

*Digest of Cases Reported*

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## APPEAL AND ERROR

### A

#### ADMINISTRATIVE LAW.

##### Land Title Determination-Parties

Title determination itself does not bar party's claim to property in question when she was not party to proceedings in which it was made and her rights as against another were not in issue in those proceedings. *Bias v. Bias*, 3 T.T.R. 99.

#### ADMIRALTY.

##### Motorboats

In case of accident involving motorboats, there may be liability in admiralty. *Ychitaro v. Lotius*, 3 T.T.R. 3.

#### AGENCY.

##### Liability of Principal

If a principal acts or conducts his business, either intentionally or through negligence, or fails to disapprove of the agent's act or course of action so as to lead the public to believe that his agent possesses authority to act or contract in the name of the principal, such principal is bound by the acts of the agent within the scope of his apparent authority as to any person who, upon the faith of such holding out, believes, and has reasonable ground to believe, that the agent has such authority and in good faith deals with him. *Akos v. Orem*, 3 T.T.R. 504.

##### Rights of Third Party

Where principal's failure to disavow his agent's sale of land until third party purchaser came to him after the principal had sold the same land to another, the disavowal came too late to affect the rights of the third party purchaser. *Akos v. Orem*, 3 T.T.R. 504.

#### APPEAL AND ERROR.

##### Generally

In an appeal the burden is on the appellant to affirmatively show that there has been some error and that he has been prejudiced thereby. (T.T.C., Sec. 337) *Eram v. Trust Territory*, 3 T.T.R. 442.

Because of the deliberate disregard of the court proceedings to which they had been summoned, the appellants lost any right to object to the action taken by the court at that proceeding. *Ngiraiechol v. Ingilai Clan*, 3 T.T.R. 525.

##### Evidentiary Error

Where the affirmative obligation of proof was placed upon the wrong party, it was appropriate for the appellate court to reconsider all of the evidence to ascertain whether the conclusions of the trial court be sustained. *Adelbai v. Ngirchoteot*, 3 T.T.R. 619.

## **APPEAL AND ERROR**

### **Notice and Filing of Appeal**

Filing of notice of appeal within time limited by Trust Territory Code provisions is essential to the jurisdiction of the court upon appeal in the absence of some most unusual circumstance. *Ngiralois v. Trust Territory*, 3 T.T.R. 637.

### **-Excuse for Late Filing**

Exception to timely filing of notice of appeal is recognized where the failure to file is the result of default of some officer of the court. *Ngiralois v. Trust Territory*, 3 T.T.R. 637.

### **Scope of Review**

Appellate court should make every reasonable presumption in favor of determinations of trial court. *Timulch v. Trust Territory*, 3 T.T.R. 208.

In considering case on appeal, appellate court in Trust Territory must test sufficiency of proof on basis of what trial court had right to believe, even though there is evidence to contrary. *Figir v. Trust Territory*, 3 T.T.R. 127.

### **-Facts**

It is function of trial court, not appellate court, to make determinations of fact which are dependent upon conflicting evidence. *Fattun v. Trust Territory*, 3 T.T.R. 571.

The findings of the trial court based upon the evidence will not be set aside unless there is manifest error. *Lajutok v. Kabua*, 3 T.T.R. 630.

The Trial Division of the High Court on appeals from District Courts may review facts as well as law. (T.T.C., Sec. 200) *Aiiehi v. Trust Territory*, 3 T.T.R. 290.

An appellate court does not weigh conflicting evidence and if there is reasonable evidence in support of the trial court's findings and conclusions, they will not be disturbed. *Adelbai v. Ngirchoteot*, 3 T.T.R. 619.

Appellate courts are constituted for dealing with questions of law, and findings of fact will not be disturbed when supported by competent evidence. *Osawa v. Ludwig*, 3 T.T.R. 594.

Findings of fact by Trial Division of the High Court in cases tried by it will not be set aside by appellate court unless clearly erroneous. (T.T.C., Sec. 200) *Osawa v. Ludwig*, 3 T.T.R. 594.

Where the Trial Division of the High Court adopts findings of Master's Report, appellate court is limited in review and may not set aside fact findings unless clearly erroneous. (T.T.C., Sec. 200) *Osawa v. Ludwig*, 3 T.T.R. 594.

When a conclusion is made by a trial court without any or insufficient evidence to support it, an appellate court will consider the sufficiency of proof and examine the entire record. *Adelbai v. Ngirchoteot*, 3 T.T.R. 619.

## BAIL AND RECOGNIZANCE

### -Newly Discovered Evidence

Newly discovered evidence cannot be considered in first instance by appellate court but can only be considered in connection with motion for new trial or motion for relief from judgment. (Rules of Civil Proc., Rules 18d, 18e(2)» *Tasio v. Yesi*, 3 T.T.R. 598.

### -Record

Evidentiary matters which are not part of record on appeal cannot be considered by appellate court. *Osawa v. Ludwig*, 3 T.T.R. 594.

### -Witness Credibility

It is not function of appellate court to weigh evidence anew or to pass on credibility of witnesses when trial court's findings are supported by substantial credible evidence. *Figir v. Trust Territory*, 3 T.T.R. 127.

Trial judge who has opportunity to hear witnesses is in much better position to judge their credibility than appellate court can be merely from written record. *Figir v. Trust Territory*, 3 T.T.R. 127.

The Trial Division of the High Court is not in as good position as trial court to pass on credibility of witnesses who appeared and testified personally in trial court. *Aiicm v. Trust Territory*, 3 T.T.R. 290.

Although Trial Division of the High Court on appeals from District Courts may review facts as well as law, it is not in as good position as trial court to pass on credibility of witnesses who appeared and testified personally in trial court. (T.T.C., Sec. 200) *Timulch v. Trust Territory*, 3 T.T.R. 208.

## ASSAULT AND BATTERY.

### Generally

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. (T.T.C., Sec. 379) *Timulch v. Trust Territory*, 3 T.T.R. 208.

## B

## BAIL AND RECOGNIZANCE.

### Generally

As matter of bail is well understood in United States and entirely foreign to Micronesian customs, incidents and effect of release on bail must be construed in accordance with American principles. *Meyer v. Epsom*, 3 T.T.R. 54.

General understanding of bail in United States is to permit person so released to go at large and not be cut off from his normal contacts with society, subject to sureties' authority over him and their right to prevent his leaving jurisdiction. *Meyer v. Epsom*, 3 T.T.R. 54.

## **BAIL AND RECOGNIZANCE**

Where restrictions placed upon individual released on bail constitute restraint of liberty, relief is ordinarily obtainable by habeas corpus. Meyer v. Epsom, 3 T.T.R. 54.

Since risk of having person charged with or convicted of serious crime present in community is normal incident of right to bail, desire to have such person excluded is not adequate justification for unduly close restriction while he is released on bail. Meyer v. Epsom, 3 T.T.R. 54.

### **Kwajaleill**

Army has both right and obligation to protect its classified activities from observation by unauthorized persons and to terminate right which individual released on bail may previously have had to access to such materials or particular area where they are kept or where such activities are carried on. Meyer v. Epsom, 3 T.T.R. 54.

Individual cannot reasonably be restricted to small part of area he was formerly allowed use of on Kwajalein Island, in manner closely approaching modified form of house arrest, while he is supposed to be at liberty on bail. Meyer v. Epsom, 3 T.T.R. 54.

Individual released on bail and required to remain at Kwajalein Test Site has no specific right to be there except that arising from exigencies of situation, but he cannot fairly be considered trespasser and does have some rights. Meyer v. Epsom, 3 T.T.R. 54.

Individual released on bail at Kwajalein Test Site has right to normal benefits of bail within limitations he voluntarily accepted by consenting to employment on Test Site, and which do not reasonably endanger security of classified matter. Meyer v. Epsom, 3 T.T.R. 54.

Individual released on bail at Kwajalein Test Site has only consented to restrictions usual for person in his former condition on Kwajalein Island, which does not include close restraint on individual basis without showing of special need for such restraint. Meyer v. Epsom, 3 T.T.R. 54.

So long as individual released on bail is required to remain at Kwajalein Test Site, he is in position like that of tenant at sufferance. Meyer v. Epsom, 3 T.T.R. 54.

While on base, individual released on bail at Kwajalein Test Site should be allowed freedom on areas of island to which he was formerly entitled for purposes not directly connected with his employment, unless and until reasonable arrangement is made for him to go at large elsewhere in Trust Territory. Meyer v. Epsom, 3 T.T.R. 54.

Individual released on bail on Kwajalein Island should not be expected to leave jurisdiction without consent of surety on bail bond who, under ordinary principles of American law, would be entitled to prevent his leaving jurisdiction. Meyer v. Epsom, 3 T.T.R. 54.

### **BIGAMY.**

#### **Generally**

To constitute bigamous marriage, it is immaterial whether alleged

## BILLS AND NOTES

marriage is illegal or defective for some other reason in addition to prior and still-existing marriage of accused. (T.T.C., Sec. 406) *Dmiich v. Trust Territory*, 3 T.T.R. 231.

In criminal prosecution for bigamy, trial court may find accused did "marry" his alleged bigamous wife, as term is used in 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. *Dmiich v. Trust Territory*, 3 T.T.R. 231.

