was siginificant corroboration of her testimony as to the rape. Trust Territory v. Ona, 5 TTR 634 (1972).

§ 1303. Sodomy. — Every person who shall unlawfully and voluntarily have any sexual relations of an unnatural manner with a member of the same or the other sex, or who shall have any carnal connection in any manner with a beast, shall be guilty of sodomy, and upon conviction thereof shall be imprisoned for a period of not more than ten years; provided, that the term "sodomy" shall embrace any and all parts of the sometimes written "abominable and detestable crime against nature." (Code 1966, § 409; Code 1970, tit. 11, § 1303.)

CHAPTER 28.

TRESPASS.

Sec.
1351. Defined; punishment.

§ 1351. Defined; punishment. — Every person who shall unlawfully violate or interfere with the peaceful use and possession of the dwelling house, premises, or property of another, whether by force or by stealth, but without committing or attempting to commit any of the crimes defined in chapters 4 (arson), 8 (burglary), 15 (forgery), 18 (larceny), 20 (malicious mischief), and 26 (robbery) of this title, shall be guilty of trespass, and upon conviction thereof shall be imprisoned for not more than six months, or fined not more than one hundred dollars, or both. (Code 1966, § 401; Code 1970, tit. 11, § 1351.)

Intention of statute. — Crime of trespass is intended to punish interferences with property that are clearly without right or unlawful, and is not to be used as summary method of trying ownership of land in lower courts. Tasio v. Trust Territory, 3 TTR 262 (1967).

Civil and criminal trespass are distinct offenses. — Civil trespass is distinct and separate from offense of criminal trespass. Tasio v. Trust Territory, 3 TTR 262 (1967).

Good faith claim of right as defense. — Claim of right made in good faith, even though erroneous, is good defense to charge of criminal trespass. Tasio v. Trust Territory, 3 TTR 262 (1967).

Where accused makes claim of right, burden is placed on government. — Where person accused of trespass claims to have acted in lawful exercise of his rights, burden is on government to show beyond reasonable doubt that interference with property was unlawful, and where evidence leaves room for reasonable doubt as to validity of accused's claim of right, he should be acquitted of criminal charge. Tasio v. Trust Territory, 3 TTR 262 (1967).

Issue of whether owner gave accused permission to enter. — In criminal prosecution for trespass, where there is reasonable doubt on question of whether owner gave accused permission to enter house, finding of trespass in entering house is not warranted. Olber v. Trust Territory, 1 TTR 559 (App. Div. 1951).

Prior civil dispute bears on good faith issue. — Where person who is accused of trespass and who claims right to land has previously lost civil dispute over that land, this has important bearing on question of his good faith in claiming right to land. Tasio v. Trust Territory, 3 TTR 262 (1967).

Accused convicted only if he committed or attempted no other crime against property. — There may be conviction for trespass only if court finds acts complained of were done without accused committing or attempting to commit any other crime against property under this Code. Bisente v. Trust Territory, 1 TTR 327 (1957).

Acts are not trespass unless no other crimes are involved. — Acts cannot constitute crime of trespass under Trust Territory law unless they are done without accused committing or attempting to commit certain other crimes, of which malicious mischief is one. Bisente v. Trust Territory, 1 TTR 327 (1957).

Requirement of break in incident or change of intention. — Where there is no indication of any break in incident or change of intention by accused during actions constituting crime of malicious mischief, he cannot also properly be found guilty of trespass. Bisente v. Trust Territory, 1 TTR 327 (1957).

Same act may not constitute trespass and malicious mischief. — If judge in criminal trial finds all elements of malicious mischief are proved, he cannot properly find all elements of trespass are proved, as it is legally impossible under Trust Territory law for the same act to constitute both trespass and malicious mischief where there is no break in incident or change of intention of accused. Bisente v. Trust Territory, 1 TTR 327 (1957).