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. (T.T.C., Sec. 406) *Dmiich v. Trust Territory*, 3 T.T.R. 231.

### Appearance of Marriage

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. (T.T.C., Sec. 406) *Dmiich v. Trust Territory*, 3 T.T.R. 231.

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. (T.T.C., Sec. 406) *Dmiich v. Trust Territory*, 3 T.T.R. 231.

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. (T.T.C., Secs. 406, 694) *Umiich v. Trust Territory*, 3 T.T.R. 231.

## BILLS AND NOTES.

### Account Stated

While account stated may be opened and rectified on grounds of fraud, omission, or mistake, party seeking to open it has burden of proving fraud, omission or mistake by clear and convincing evidence. *Marianas Electric v. Guerrero*, 3 T.T.R. 244.

Where notes constitute clear evidence of agreement between parties as to balance due for certain parts of their accounts with each other, they amount to an "account stated". *Marianas Electric v. Guerrero*, 3 T.T.R. 244.

Where records of accounts and showing as to actions or lack of actions of parties are incomplete, court cannot determine with satisfactory certainty whether any claims as to items alleged to have been erroneously included or omitted are correct. *Marianas Electric v. Guerrero*, 3 T.T.R. 244.

Beyond single error in account stated, which error is clearly-demonstrable from uncontradicted testimony of witnesses for creditor and

## BILLS AND NOTES

evidence showing how amount was computed, parties must otherwise rest on agreed status of accounts as shown by giving and accepting of notes in question. *Marianas Electric v. Guerrero*, 3 T.T.R. 244.

### BURGLARY.

#### Generally

Trust Territory law on burglary should be construed in light of modern decisions and statutory changes in definition of burglary in various American jurisdictions. (T.T.C., Sec. 391) *Trust Territory v. Peter*, 3 T.T.R. 251.

Statutory crime of burglary in Trust Territory is broader than common law definition, and includes entry by stealth. (T.T.C., Sec. 391) *Trust Territory v. Peter*, 3 T.T.R. 251.

#### Felonious Intent

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. (T.T.C., Sec. 391) *Trust Territory v. Peter*, 3 T.T.R. 251.

#### Force

Trust Territory law on burglary does away with requirement of actual breaking in sense of destroying or damaging anything. (T.T.C., Sec. 391) *Trust Territory v. Peter*, 3 T.T.R. 251.

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. (T.T.C., Sec. 391) *Trust Territory v. Peter*, 3 T.T.R. 251.

## C

### CHAMORRO CUSTOM.

#### Widow's Rights

Under Chamorro custom where a man inherits land from his father and dies leaving a widow and children, the widow is not entitled to any of the land as a matter of right. *In re Guerrero*, 3 T.T.R. 546.

### CHEATING.

#### Generally

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. (T.T.C., Sec. 431; Rules of Crim. Proc., Rule 14(a)) *Elechus v. Trust Territory*, 3 T.T.R. 297.

Where defendant is found guilty of attempting to obtain payments under construction contract by false pretenses, he is not thereby sentenced for failure to discharge contractual obligation, which is pro-

## CIVIL PROCEDURE

hibited under Trust Territory law, since attempt to obtain money by false pretenses is entirely apart from question of whether defendant has discharged his contractual obligation. (T.T.C., Sec. 10) Elechuus v. Trust Territory, 3 T.T.R. 297.

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. (T.T.C., Sec. 392) Elechuus v. Trust Territory, 3 T.T.R. 297.

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. (T.T.C., Secs. 392, 431) Elechuus v. Trust Territory, 3 T.T.R. 297.

### CIVIL PROCEDURE.

#### Generally

In Trust Territory, where no procedure has been specified, court may proceed in any manner not inconsistent with law or rules or procedure and which court deems will promote justice. (Rules of Crim. Proc., Rule 30) Butirang v. Uchel, 3 T.T.R. 382.

Designation of action is not important since it is substance that determines nature of action. Remoket v. Olekeriil, 3 T.T.R. 339.

The general rule is that a judgment in a criminal prosecution is not a bar to a subsequent civil action based upon the same offense of which the party stands convicted. Moolang v. Figir, 3 T.T.R. 455.

An obligation rests upon all parties to a law suit to keep themselves advised as to its progress and outcome. Lanilobar v. Kiojan, 3 T.T.R. 248.

#### Affirmative Defenses

Court can and should consider and apply any affirmative defenses upon face of record. Butirang v. Uchel, 3 T.T.R. 382.

Where no procedure is directed in Trust Territory regarding specially pleading affirmative defenses, court may apply defense of limitations. (Rules of Crim. Proc., Rule 30) Butirang v. Uchel, 3 T.T.R. 382.

#### Burden of Proof

The burden of proof rests with the party seeking affirmative relief. Adelbai v. Ngirchoteot, 3 T.T.R. 619.

#### Costs

The second sentence of Sec. 265 of the Trust Territory Code enlarges the grounds of recoverable expenses but does not cover costs incurred for traveling and living expenses by a party to an action. (T.T.C., Sec. 265) Penno v. Katarina, 3 T.T.R. 416.

## **CIVIL PROCEDURE**

Personal expenses incurred by a party to an action are not allowable under the first sentence of Sec. 265 of the Trust Territory Code which limits costs to service of process, witness fees, or filing fees on appeal. (T.T.C., Sec. 265) *Penno v. Katarina*, 3 T.T.R. 416.

### **Damages**

Civil damages are not punishment. *Moolang v. Figir*, 3 T.T.R. 455.

### **Jurisdictional Allegation**

Where court is one of limited jurisdiction, averment of jurisdiction must be definite and positive and cannot be inferred from other averments. *Sam v. Sam*, 3 T.T.R. 203.

If plaintiff is to bring cause of action within jurisdiction of District Court, this must be done affirmatively in complaint. *Sam v. Sam*, 3 T.T.R. 203.

### **Motion for New Trial-Equitable Grounds**

Subsection 6 of Rule 18e of the Rules of Civil Procedure authorizes the court to set aside a judgment where justice so requires and it is based on a similar provision in Rule 60b of the Federal Rules of Civil Procedure which has been said to constitute a grand reservoir of equitable power to do justice in a particular case. *Delemel v. Tulop*, 3 T.T.R. 469.

### **-Newly Discovered Evidence**

Under Rules of Civil Procedure, newly discovered evidence may be considered only in connection with motion for new trial or motion for relief from judgment. (Rules of Civil Proc., Rules 18d, 18e(2)) *Osawa v. Ludwig*, 3 T.T.R. 594.

Affidavits filed in support of motions were clearly insufficient to show newly discovered evidence which by due diligence could not have been discovered in time to be presented either at one of previous meetings held or for use in support of a motion for new trial within the time allowed for that purpose after entry of judgment under Rule of Civil Procedure 18d. *Delemel v. Tulop*, 3 T.T.R. 469.

### **Splitting Cause of Action**

Plaintiff cannot split indivisible claim so as to give jurisdiction to court that would not have jurisdiction if entire claim were sued for, unless plaintiff waives his claim to amounts in excess of that demanded in complaint, so that excess is forever lost to plaintiff. *Sam v. Sam*, 3 T.T.R. 203.

Suit for support money already due does not involve splitting of cause of action. *Sam v. Sam*, 3 T.T.R. 203.

### **Untrained Counsel**

There is recognized need in Trust Territory for special consideration for Micronesian practice as compared to United States practice by trained lawyers. *Butirang v. Uchel*, 3 T.T.R. 382.

## CONSTITUTIONAL LAW

Court will not hold Micronesian counsel to rules of pleading and procedure employed in United States when matters are not covered by Trust Territory rules or Code. *Butirang v. Uchel*, 3 T.T.R. 382.

### Witnesses

Where a witness is allowed to testify without being sworn, and without objection at the time, at a hearing or trial participated in by the parties concerned, personally or through counsel, requirement of the oath is properly to be considered as waived. *Delemel v. Tulop*, 3 T.T.R. 469.

### CLANS.

#### Generally

In some respects, a clan has certain similarities to a voluntary association or political party in the United States. *Ngiraiechol v. Inglai Clan*, 3 T.T.R. 525.

### CONFESSIONS.

#### Generally

In recognizing Trust Territory realities, court will not consider recent United States Supreme Court decision on exclusion of confessions as evidence in criminal proceedings. *Meyer v. Trust Territory*, 3 T.T.R. 586.

#### Admissibility

In determining whether confession introduced in criminal proceedings is voluntary, Trust Territory must assure fair treatment, which does not necessarily mean treatment available in communities where trial and communication present no difficulty and counsel are available from nearest telephone. *Meyer v. Trust Territory*, 3 T.T.R. 586.

Where it is not shown in record of criminal trial that accused was not told of right to counsel before confessing, court will not assume that he was not aware of such rights. *Meyer v. Trust Territory*, 3 T.T.R. 586.

#### -Illegal Custody

The mere fact that an accused was in custody of the police when he made his confession does not make it inadmissible; nor does any "illegal" detention there may have been after the confession was given make it inadmissible. *Eram v. Trust Territory*, 3 T.T.R. 442.