Where defendant is erroneously found guilty of two crimes, he is entitled to new trial even if sentence is light. — Where trial court erred in finding defendant guilty of both crimes of trespass and malicious mischief, and sentence imposed was no greater than he could have reasonably and in his discretion imposed on one of charges alone, defendant is still entitled to a new trial if he so desires. Bisente v. Trust Territory, 1 TTR 327 (1957).

Possible to follow trespass with malicious mischief. — It is possible under Trust Territory law for person to commit act of malicious mischief immediately after committing crime of trespass. Figir v. Trust Territory, 3 TTR 127 (1966).

Acts constitute trespass only if no other crime is attempted or committed. — In order for acts set forth in this Code to constitute trespass, they must be done without committing or attempting to commit any of certain other crimes mentioned therein. Figir v. Trust Territory, 3 TTR 127 (1966).

Malicious mischief is separate crime. — The crime of malicious mischief is within the phrase "beforementioned crimes" referred to in this section. Figir v. Trust Territory, 3 TTR 127 (1966).

Finding of trespass as to taking of piece of underclothing. — In criminal prosecution for burglary, although element of trespass as to underclothing taken from house is not technically included in burglary charge finding of guilty of trespass so far as taking of piece of underclothing is concerned does not result in any injustice to accused. Olber v. Trust Territory, 1 TTR 559 (App. Div. 1951).

Taking of underclothing as interfering with peaceful use and possession of another. — Where individual takes woman's underclothing from clothesline without any firm basis for knowing whose it is and knowing he has no actual permission from anyone to take it, he is interfering with peaceful use and possession of another, even though he hopes owner will approve. Olber v. Trust Territory, 1 TTR 559 (App. Div. 1951).

CHAPTER 29.

MISCELLANEOUS CRIMES.

§ 1401. Compounding a crime. — Every person who, having knowledge that a crime has been, is being, or is about to be committed, shall unlawfully, knowingly, and wilfully agree for a reward not to prosecute it, shall be guilty of compounding a crime, and upon conviction thereof shall be imprisoned for a period of not more than one year, or fined not more than one hundred dollars, or both. (Code 1966, § 413; Code 1970, tit. 11, § 1401.)

§ 1402. Tampering with mail. — Every person who, without authority, opens, or destroys any mail not directed to him, shall upon conviction thereof be imprisoned not more than six months, or fined not more than one hundred dollars, or both. (Code 1966, § 402; Code 1970, tit. 11, § 1402.)

§ 1403. Unauthorized disposition of certain foods. — Every person who, having any responsibility for disposition of any food commodity donated under any program of the United States government or the Trust Territory government, wilfully makes any unauthorized disposition of such food commodity, or every person who, not being an authorized recipient thereof, wilfully converts to his own use or benefit any such food commodity, shall upon conviction thereof, be punished by imprisonment for not more than six months, or fined not more than five hundred dollars, or both. (Code 1966, § 404; Code 1970, tit. 11, § 1403.)

§ 1404. Duty to report wounds or deaths. — (1) Every person who gains knowledge of a death or injury resulting from a knife wound, bullet wound, powder burn, or sustained in a suspicious or unusual manner or under conditions suggesting poisoning or violence, shall make a report thereof immediately, and in any case within five days of obtaining such knowledge, to the nearest law enforcement official or to any police officer or to the chief of police of the district within which the injured or deceased person is situated. Said report shall state:

(a) The name and location of injured or deceased person;

(b) The date of injury or death, or date of gaining knowledge thereof by informant, if date of injury or death is unknown;

(c) The cause and manner of injury or death;

(d) The name of the person causing injury or death, if known.

(2) No person making a report in compliance with this section shall be deemed to have violated the confidential relationship existing between doctor and patient.

(3) Copies of such report shall be furnished without charge to the district public defender at his request.

(4) Any person violating subsection (1) of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars, or imprisoned for not more than one year, or both. (Code 1970, tit. 11, § 1404.)

§ 1405. Possession or removal of government property. — It shall be unlawful for any person without proper authority to have in his possession or remove from its location any property of any kind, wherever situated, of the government of the United States or of the government of the Trust Territory, its political subdivisions, or municipal governments. Any person convicted of a violation of this section shall be fined not more than one hundred dollars, or imprisoned not more than six months, or both. (Code 1970, tit. 11, § 1405.)

§ 1406. Theft of electricity; injuring or altering meter. — Every person who wilfully and knowingly, with intent to injure or defraud, makes or causes to be made any connection with the electric lines of any agency or corporation authorized to generate, transmit, or sell electric current by means of electric wire or electric appliance of any character whatsoever, without the written authority of such agency or corporation, or who shall, knowingly and with like intent, injure, alter, or procure to be injured or altered any electric meter, or obstruct its working, or procure the same to be tampered with or injured, or use or cause to be used any electric meter or appliance so tampered with or injured, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be imprisoned for not more than six months, or fined not more than one hundred dollars, or both. (P.L. No. 7-1, § 1.)

CHAPTER 30.

PUNISHMENTS; JUDGMENT AND SENTENCING.

Cross reference. — Excessive bail, etc., 1 TTC 6.

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§ 1451. Recognition of custom in imposing or suspending sentences and in granting probation. — In imposing or suspending the execution of sentences, or in suspending the imposition of sentence and granting probation, in accordance with this title, due recognition shall be given to the customs of the inhabitants of the Trust Territory in accordance with the last two clauses of article 6, paragraph 1 of the trusteeship agreement. (Code 1966, § 436; Code 1970, tit. 11, § 1451; P.L. No. 7-92, § 2.)

Cross references. — Recognition of local customs, 1 TTC 14, 39 TTC 4. Limitation on punishment for crimes and violation of native customs, 11 TTC 8.

§ 1452. Consideration of previous convictions. — Before imposing or suspending the execution of sentence upon a person found guilty of a criminal offense, or in suspending the imposition of sentence and granting probation, evidence of good or bad character, including any prior criminal record of the defendant, may be received and considered by the court. (Code 1966, § 168; Code 1970, tit. 11, § 1452; P.L. No. 7-92, § 3.)

Court not required to be lenient to one defendant because of another defendant in a previous case. — District court is not required to be indulgent to one criminal defendant because, for reasons not readily apparent, it has yielded to argument of counsel on behalf of other criminal defendant in previous case. Taman v. Trust Territory, 1 TTR 415 (1958).

Comparison of sentences illogical. — Comparison of sentences in two criminal cases involving same offense is illogical unless there is available for examination facts with respect to prior involvement in similar offenses. Evidence of extenuating circumstances for mitigation of punishment are not sufficiently similar in cases of any two criminal offenses to merit comparison. Taman v. Trust Territory, 1 TTR 415 (1958).

Repeated offenders treated differently from first offenders. — Defendant in criminal proceedings who is repeated offender can hardly expect same light punishment meted out to first offender. Taman v. Trust Territory, 1 TTR 415 (1958).

Effect of restitution accomplished by police. — Restitution accomplished by police in locating and seizing stolen goods is not such restitution as entitles defendant in criminal prosecution to special treatment even if defendant in criminal proceedings leads authorities to stolen property after agreeing to make restitution, this does not necessarily make a case for lighter punishment. Taman v. Trust Territory, 1 TTR 415 (1958).

§ 1453. Imposition of fines; Procedure upon nonpayment of fines. Where an offense is made punishable by fine the court imposing the fine may give such directions as appear to be just with respect to the payment of the fine In default of payment of the fine or any part thereof the court may order the defendant to be imprisoned for such period of time as it may direct. These directions may be given and orders for imprisonment made at any time, and may be modified if the court deems justice so requires, until the fine is paid in full or the imprisonment served which has been ordered in default of payment provided, that the accused shall be given an opportunity to be heard before any such direction or order is given, made, or modified, except when that is done at the time sentence is imposed; and provided further, that no defendant shall be imprisoned for a longer period of time than that fixed by law for such offense. (Code 1966, § 169; Code 1970, tit. 11, § 1453.)