### CONSTITUTIONAL LAW.

#### Double Jeopardy

Under Section 4 of the Trust Territory Code a person may not be twice punished or put in "double jeopardy" of two punishments for the same offense. (T.T.C., Sec. 4) *Moolang v. Figir*, 3 T.T.R. 455.

A criminal judgment imposed as punishment for a crime is not a bar, upon the theory of double jeopardy, to a subsequent civil action. (T.T.C., Sec. 4) *Moolang v. Figir*, 3 T.T.R. 455. " " "

## CONTRACTS

### CONTRACTS.

#### Generally

Regardless of whether prospective buyer and seller are versed in law of contracts, law is applicable to them whatever their beliefs are as to legal effect of their conduct. *Itol v. Sakuma*, 3 T.T.R. 358.

Where both parties to defective contract are equally guilty of wrongfully taking advantage of the other, neither will receive equitable consideration and court will strictly adhere to law of contracts. *Itol v. Sakuma*, 3 T.T.R. 358.

#### Acceptance-Conditional

Prospective buyer's secret intent to accept part of seller's offer and reject remainder is without legal effect. *Itol v. Sakuma*, 3 T.T.R. 358.

**If** offeree fixes condition to acceptance of offer, or requests modification or change of offer, there is rejection of offer which puts end to negotiations unless offeror renews offer or assents to modifications suggested. *Itol v. Sakuma*, 3 T.T.R. 358.

**If** offeree once rejects offer by a conditional acceptance, he cannot afterward revive offer by tendering unconditional acceptance of it. *Itol v. Sakuma*, 3 T.T.R. 358.

Offer which contemplates a bilateral contract, or one set of promises in exchange for another set of promises, cannot be divided into parts; some of which might be accepted and others rejected. *Itol v. Sakuma*, 3 T.T.R. 358.

Where prospective buyer of land attempts to accept part of seller's offer and to reject remainder, his rejection, as matter of law, of part or offer prevents valid contract of sale coming into existence. *Itol v. Sakuma*, 3 T.T.R. 358.

Where prospective buyer of land accepts part of seller's offer and retains deed to land, rejection of remainder of offer prevents valid contract of sale, and buyer is not entitled to keep or record deed. *Itol v. Sakuma*, 3 T.T.R. 358.

Where seller offers his land and house in exchange for cash and another house, buyer must accept whole offer or none of it. *Itol v. Sakuma*, 3 T.T.R.358.

#### Agreement to Contract in Future

A contract to contract in the future must be definite in all its essential terms. *Itol v. Sakuma*, 3 T.T.R. 358.

Where seller and buyer arrive at understanding that if one piece of property cannot be sold according to agreement, second piece of property may be substituted, and there are not specific terms as to second lot, there is no binding agreement to enter into contract in the future. *Itol v. Sakuma*, 3 T.T.R. 358.

## COURTS

### Voidable Contracts

Where arrangement between two parties may be voidable at option of one of them, it is neither entirely void nor voidable at option of one not a party to it. *Trust Territory v. Saipan Bus Company*, 3 T.T.R. 76.

No future service can legally be rendered under unauthorized lease agreement unless and until required license is obtained and no payments need be made under it except for services already rendered or that may be rendered after license is obtained. *Trust Territory v. Saipan Bus Company*, 3 T.T.R. 76.

### -Undue Influence

It is unconscionable for one relatively well educated lineage member to impose upon another who can neither read nor write and who had every reason to rely upon him to treat her fairly, and a contract resulting from such action is neither binding nor does it prevent her personally from asserting her rights. *Narruhn v. Sale*, 3 T.T.R. 514.

### Void Contracts-Restitution

Where lease agreement between parties is irregular or lacking in formal authority, party may be able to recover under it rent and other charges for period when services are rendered in accordance with it. *Trust Territory v. Saipan Bus Company*, 3 T.T.R. 76.

## CORPORATIONS.

### Ultra Vires

Whether engaging in certain kind of land transportation is in violation of corporation charter or not is matter of concern to government which issued charter, corporation's stockholders and, under some circumstances, to those contracting with it, but it is not open to collateral attack by others. *Trust Territory v. Saipan Bus Company*, 3 T.T.R. 76.

## COURTS.

### High Court

Under Trust Territory law, the Trial Division of the High Court is court of general jurisdiction. (T.T.C., Sec. 23) *Alig v. Trust Territory*, 3 T.T.R. 603.

Adjudication of land disputes is within exclusive original jurisdiction of the Trial Division of the High Court. (T.T.C., Sees. 123, 138, 149) *Tasio v. Trust Territory*, 3 T.T.R. 262.

The Trial Division of the High Court may correct manifest error in land title determinations. *Owang Lineage v. Ngiraikelau*, 3 T.T.R. 560.

Where complaint asks for recovery of money because of rights in land from which money is derived, action should be brought in Trial Division of the High Court, and District Court has no jurisdiction of subject matter. (T.T.C., Sees. 123, 138) *Remoket v. Olekeriil*, 3 T.T.R. 339.

Where claim of plaintiff for money damages is based on alleged interest in land superior to defendant's interest, matter is within original juris-

## COURTS

diction of High Court to try title or any interest in land, and not within District Court's jurisdiction, which is limited in land matters to right of immediate possession. (T.T.C., Sees. 123, 138) *Remoket v. Olekeriil*, 3 T.T.R. 339.

### District Court

There is distinction between action relating to claim for money, which is within jurisdiction of District Court, and action which determines interests in land, which is not within power of District Court to decide. *Remoket v. Olekeriil*, 3 T.T.R. 339.

District Court has original jurisdiction in all civil cases where amount claimed or value of property involved does not exceed \$1,000.00, except admiralty and maritime matters and adjudication of title to land or interests therein. (T.T.C., Sec. 138) *Sam v. Sam*, 3 T.T.R. 203.

Where total amount of support prayed for in action for divorce exceeds jurisdiction of District Court, action must be brought in High Court. (T.T.C., Sec. 138) *Sam v. Sam*, 3 T.T.R. 203.

### Jurisdiction

Normally a court will not interfere in internal affairs of an organization. *Ngiraiechol v. Inglai Clan*, 3 T.T.R. 525.

Before acting in a clan matter the courts will give a clan reasonable opportunity to settle its own problems if that can be done fairly and peacefully. *Delemel v. Tulop*, 3 T.T.R. 469.

An exception to the rule that courts will not interfere in internal affairs of an organization is when someone seeks aid from the court to preserve either vested rights, which are considered in the nature of property, or to enforce an applicable statute or other law. *Ngiraiechol v. Inglai Clan*, 3 T.T.R. 525.

Where the Palau District Legislature, having exclusive authority to determine the qualification of its membership, selected a person other than the acting title bearer to sit in place of the hereditary chief of a municipality, it was a clan problem which should be acted upon in accordance with traditional custom. *Ngiraiechol v. Inglai Clan*, 3 T.T.R. 525.

A clan is entitled to exercise a wide discretion in handling its own affairs, so long as it acts fairly with proper regard for the interests of all its members and within the limits of the law, but when it fails to operate within those limits, the courts have an obligation to intervene in the interests of justice and maintaining the peace when the matter is presented to them by one or more of the interested parties. *Delemel v. Tulop*, 3 T.T.R. 469.

Where court was faced with the necessity of working out some arrangement that would solve a clan agreement the referring of the matter to a Master for a determination of the honest wishes of the clan was a reasonable and proper solution. *Delemel v. Tulop*, 3 T.T.R. 469.

## COURTS

### Judges

It is right and duty of incumbent judge in Trust Territory upon expiration of term of office, to hold over and exercise duties and functions of office until his successor has been appointed, if incumbent is not removed from office. *Trust Territory v. Isikeil*, 3 T.T.R. 161.

### Parties

Right of lineage to represent individual member is implicit under Truk custom and should be given effect in interests of stability of social relations and avoiding of multiplicity of action. *Ketari v. Taro*, 3 T.T.R. 279.

Under Truk custom, individual and his lineage are so closely identified as to cause uncertainty as to who are necessary or proper parties to civil actions. *Ketari v. Taro*, 3 T.T.R. 279.

In accordance with Truk custom, anyone can speak for Trukese lineage in Community, District or High Court who shows normal right to do so, unless some issue is raised about it at the time. *Ketari v. Taro*, 3 T.T.R. 279.

### Judicial Discretion

Many different expressions have been used to describe the exact meaning of "judicial discretion" sometimes referred to as a "legal discretion" to make clear that it does not imply a completely free choice, but one limited by general principles of law. *Lizama v. Trust Territory*, 3 T.T.R. 436.

A legal discretion is one that is regulated by well known and established principles of law. *Lizama v. Trust Territory*, 3 T.T.R. 436.

### Judicial Notice

Court may take judicial notice of an affirmative defense, including limitation of actions in appropriate cases, without defense having been specifically pleaded. *Butirang v. Uchel*, 3 T.T.R. 382.

Judicial notice maybe taken without request by party, of common law, constitutions and public statutes in force in any part of Trust Territory, including statutory limitation of tort actions to two years. (Rules of Evidence, Rule 9; T.T.C., Sec. 317) *Butirang v. Uchel*, 3 T.T.R. 382.

Where complaint for personal injury shows on its face that cause of action arose more than three years prior to filing of complaint, court will take judicial notice that action is barred. (T.T.C., Sec. 317) *Butirang v. Uchel*, 3 T.T.R. 382.

It is a well-known fact that gasoline sniffing causes a form of intoxication and that it can also seriously and permanently injure the respiratory system and, also, do brain damage. *In re Ichiro*, 3 T.T.R. 406.

### Master's Report

As any person signing a document must be responsible for its contents, then it is improper for a Clerk of Courts to prepare a Master's Report

## COURTS

and then have the Master sign it without giving it the proper attention. *Lanilobar v. Kiojan*, a T.T.R. 248.

### Settlements

District and Community Courts may assist in settlement of controversies and reduce agreements to writing which, when signed by parties, have effect of judgments. (T.T.C., Sec. 164) *Philip v. Carl*, a T.T.R. 97.

### Continuance

Trial court is entitled to use its sound discretion in granting postponements when there is good reason for them. *Figir v. Trust Territory*, a T.T.R. 127.

Trial court's discretion in granting postponement will not be interfered with on appeal unless it appears there has been definite abuse of that discretion. *Figir v. Trust Territory*, a T.T.R. 127.

### Dismissal

Judgment dismissing action, based upon stipulation of parties, settling and adjusting matter of action and agreeing to dismissal, is bar to subsequent action for same cause of action. *Philip v. Carl*, a T.T.R. 97.

### Costs

Where plaintiff in good faith brings action to determine ownership of land in Truk, plaintiff will not be charged with additional costs which may be granted in cases where action is groundless, even though evidence to refute plaintiff's claim is strong. (T.T.C., Sec. 265) *Irons v. Mailo*, a T.T.R. 194.

## CRIMINAL LAW.

### Generally

Criminal statutes should not be used to try disputed rights in land or as substitute for other adequate civil remedies for trespass. *Tasio v. Trust Territory*, a T.T.R. 262.

Civil trespass is distinct and separate from offense of criminal trespass. (T.T.C., Sec. 401) *Tasio v. Trust Territory*, 3 T.T.R. 262.

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. (T.T.C., Sec. 401) *Tasio v. Trust Territory*, a T.T.R. 262.

Treatment accorded accused in police station appeared directly contrary to section lab of the Trust Territory Constabulary Manual which provided that prisoners were to be treated fairly and impartially, properly clothed and fed and provided with clean, properly equipped living quarters. *Trust Territory v. Poll*, 3 T.T.R. 387.

### Admissions

Expressions of regret or apologies for another's injury are in public interest and should not be discouraged or held against accused in crimi-

## CRIMINAL LAW

nal proceedings as admission of anything not stated in them. Haruo v. Trust Territory, 3 T.T.R. 39.

Apology to mother of victim of motorcycle accident does not indicate admission of blame or fault on part of one accused of reckless driving. (T.T.C., Sec. 815(b), as amended) Haruo v. Trust Territory, 3 T.T.R. 39.

### Double Jeopardy

Same act may constitute offense against two sovereignties and may be punished under laws of each. Trust Territory v. Ogo, 3 T.T.R. 287.

### Self-Defense

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 T.T.R. 575.

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. (T.T.C., Sec. 377-A) Asako v. Trust Territory, 3 T.T.R. 191.

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 T.T.R. 575.

Where accused in criminal prosecution was aggressor in struggle, having to move fifteen feet in order to stab victim who was on ground, accused cannot claim right of self-defense. Santiago v. Trust Territory, 3 T.T.R. 575.

### Restitution

Section 171 of the Trust Territory Code which gives the court discretion to order restitution or compensation contemplates restitution as punishment. (T.T.C., Sec. 171) Moolang v. Figir, 3 T.T.R. 455.

### Statutes

It is responsibility of all those concerned with District Court proceedings to determine whether statute involved in criminal prosecution has been amended or repealed. Borja v. Trust Territory, 3 T.T.R. 254.

### -Construction

Penal statutes are to be interpreted strictly against government and liberally in favor of accused. Tasio v. Trust Territory, 3 T.T.R. 262.

Sufficient statement of essential ingredients of criminal offense is matter of substance, not of form, and want of such statement is beyond protection of curative statutes. Willianter v. Trust Territory, 3 T.T.R. 227.

### Arrest for Examination

There is no equivalent in the federal system of the arrest for examina-

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tion for 48 hours permitted by the Trust Territory Code. (T.T.C. Sec. 464) Trust Territory v. Poll, 3 T.T.R. 387.

Section 464 of the Trust Territory Code relating to rights of persons arrested for examination *imposed* no express obligation on anyone to inform the arrested person of his rights under the section. (T.T.C., Sec. 464) Trust Territory v. Poll, 3 T.T.R. 387.

Section 13c of the Trust Territory Constabulary Manual made clear that those persons held undergoing investigation came within the term "prisoner" as used in section 13b of that Manual. Trust Territory v. Poll, 3 T.T.R. 387.

### Discretion to Prosecute

Courts have no right to interfere with prosecutor's decision to go ahead with prosecution, although consent of court is necessary for dismissal. Celis v. Trust Territory, 3 T.T.R. 237.

Under present state of Trust Territory law, decision of whether government should go ahead *with* prosecution contrary to wishes of complaining witness or injured party *is* left to discretion of prosecuting officials. Celis v. Trust Territory, 3 T.T.R. 237.

Relief from situation where criminal defendant has made restitution and complaining witness has forgiven defendant must depend on action by either executive or legislative branch of government and is beyond sphere of courts under present state of law. Celis v. Trust Territory, 3 T.T.R. 237.

### Complaint

Information in criminal prosecution must allege all essential elements of crime charged in order to fully apprise accused of nature of accusation. Willianter v. Trust Territory, 3 T.T.R. 227.

### -Warrant of Arrest

Courts and officials authorized to *issue* warrants have an obligation to give effect to the policy that in the case of offenses punishable by not more than one hundred dollars fine or *six* months' imprisonment or both, a penal summons shall be issued in place of a warrant of arrest unless there is special reason to believe that the public interest requires arrest. (T.T.C., Sec. 450) Eram v. Trust Territory, 3 T.T.R. 442.

The fact that an accused is not prepared to post bail is not a proper reason for delay in bringing him before a court or official authorized to *issue* a warrant. Eram v. Trust Territory, 3 T.T.R. 442.

### —Defect

Appellate court may order new trial and direct trial court to permit amendment of complaint where complaint does not allege essential elements of offense. (T.T.C., Sec. 200) Willianter v. Trust Territory, 3 T.T.R. 227.

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### Pre-Trial Procedure

Regardless of what has transpired between time of arrest and trial, where appellant was properly charged and convicted in trial court and admitted his guilt in open court, appellate court will affirm conviction. *Meyer v. Trust Territory*, 3 T.T.R. 586.

### Rights of Accused-Generally

Decision of the United States Supreme Court concerning protection against self-incrimination and the right to counsel are entitled to great weight as precedents from another jurisdiction and should be recognized as goals to be reached so far as they are applicable to conditions existing in the Trust Territory. (T.T.C., Sec. 4) *Trust Territory v. Poll*, 3 T.T.R. 387.

Under the *Miranda* decision the mere fact that an accused person may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned. *Trust Territory v. Poll*, 3 T.T.R. 387.

### -Counsel

The Criminal Justice Act of 1964 aims to make competent counsel immediately and readily available to even the most indigent in criminal cases, other than for petty offenses, in the United States federal courts right from their first appearance before a commissioner or court, which under the federal system must follow the arrest "without unnecessary delay". (Public Law 88-455, 78 Stat. 552, 18 U.S.C. § 300 6A) *Trust Territory v. Poll*, 3 T.T.R. 387.

Court would apply traditional standards regarding right to counsel in the case of all confessions or admissions obtained by the police from persons in the Trust Territory until prosecuting authorities had reasonable notice of opinion changing standards. *Trust Territory v. Poll*, 3 T.T.R. 387.

The *Escobedo* decision established that as far as state courts in the United States are concerned the right to counsel extends to those in custody on suspicion and not yet charged with a specific crime and that statements obtained from them after their request to consult counsel had been disregarded or denied by the police cannot be admitted in evidence against them. *Trust Territory v. Poll*, 3 T.T.R. 387.

Under the *Miranda* decision it is necessary to warn an accused person not only that he has a right to consult with an attorney but also that if he is indigent a lawyer will be appointed to represent him. *Trust Territory v. Poll*, 3 T.T.R. 387.

### -Speedy Trial

It is burden of prosecution to take necessary steps to bring criminal matter to trial. *Trust Territory v. Ogo*, 3 T.T.R. 287.

## CRIMINAL LAW

Court has discretion to dismiss information, complaint or citation if there is unnecessary delay in bringing accused to trial. (T.T.C., Sec. 492) Trust Territory v. ago, 3 T.T.R. 287.

If delay in prosecution of criminal case is result of deliberate or negligent actions on part of prosecutor and he fails to show accused suffered no serious prejudice beyond that which ensued from ordinary and inevitable delay, defendant's Sixth Amendment rights have been denied. Trust Territory v. ago, 3 T.T.R. 287.