Imprisonment for failure to pay fine. — Court may sentence defendant to imprisonment for failure to pay fine and such direction may be given or modified at any time until fine is paid in full or imprisonment served which has been ordered in default of payment, provided accused is given opportunity to be heard before any such direction or order is given or modified, except when direction or order is given at time sentence is imposed. Raismet v. Trust Territory, 1 TTR 631 (App. Div. 1958).

§ 1454. Orders requiring specified residence. — The high court may, in lieu of or in addition to other lawful punishment, direct that a person found by it to be guilty of a criminal offense shall establish his place of residence within a specified area and maintain it there for a period of time not exceeding the maximum period of imprisonment which may be imposed for the offense. (Code 1966, § 170; Code 1970, tit. 11, § 1454.)

Power to banish limited. — It was not the intention of this Code to permit banishment by the community courts or the district courts either under this section or under section 1459 of this title. Tinteru v. Trust Territory, 4 TTR 361 (1969).

High court has banishment power. — Only the high court has the power of banishment. Tinteru v. Trust Territory, 4 TTR 361 (1969).

Banishment power limited because of its serious consequences. — The power of banishment, even though it may be for only a limited time, can be of very serious consequences and in the United States it is generally held that banishment of a person convicted of a crime is generally beyond the jurisdiction of state or local courts. Tinteru v. Trust Territory, 4 TTR 361 (1969).

Suspension or reduction of sentence on condition of leaving state is void. — The suspension or reduction of a sentence on condition that the convicted person leave the state or county is void. Tinteru v. Trust Territory, 4 TTR 361 (1969).

§ 1455. Restitution, compensation or forfeiture. — If a defendant is convicted of wrongful or unlawful sale, purchase, use or possession of any article, or of a wilful wrong causing damage to another, the court may, in lieu of or in addition to other lawful punishment, order restitution or compensation to the owner or person damaged or the forfeiture of the article to the Trust Territory or a municipality thereof. (Code 1966, § 171; Code 1970, tit. 11, § 1455.)

Res judicata does not bar civil action after criminal judgment. — A criminal judgment, including the provision for restitution under statute, is not a bar to a civil action under the doctrine of res judicata. Moolang v. Figir, 3 TTR 455 (1968).

Restitution contemplated as punishment. — This section, which gives the court discretion to order restitution or compensation, contemplates restitution as punishment. Moolang v. Figir, 3 TTR 455 (1968).

§ 1456. Closing of business. — If a defendant is convicted of an offense involving the sale of a harmful article or the operation of an unlawful business, the court may, in lieu of or in addition to other lawful punishment, order that the place of sale or business be vacated or closed for a specified time. (Code 1966, § 172; Code 1970, tit. 11, § 1456.)

§ 1457. Labor without imprisonment. — In any case in which a court is authorized to impose sentence of imprisonment, the court may, if it deems best, instead of imposing imprisonment, sentence the accused to perform hard labor in accordance with his physical ability on any public project for a period not exceeding that for which imprisonment might be imposed. (Code 1966, § 173; Code 1970, tit. 11, § 1457.)

§ 1458. Designation of place of confinement. — Any court upon sentencing a person to imprisonment may designate in the commitment order a place of confinement within the district where the trial is held. The place of confinement may be changed or otherwise designated as follows at any time while the sentence is still in force:

(1) The district administrator, subject to instruction, if any, from higher authority, may transfer the person to or designate any place of confinement within his district; or,

(2) The High Commissioner may transfer the person to or designate any place of confinement. (Code 1966, § 496; Code 1970, tit. 11, § 1458.)

§ 1459. Suspension of sentence. — The court which imposes a sentence upon a person convicted of a criminal offense may direct that the execution of the whole or any part of a sentence of imprisonment imposed by it shall be suspended on such terms as to good behavior and on such conditions as the court may think proper to impose. A subsequent conviction by a court for any offense shall have the effect of revoking the suspension of the execution of the previous sentence unless the court otherwise directs. (Code 1966, § 174; Code 1970, tit. 11, § 1459.)