Where delays in prosecution of criminal case are due in part to absences of Public Defender, District Attorney and essential witness from Trust Territory, and affidavits stating case would be dismissed enabled defendant to obtain employment, accused suffered no prejudice beyond that which ensued from ordinary and inevitable delay. Trust Territory v. ago, 3 T.T.R. 287.

In criminal proceedings, accused cannot consent either personally or through counsel to postponement of trial and then use postponement as ground for avoiding trial. Figir v. Trust Territory, 3 T.T.R. 127.

By consenting to postponement of criminal trial, accused waives any objection he might otherwise have to delay as an interference with his right to speedy trial. (T.T.C., Sec. 4) Figir v. Trust Territory, 3 T.T.R. 127.

Where criminal trial is completed within eighteen days after incident involved, and accused consents to postponement, there is no basis for any claim of abuse of discretion by trial court. Figir v. Trust Territory, 3 T.T.R. 127.

### -Allocation

In United States District Courts, accused has right to be heard before sentence is imposed (right of allocation). (18 U.S.C. Sec. 4208(b); Fed. Rules of Crim. Proc., Rule 32(a) Uchel v. Trust Territory, 3 T.T.R. 578.

Records on appeal in criminal proceedings should affirmatively show that right of allocation has been accorded accused. Uchel v. Trust Territory, 3 T.T.R. 578.

It is unnecessary to reverse judgment in criminal proceedings for new sentencing when record fails to show that appellant has been given right of allocation as required by Trust Territory Code. Meyer v. Trust Territory, 3 T.T.R. 586.

### -Waiver

The *Miranda* decision concerning "custodial interrogation" requires that prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has right to the presence of an attorney, either retained or appointed, however, the person may waive

## CRIMINAL LAW

those rights provided the waiver is made voluntarily, knowingly and intelligently. *Trust Territory v. Poll*, 3 T.T.R. 387.

### Juveniles

Fact that juvenile delinquency is definite problem in place where criminal offense arose should not lead to disregard of clear provisions of Trust Territory law regarding juvenile offenders. *Celis v. Trust Territory*, 3 T.T.R. 237.

Trust Territory law provisions as to juvenile offenders contemplates importance of trying to secure cooperation of parents or guardians in helping rehabilitate minors. (T.T.C., Sec. 495) *Celis v. Trust Territory*, 3 T.T.R. 237.

Fifteen-year-old defendant in criminal case has absolute right to be tried with protections accorded juvenile offender. (T.T.C., Sec. 495) *Celis v. Trust Territory*, 3 T.T.R. 237.

Court in criminal proceedings has discretion to treat offender sixteen years of age or over in all respects as adult if in opinion of court his physical and mental maturity so justifies, but court has no such discretion as to fifteen-year-old offender. (T.T.C., Sec. 495) *Celis v. Trust Territory*, 3 T.T.R. 237.

### Trial Procedure-Generally

Under the Trust Territory Bill of Rights every person charged with crime has an absolute right to a fair and impartial trial, and the duty rests upon the courts, and also upon the prosecuting authorities to see that this right is upheld and sustained. *Lizama v. Trust Territory*, 3 T.T.R.436.

### -Plea of Guilty

Court in criminal case may refuse to accept plea of guilty and enter plea of not guilty even though accused purports to plead guilty. (Rules of Crim. Proc., Rule 10b(1)(b)» *Rodriguez v. Trust Territory*, 3 T.T.R. 179.

Where accused in criminal case submits plea of guilty through counsel and court does not interrogate accused personally, plea of guilty will be disregarded. (Rules of Crim. Proc., Rule 10b(1)(b)» *Rodriguez v. Trust Territory*, 3 T.T.R. 179.

Where accused pleads guilty in criminal case, court must ascertain from accused's own statements personally in open court that he is voluntarily making plea of guilty and understands nature of charge and general effect of plea, before plea is accepted. (Rules of Crim. Proc., Rule 10b(1)(b)» *Rodriguez v. Trust Territory*, 3 T.T.R. 179.

Where plea of guilty is offered by counsel for accused in criminal case, court should, before making determination that plea is voluntary and is made with understanding nature of charge, interrogate accused personally so that there is no question that accused authorized plea and under-

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stands its effect. (Rules of Crim. Proc., Rule 10b(1)(b)» Rodriguez v. Trust Territory, 3 T.T.R. 179.

**If** there is any doubt in trial court's mind about accused in criminal case making plea of guilty voluntarily, court should refuse to accept plea. (Rules of Crim. Proc., Rule 10b(1)(b)» Rodriguez v. Trust Territory, 3 T.T.R. 179.

### -Change of Plea

When accused in criminal case indicates he wishes to change plea from not guilty to guilty he should be arraigned over again and same procedures followed in questioning him as if he were offering plea in first instance. (Rules of Crim. Proc., Rule 10b(a)(b)» Rodriguez v. Trust Territory, 3 T.T.R. 179.

### -Exclusion of Witnesses

Ordinarily, a motion for exclusion of witness and any order on the subject should be made before the prosecution's or plaintiff's opening statement. Lizama v. Trust Territory, 3 T.T.R. 436.

Rule 19h of the Rules of Criminal Procedure relating to the exclusion of witnesses, like all other parts of those Rules, must be construed in the light of the purpose of the Rules and the overall obligations of a judge to act fairly and justly within the limits imposed on him by law. Lizama v. Trust Territory, 3 T.T.R. 436.

Exemptions from an order excluding witnesses should be applied equally to witnesses of both sides as far as circumstances permit. Lizama v. Trust Territory, 3 T.T.R. 436.

As to the exclusion of witnesses, it is generally considered that where exclusion is ordered all witnesses should be included, **unless** some good reason is shown for exempting certain ones. Lizama v. Trust Territory, 3 T.T.R. 436.

That there is good reason for exempting certain persons from the exclusion of witnesses is well recognized, thus an accused has an absolute right to be present even though he plans to testify, similarly one directly interested in the result of the trial, such as the complainant, may be exempted, and parties in civil action should be exempted on the same basis; so too expert witnesses and one who has actively assisted in the preparation of the case and is assisting counsel at the trial should be exempted. Lizama v. Trust Territory, 3 T.T.R. 436.

The order excluding witnesses should not prevent calling as a rebuttal witness one who has been in the courtroom **if** the side calling him had not planned to use him and could not reasonably have foreseen that he would be needed. Lizama v. Trust Territory, 3 T.T.R. 436.

### -Motion to Dismiss

Motion to dismiss one of counts in criminal case made before evidence is taken is without merit in that form, since alternative counts or

## CRIMINAL LAW

charges may be based on same facts. (Rules of Crim. Proc., Rule 6e)  
Figir v. Trust Territory, 3 T.T.R. 127.

### Burden of Proof-Reasonable Doubt

To warrant conviction in criminal case, government must prove accused guilty beyond reasonable doubt. Uchel v. Trust Territory, 3 T.T.R. 578.

Facts assumed by prosecution in criminal case which, if true, may show accused guilty of reckless driving, must be established by evidence beyond reasonable doubt. (T.T.C., Sec. 815(b), as amended) Haruo v. Trust Territory, 3 T.T.R. 39.

Prosecution in criminal case involving reckless driving has duty to show beyond reasonable doubt that accused either did something he definitely should not have done, or failed to do something which he definitely should have done. (T.T.C., Sec. 815(b), as amended) Haruo v. Trust Territory, 3 T.T.R. 39.

### Evidence

Where there is clear and positive testimony that defendant committed act charged and testimony is believed by trial court, evidence is sufficient to establish guilt. Aiichi v. Trust Territory, 3 T.T.R. 290.

### -Prior Commission of Crime

In criminal prosecution, it is not competent to prove defendant committed other crimes of like nature for purpose of showing that he would be likely to commit crime charged in indictment. Meyer v. Trust Territory, 3 T.T.R. 586.

In criminal prosecution, proof which shows or tends to show that accused is guilty of commission of other crimes and offenses at other times, even though they are of same nature as one charged in indictment, is incompetent and inadmissible for purpose of showing commission of particular crime charged, unless other offenses are connected with offense for which accused is on trial. Meyer v. Trust Territory, 3 T.T.R. 586.

Principle of excluding evidence of prior commission of crimes in criminal proceedings is applicable to evidence of attempt to commit crimes and statements of intention to commit them. Meyer v. Trust Territory, 3 T.T.R. 586.

### Witnesses

Where court calls witness in criminal trial which neither prosecutor nor defense has called, appellate court will construe action as exercise of caution endeavoring to make situation as clear as possible, and not as admission of doubt of sufficiency of evidence of prosecution. Uchel v. Trust Territory, 3 T.T.R. 578.

### Sentence

It is highly improper in sentencing accused in criminal case on plea of guilty to one crime to consider possibility he may have committed some

## CRIMINAL LAW

other more serious crime with which he has not been charged and against which he has had no opportunity to defend himself. *Celis v. Trust Territory*, 3 T.T.R. 237.

In criminal prosecution for reckless driving, relatively light sentence which was within limits specified by law is matter resting in discretion of court and to which accused cannot fairly object. (T.T.C., Sec. 815(b)» *Mesechol v. Trust Territory*, 3 T.T.R. 136.