Banishment power limited. — It was not the intention of this Code to permit banishment by the community courts or the district courts either under this section or section 1454 of this title. Tinteru v. Trust Territory, 4 TTR 361 (1969).

Part of mandatory life sentence may be suspended. — Trial court may suspend part of a mandatory life sentence. Mad v. Trust Territory, 6 TTR 550 (1973).

Meaning of provision for revocation of suspension upon subsequent conviction. — Statute providing that subsequent conviction of one on a suspended sentence has effect of revoking suspension unless court otherwise directs means that court has discretion to remand offender to jail to serve all or part of the suspended portion of the sentence, try offender for current offense and impose a sentence for that offense should conviction be had, or hold an evidentiary hearing to determine whether any conditions of suspension have been broken and if so, order revocation of the suspension. Trust Territory v. Singeo, 6 TTR 71 (1972).

Subsequent conviction not mandatory. — Under statute providing that a subsequent conviction has effect of revoking suspension of execution of sentence for a prior offense unless the court otherwise directs, a subsequent conviction is not mandatory. Trust Territory v. Singeo, 6 TTR 71 (1972).

§ 1460. Probation. — (1) Upon entering a judgment of conviction of any offense not punishable by life imprisonment, the court, when satisfied that the ends of justice and the best interests of the public as well as the defendant will be served, may suspend the imposition of sentence and may direct that the suspension continue for a period of time, not exceeding the maximum term of sentence which may be imposed, and upon the terms and conditions which the court determines, and shall place the person on probation, under the charge

and supervision of a probation officer or any other person designated by the court, during the suspension.

(2) Upon violation of any of the terms and conditions of probation at any time during the probationary period, the court may issue a warrant for the rearrest of the person on probation and, after giving the person an opportunity to be heard and to rebut any evidence presented against him, may revoke and terminate the probation.

(3) Upon the revocation of the probation, the court may then impose any sentence which may have initially been imposed had the court not suspended imposition of sentence in the first instance.

(4) The court may at any time during the period of probation modify its order of suspension of imposition of sentence. The court may at any time, when the ends of justice and the best interests of the public as well as the defendant will be served, and when the good conduct and reform of the person held on probation warrants it, terminate the period of probation and discharge the person held. If the court has not revoked the order of probation and pronounced sentence, the defendant shall, at the end of the term of probation, be discharged by the court.

(5) Upon discharge of the defendant without imposition of sentence, the court shall vacate the judgment of conviction and the defendant shall not be deemed to have been convicted of the crime for any purpose. (P.L. No. 7-92, § 1.)

CHAPTER 31.

PARDONS AND PAROLES.

Sec.

§ 1501. Authority of High Commissioner and district administrators. — (1) Any person convicted of a crime in the Trust Territory may be pardoned or paroled by the High Commissioner upon such terms and conditions as he shall deem best.

(2) Any person sentenced in any district of the Trust Territory to imprisonment for not more than six months, or to pay a fine of not more than one hundred dollars, or both, may be pardoned or paroled by the district administrator of the district upon such terms and conditions as he deems best. (Code 1966, § 435; Code 1970, tit. 11, § 1501.)

Power of High Commissioner to pardon or parole. — Under this section of this Code any person convicted of a crime in the Trust Territory may be pardoned or paroled by the High Commissioner upon such terms and conditions as he shall deem best. Trust Territory v. Yamashiro, 4 TTR 95 (1968).

Whom to direct petition for pardon or parole to. — Petition for pardon or parole from sentence in criminal case should be directed to High Commissioner of Trust Territory or to the district administrator. Trust Territory v. Helgenberger, 3 TTR 257 (1967).

Parole cannot be revoked without due process. — Where there is no stipulation by the High Commissioner for the revocation of parole without notice and an opportunity to be heard, and the due process clause is in force at the time of the attempted revocation, the power to revoke parole for alleged breach of conditions cannot be exercised without notice and opportunity to be heard. The failure to give such notice and opportunity to be heard renders an order of revocation of parole defective. Ichiro v. Bismark, 1 TTR 57 (1953), deciding issue prior to enactment of existing section.