Where criminal case is remanded for further proceedings as to fifteen-year-old defendant, he should receive credit for eighteen days of sentence already served before sentence was stayed pending appeal in any future action taken as to him. *Celis v. Trust Territory*, 3 T.T.R. 237.

### -Modification

Where there are no irregularities in criminal proceedings and sentence is not unreasonable, appellate court will not modify sentence of trial court because of hardship to defendant's wife. *Trust Territory v. Helgenberger*, 3 T.T.R.257.

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. (T.T.C., Sec. 379) *Fattun v. Trust Territory*, 3 T.T.R. 571.

### -Restitution

Restitution is matter which courts can properly consider in connection with matter of sentence in criminal cases. *Celis v. Trust Territory*, 3 T.T.R. 237.

### Appeals-Draft Report

Draft reports to appellate court should include matters tending to support grounds of appeal or matters tending to show grounds are not sound. (Rules of Crim. Proc., Rule 15b(3)» *Tasio v. Trust Territory*, 3 T.T.R. 262.

In appeal from criminal conviction, evidence which appellee wishes to have considered should be adequately set forth in District Court reports. (Rules of Crim. Proc., Rule 15b(3)» *Tasio v. Trust Territory*, 3 T.T.R. 262.

In appeal from criminal conviction, report from District Court to appellate court should include statement of all rulings and substance of all evidence needed for full understanding of questions raised by appeal. (Rules of Crim. Proc., Rule 15b(3)» *Tasio v. Trust Territory*, 3 T.T.R. 262.

### -Notice of Appeal

Timely filing of required notice of appeal in United States District Courts is essential to exercise of jurisdiction over appeal. *Uchel v. Trust Territory*, 3 T.T.R. 578.

## CRIMINAL LAW

Written notice of appeal in criminal proceedings is required in Trust Territory. (Rules of Crim. Proc., Rules 31(a), 32(b); T.T.C., Sec. 198) Uchel v. Trust Territory, 3 T.T.R. 578.

Under Federal Rules of Criminal Procedure, oral notice of appeal is insufficient. (Fed. Rules of Crim. Proc., Rule 37(a)» Uchel v. Trust Territory, 3 T.T.R. 578.

Oral notice of appeal in criminal proceedings is not in compliance with Trust Territory Rules of Criminal Procedure which require concise statement of grounds of appeal. (Rules of Crim. Proc., Rule 31(a)» Uchel v. Trust Territory, 3 T.T.R. 578.

Trial court may accept oral notice of appeal in criminal proceedings only as basis for temporary stay of execution of sentence. Uchel v. Trust Territory, 3 T.T.R. 578.

### -Scope of Review

Under Trust Territory Code and general principles of law, appellate court on criminal appeal is obligated to consider evidence in light most favorable to government. (T.T.C., Sec. 200) Uchel v. Trust Territory, 3 T.T.R. 578; Fattun v. Trust Territory, 3 T.T.R. 571; Timulch v. Trust Territory, 3 T.T.R. 208; Asako v. Trust Territory, 3 T.T.R. 191; Mesechol v. Trust Territory, 3 T.T.R. 136.

On appeal in criminal case in Trust Territory, evidence must be considered in light as favorable to government as is reasonable. Figir v. Trust Territory, 3 T.T.R. 127.

In appeals by accused in criminal case, evidence must be considered in light most favorable to government and on basis of what trial court had right to believe, not on what appellant wishes it believed. Aiichi v. Trust Territory, 3 T.T.R. 290.

In criminal appeal, evidence must be considered on basis of what trial court had right to believe, not on what accused wishes it believed. Timulch v. Trust Territory, 3 T.T.R. 208.

Appellate court on appeal in criminal case should make every reasonable presumption in "favor of determinations of trial court. Aiichi v. Trust Territory, 3 T.T.R. 290.

Where there is direct conflict in testimony in criminal proceedings before lower court, appellate court will not re-weigh evidence. Aiichi v. Trust Territory, 3 T.T.R. 290.

Where trial court in criminal proceedings is faced with conflicting testimony, and evidence favorable to government, **if** believed, clearly and expressly covers every element of crime, trial court's findings will not be upset on appeal. Figir v. Trust Territory, 3 T.T.R. 127.

Where substantial evidence of every essential element of crime charged is offered by prosecution in criminal proceedings, court will not upset determination of trial court even though there was evidence to contrary. Fattun v. Trust Territory, 3 T.T.R. 571.

## CRIMINAL LAW

### -Prejudicial Error

Trust Territory statute providing that criminal conviction will be reversed only where injustice to accused results from error committed during proceedings, is designed to afford full protection to accused and prevent guilty from escaping punishments. (T.T.C., Sec. 497) *Willianter v. Trust Territory*, 3 T.T.R. 227.

Finding of trial court will not be set aside for error or omission occurring during proceedings unless appellate court determines error has resulted in injustice to accused. (T.T.C., Sec. 497) *Willianter v. Trust Territory*, 3 T.T.R. 227.

### New Trial

Where evidence of guilt is conclusive in criminal proceedings, nothing would be accomplished by returning case for new trial, even though there are errors in record. *Meyer v. Trust Territory*, 3 T.T.R. 586.

Where evidence is confused and contradictory concerning actions of accused and victim as related to alleged criminal violation, 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 T.T.R. 601.

### Pardon and Parole

Petition for pardon or parole from sentence in criminal case should be directed to High Commissioner of Trust Territory or to District Administrator. (T.T.C., Sec. 435) *Trust Territory v. Helgenberger*, 3 T.T.R. 257.

## CUSTOM.

### Generally

"Custom" is usage by common consent, or uniform practice which becomes law of place or subject matter to which it relates. *Ychitaro v. Lotius*, 3 T.T.R. 3.

Custom must be accepted by those upon whom it places burden as well as by those who hope to profit from it. *Ychitaro v. Lotius*, 3 T.T.R. 3.

There may be, and often are, exceptions to that which is recognized as general custom. *Adelbai v. Ngirchoteot*, 3 T.T.R. 619.

When local custom fails to provide an acceptable solution for any given problem involving all residents of a governmental subdivision, it is the right of one or more of the three branches of the government, to advance a solution. *Ngiraiechol v. Inglai Clan*, 3 T.T.R. 525.

### Burden of Proof

When there is a dispute as to the existence or effect of a local custom, and the court is not satisfied as to either its existence or its applicability such custom becomes a mixed question of law and fact, and the party relying upon it must prove it to the satisfaction of the court. *Lajutok v. Kabua*, 3 T.T.R. 630.

## DOMESTIC RELATIONS

### Judicial Notice

If a local custom is firmly established and widely known the High Court will take judicial notice of it. (T.T.C., Sec. 21) *Lajutok v. Kabua*, 3 T.T.R. 630.

## D

### DOMESTIC RELATIONS.

#### Confirmation of Custom

No restrictions or limitations are imposed by Trust Territory law upon granting of annulments, divorces or adoptions in accordance with local custom. *Ketari v. Taro*, 3 T.T.R. 279.

#### Adoption

Under Trust Territory law, district court may decree adoption of minor children. (T.T.C., Sec. 706) *In re de Leon*, 3 T.T.R. 167.

Trust Territory law does not provide for adoption of adult. (T.T.C., Sec. 706) *In re de Leon*, 3 T.T.R. 167.

Adoption, see, also, Ponape Custom-Adoption.'

#### Divorce

District and Community Courts are authorized to grant divorces and annulments and to make orders for support of minor children and support of either party. (T.T.C., Sees. 702, 704) *Sam v. Sam*, 3 T.T.R. 203.

Court divorce is only authorized on proof of one of grounds listed in Code which are recognized by law to constitute good reason. (T.T.C., Sec. 698) *Ketari v. Taro*, 3 T.T.R. 279.

Absolute decree of divorce granted pursuant to Trust Territory Code restores parties to state of unmarried persons so far as marriage in question is concerned. (T.T.C., Sec. 705) *Sam v. Sam*, 3 T.T.R. 203.

Once marriage has been dissolved by court action, it is not possible to dismiss action on basis of motion filed thereafter reciting that parties have reconciled. *Mutong v. Mutong*, 3 T.T.R. 165.

#### -Custom

Local customary divorces are permitted under Trust Territory law. (T.T.C., Sec. 714) *Ketari v. Taro*, 3 T.T.R. 279.

#### - "A Mensa Et Thoro"

Divorce *a mensa et thoro* is limited divorce from bed and board which terminates obligation and right of cohabitation but does not affect status of parties as married persons. *Sam v. Sam*, 3 T.T.R. 203.'

#### Separate Maintenance

Decree of separate maintenance affirms marriage relation and enforces support obligations of that relation. *Sam v. Sam*, 3 T.T.R. 203.

## DOMESTIC RELATIONS

### Support

There is no authorization for District Court to consider prayers for support except in actions for divorce or annulment and unless prayer is for amount within jurisdiction of court. (T.T.C., Secs. 138, 702, 704) Sam v. Sam, 3 T.T.R. 203.

## E

### ELECTIONS.

#### Legislative Responsibility

Election contests are essentially responsibility of legislative branch of government under American theory of separation of powers, and beyond control of judicial power except where responsibility therefor is expressly given judiciary by legislation. Liberal Party v. Election Com'n, 3 T.T.R. 293.

Where legislature is judge of qualifications, elections and returns of its own members, such jurisdiction is exclusive. Liberal Party v. Election Com'n, 3 T.T.R. 293.

None of courts of Trust Territory have jurisdiction over contests for election of members of Congress of Micronesia, except to extent and under circumstances that such jurisdiction is expressly granted by legislation. Liberal Party v. Election Com'n, 3 T.T.R. 293.

#### Irregularities

Where courts are given jurisdiction over election contests, basic question is whether result of elections has been fair, and mere irregularities will not ordinarily suffice to upset election in absence of allegations and proof that irregularities were prejudicial or changed results of election, or where this result is necessarily inferred. Liberal Party v. Election Com'n, 3 T.T.R. 293.

In action to contest election results, where it is alleged illegal votes were cast and it is not possible for either party to prove how alleged illegal votes affected result, the contestant, having burden of proof, must fail. Liberal Party v. Election Com'n, 3 T.T.R. 293.

#### Quo Warranto

Except where common law is modified by legislation, quo warranto proceeding to contest election must be brought in name of government against person or persons charged with exercising particular office without lawful right. Liberal Party v. Election Com'n, 3 T.T.R. 293.

Where complaint to contest election is brought by political party against election commissioner and not by government official against one alleged to be exercising particular office without lawful right, action does not resemble quo warranto proceeding. Liberal Party v. Election Com'n, 3 T.T.R. 293.

## EMINENT DOMAIN

Quo warranto proceeding is ineffective to contest election for members of Congress of Micronesia, since Congress is sole judge of elections and qualifications of its members. (Executive Order, Secretary of Interior No. 2882, Section 17(i)» Liberal Party v. Election Com'n, 3 T.T.R. 293.

### EMBEZZLEMENT.

#### Generally

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. (T.T.C., Sec. 393) Willianter v. Trust Territory, 3 T.T.R. 227.

### EMINENT DOMAIN.

#### Generally

While power of eminent domain is attribute of sovereignty, this does not mean it can only be exercised by body which is recognized as sovereign in international sense. Trust Territory v. Ngiralois, 3 T.T.R. 303.

Trust Territory Code provisions regarding eminent domain are not inconsistent with grant of legislative power to Congress of Micronesia. Trust Territory v. Ngiralois, 3 T.T.R. 303.

Provisions of Trust Territory law regarding eminent domain proceedings are valid, give High Court jurisdiction in accordance with their terms, and do not deny due process of law or provide for taking of property without just compensation. (T.T.C., Sec. 4) Trust Territory v. Ngiralois, 3 T.T.R. 303.

Where taking of property by Japanese Government occurred in 1931, Trust Territory Bill of Rights provision regarding payment of compensation where property is taken for public use is not applicable, since Bill of Rights provision is prospective only. (T.T.C., Sec. 4) Alig v. Trust Territory, 3 T.T.R. 603.

#### Delegation of Power

Power of eminent domain may be delegated expressly or by necessary implication and passes naturally with legislative power even though that power may be subject to control by higher level of government. Trust Territory v. Ngiralois, 3 T.T.R. 303.

Power of eminent domain may be delegated to subordinate governments and to privately owned public utility corporations. Trust Territory v. Ngiralois, 3 T.T.R. 303.

#### Public Use

High Commissioner of Trust Territory may only declare to be public use, for purposes of eminent domain, something which he honestly and reasonably believes to be that. (T.T.C., Sec. 1302(b)) Trust Territory v. Ngiralois, 3 T.T.R. 303.

## EMINENT DOMAIN

District Attorney or Attorney General must make prima facie showing that property desired by Government is for public use before court proceeds to hear parties. (T.T.C., Sec. 1302(b)» Trust Territory v. Ngiralois, 3 T.T.R. 303.

While court will give great weight to determination of High Commissioner regarding what is a public use for purposes of eminent domain, if he arbitrarily and unreasonably declares what is actually private use to be public use, court may adjudicate matter and determine whether use is in fact public, since question is ultimately a judicial one. (T.T.C., Sec. 1302(b)» Trust Territory v. Ngiralois, 3 T.T.R. 303.

Where government takes land to obtain coral therefrom for construction of government airfield and access road to airfield, taking is for public use. Trust Territory v. Ngiralois, 3 T.T.R. 303.

### Compensation

Provision in Trust Territory law that private property shall not be taken for public use without just compensation does not require that compensation be paid before possession is taken, but merely that reasonable, certain and adequate provision is made before owner's occupancy is disturbed. (T.T.C., Sec. 4) Trust Territory v. Ngiralois, 3 T.T.R. 303.

### Damages

Landowners cannot claim punitive damages in condemnation proceedings where government entered on land in mistaken but honest belief that land was government land and without any intention to interfere with any rights it knew any private owners had. Trust Territory v. Ngiralois, 3 T.T.R. 303.

### Value

Court will set fair value of land in condemnation proceedings, including trees and coral rock removed from land, as of time government took possession of land, and allow interest from that date. Trust Territory v. Ngiralois, 3 T.T.R. 303.

High Commissioner's determination of value of land taken in condemnation proceedings constitutes admission that such amount is average value of land, including things attached to it and coral in it, so far as government is concerned, and no separate allowance will be made for trees and coral severed from land by government when owners fail to produce contrary evidence. Trust Territory v. Ngiralois, 3 T.T.R. 303.

## EQUITY.

### Generally

A court of equity will not tolerate unfairness, inequitable conduct, or corruption in a complainant however strong and clear his equitable right against the other party may be. In re De Fang, 3 T.T.R. 423.

While equity does not purport to enforce moral as distinguished from legal obligations, it can and should refuse aid to a litigant who has

## ESTOPPEL

been guilty of such reprehensible conduct in reference to the subject matter of the litigation that good conscience must revolt against granting him relief: In re De Fang, 3 T.T.R. 423.

As between equities otherwise equal, he who has the prior equity in point of time is entitled to a like priority in point of right. Akos v. Orem, 3 T.T.R. 504.

Where one of two innocent parties must suffer from the wrongful act of another, the loss should fall upon the one who, by his conduct, created the circumstances which enabled the third party to perpetuate the wrong and cause the loss. Akos v. Orem, 3 T.T.R. 504.

### Clean Hands

A party in equity may invoke the maxim of "clean hands" without pleading it. In re De Fang, 3 T.T.R. 423.

In order that a suit in equity may be dismissed under the "clean hands" maxim, the defendant need not invoke the maxim, the court will act sua sponte or of its own motion. In re De Fang, 3 T.T.R. 423.

A court of equity will grant no relief to a plaintiff who does not come into court with clean hands, that is, who has been fraudulent and deceitful in relation to the matter before the court. In re De Fang, 3 T.T.R. 423.

Under the maxim he who comes into equity must come with clean hands, a litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair or dishonest, or fraudulent and deceitful as to the controversy in issue. In re De Fang, 3 T.T.R. 423.

### Injunctions

Mere literal meaning of "irreparable injury" as ordinarily used in other connections cannot be relied on as used in connection with injunctive relief. Trust Territory v. Saipan Bus Company, 3 T.T.R. 76.

Protection against operation of public utility without franchise or license is well recognized situation in which injunction may be used. Trust Territory v. Saipan Bus Company, 3 T.T.R. 76.

### Laches

Where party who claims title to land in Palau Islands on behalf of clan had opportunity to raise claim in Japanese courts in 1942, and again at hearing of title determination and subsequent civil action, party has delayed too long in asserting clan's interests. Ngirudelsang v. Itol, 3 T.T.R. 351.

## ESTOPPEL.

### Generally

In a case in which the circumstances would justify the predication of an estoppel against an owner with respect to the assertion of the fact

## **ESTOPPEL**

of ownership, his consent to the consummation of a transaction involving the disposition of his land may sometimes constitute one of the elements which is regarded as pointing to the particular inference that he is debarred from denying that the person who assumed to deal with the property as its owner was authorized to do so. *Akos v. Orem*, 3 T.T.R. 504.

## **EVIDENCE.**

### **Burden of Proof**

Burden of proving case is upon person who puts it forward and if pleadings consist of allegations of facts by plaintiff and denial by defendant, burden of proving facts is upon plaintiff. *Tasio v. Yesi*, 3 T.T.R. 598.

Where at conclusion of trial, evidence is evenly balanced, decision must go against party who has burden of proof. *Tasio v. Yesi*, 3 T.T.R. 598.

## **EXECUTORS AND ADMINISTRATORS.**

### **Settlement of Estate Without Administration**

An application for dispensing with administration may be granted in the district where the decedent died where notice of application has been published and no objection filed with the Court, no creditors have filed claims, no inheritance tax is due, and the heirs and next of kin have entered into a settlement agreement. *In re Jakkein*, 3 T.T.R. 260.

## **F**

## **FORMER ADMINISTRATIONS.**

### **Applicable Law**

Legality of act should be decided according to law as it was at time act was done. *Protestant Mission v. Trust Territory*, 3 T.T.R. 26.

Where individual took possession of land in Truk under grant from Spanish Government, act must be judged by law as it was at that time and not by more recent concepts. *Raimato v. Trust Territory*, 3 T.T.R. 269.

Question of whether land settlement contract made with German authorities gave right below high-water mark should be determined primarily by law and practice of German Administration on Ponape. *Protestant Mission v. Trust Territory*, 3 T.T.R. 26.

Under German Administration on Ponape, all property from high-water mark out was considered to belong to German Government, with exception of three private mangrove reserves which were specifically granted by government. *Protestant Mission v. Trust Territory*, 3 T.T.R. 26.

### **Official Acts**

Present administration is entitled to rely upon and respect acts of

## FORMER ADMINISTRATIONS

former administration of these islands. *Raimato v. Trust Territory*, 3 T.T.R.269.

There was nothing legally wrong in filling in of land below high-water mark by Japanese Government or its claim of ownership of such land. *Protestant Mission v. Trust Territory*, 3 T.T.R. 26.

Where land on Ponape Island below tide-water mark was filled in by Japanese Government, it became upland which was clearly claimed by Japanese Government. *Protestant Mission v. Trust Territory*, 3 T.T.R. 26.

Undertaking by Japanese Government on Ponape Island to permit private owners coming by boat to pass across filled-in land owned by government constitutes easement appurtenant to adjoining property. *Protestant Mission v. Trust Territory*, 3 T.T.R. 26.

### Recognition of Established Rights

Where rights have persisted for many years under prior administration and party has failed to avail himself of agencies and courts of that administration, it is not proper function of courts of present administration to upset rights so long established and recognized by former administration. *Sehk v. Sohn*, 3 T.T.R. 348.

In the absence of something very specific which has happened to change rights in land since the end of the Japanese administration the court will not attempt to upset such right now. *Sehk v. Sohn*, 3 T.T.R. 420.

**If** there was anything wrong about the conveyance of land to Japanese interests for use as a railroad site and buildings connected with it in 1934 or earlier, it is too late now to have the matter corrected by court action. *In re De Castro*, 3 T.T.R. 446.

### Redress of Prior Wrongs

**It** is not proper function of courts of present administration to right wrongs which may have for many years before been persisted in by former administration. *Raimato v. Trust Territory*, 3 T.T.R. 269.

Although present administration may be willing in some cases to grant relief from hardships imposed by law in force under former administration where it is under no obligation to do so, this is matter of policy to be decided by law-making authorities and not by courts. *Raimato v. Trust Territory*, 3 T.T.R. 269.

**If** there were any private rights below high-water mark under Ponape custom, they were taken away by German land reform, and **if** that was a wrong, it is now too late for courts of present administration to correct it. *Protestant Mission v. Trust Territory*, 3 T.T.R. 26.

Japanese Government on Ponape in 1934 proclaimed all areas below high-water mark belonged to government except for rights specifically granted by government authority, and **if** there was any wrong here, it is now too late to correct it. *Protestant Mission v. Trust Territory*, 3 T.T.R. 26.

## FORMER ADMINISTRATIONS

If there was anything wrong with land grant by Spanish Government to individual grantee, it is too late for claimants to expect relief from present administering authority as matter of right. *Raimato v. Trust Territory*, 3 T.T.R. 269.

### -Exception to Applicable Doctrine

Government of Trust Territory is not required as matter of right to correct wrongs which former government may have permitted, except in those cases where wrong occurred so near time of change of administration that there was no opportunity for it to be corrected through courts or other administration of the former administration. *Alig v. Trust Territory*, 3 T.T.R. 603; *Raimato v. Trust Territory*, 3 T.T.R. 269; *Protestant Mission v. Trust Territory*, 3 T.T.R. 26.

### Taking of Private Property by Japanese Government-Limitations

The Trust Territory of the Pacific Islands has not consented to be sued for return of property taken by Japanese Government in 1931, nor for damages and profits accruing to it as result of possession of such property. *Alig v. Trust Territory*, 3 T.T.R. 603.

## FRANCHISE.

### Generally

A franchise, while it may include a permit or license, is something far more than either of these. *Trust Territory v. Saipan Bus Company*, 3 T.T.R. 76.

Franchise constitutes property, is entitled to protection of law like other property, and cannot be revoked at mere will of grantor in absence of reservation of such right. *Trust Territory v. Saipan Bus Company*, 3 T.T.R. 76.

Franchise regularly involves contract with governmental power subject to governmental control in certain respects because of its public nature. *Trust Territory v. Saipan Bus Company*, 3 T.T.R. 76.

### Grant

Under American concept of separation of powers, grant of franchise is legislative function and franchise rights cannot be given without legislative authority. *Trust Territory v. Saipan Bus Company*, 3 T.T.R. 76.

### Unauthorized

Where, object of franchise and contract made pursuant to it is not inherently bad, or involving acts that are "mala in se", nor prohibited by law, and their provisions are divisible, effect will be given to legal portions apart from unauthorized portions. *Trust Territory v. Saipan Bus Company*, 3 T.T.R. 76.

Franchise agreement which is of no force and effect as a franchise may still be effective as a permit and as specification of work to be done for payments called for in contract. (T.T.C., Sec. 1100). *Trust Territory v. Saipan Bus Company*, 3 T.T.R. 76.

## HIGHWAYS AND STREETS

When franchise has not been legally authorized, Franchise Agreement and Contract for Transporting School Children made pursuant to it are not entitled to be given full effect. *Trust Territory v. Saipan Bus Company*, 3 T.T.R. 76.

### FRAUD.

#### Generally

Fraud as considered in equity matters regularly involves deceiving person to his disadvantage and is not to be presumed without good cause. *Trust Territory v. Saipan Bus Company*, 3 T.T.R. 76.

Honest misrepresentations of law, or of what courts finally decide law to be, will not ordinarily form basis of valid claim for fraud. *Trust Territory v. Saipan Bus Company*, 3 T.T.R. 76.

## G

### GIFTS.

#### Generally

Before any gift is completed there must be an intention to make a gift on a delivery to and acceptance by the donee. *Rechemang v. Belau*, 3 T.ToR. 552.

Whether a transfer is a conditional or an irrevocable gift depends upon the intent of the donor and the understanding of the parties as to that intent, and evidence as to the intent and understanding must relate to the conduct of the parties, i.e., the objective manifestations of intent, when the parties themselves are no longer living. *Lajutok v. Kabua*, 3T.ToR. 630.

#### "Causa Mortis"

A gift *causa mortis* is defined as being made in contemplation of death from a present illness or some immediate peril, which if death does not result revokes the gift. *Rechemang v. Belau*, 3 T.T.R. 552.

#### Land

Since the statute of frauds is not in effect in the Trust Territory, the law as developed from gifts of chattels is equally applicable to gifts of land. *Rechemang v. Belau*, 3 T.T.R. 552.

## H

### HIGHWAYS AND STREETS.

#### Pedestrians

Where there are no sidewalks provided, pedestrians have right to be on highway if they are using it properly. *Mesechol v. Trust Territory*, 3 T.T.R. 136.

## INFANTS

I

### INFANTS

#### Delinquent Child

Assuming that the child in question was held for too long a period before being released by the sheriff, that would not constitute a defense in an action to determine whether the child was a delinquent child under Section 437 of the Trust Territory Code. (T.T.C., Sec. 437) In re Ichiro, 3 T.T.R. 406.

No medical testimony was necessary to support finding that because of gasoline sniffing child in question was a delinquent child under Section 437 of the Trust Territory Code, where sheriff observed child inhaling gasoline fumes for one-half hour and the child thereupon stiffened and vomited. (T.T.C., Sec. 437(d)» In re Ichiro, 3 T.T.R. 406.

### INTERNATIONAL LAW.

#### Sovereignty

There are degrees of sovereignty which may be exercised by certain bodies which are sovereign or in position like sovereign with regard to certain matters, while clearly not sovereign in international sense. Trust Territory v. Ngiralois, 3 T.T.R. 303.

#### -Sovereign Immunity

Actual sovereignty in traditional sense is not essential to right of a government to sovereign immunity from suit without its consent. Alig v. Trust Territory, 3 T.T.R. 603.

A government may be entitled to and enjoy some attributes of sovereignty without necessarily having all of them, and court will consider fundamental purpose of sovereign immunity in order to determine which governments principle applies to. Alig v. Trust Territory, 4 T.T.R. 603.

Sovereign immunity attaches to a government having wide legislative power, as an incident of that power, even though government may not be truly sovereign. Alig v. Trust Territory, 3 T.T.R. 603.

J

### JUDGMENTS.

#### Default

If defendant answers civil complaint at any time prior to entry of default, he is permitted to contest claim as well as amount. Ngirchokebai v. Santos, 3 T.T.R. 337.

Where default judgment is entered in docket in civil action, plaintiff's only obligation is to prove amount to which he is entitled. Ngirchokebai v. Santos, 3 T.T.R. 337.

## JUDGMENTS

Once default in civil action has been entered in docket, unless good cause is shown for setting it aside, plaintiff may proceed with establishment of amount of his judgment. *Ngirchokebai v. Santos*, 3 T.T.R. 337.

Where default judgment is entered against defendant for failure to appear or answer civil complaint, defendant's only interest is then to defend against amount claimed and not against his liability under the claim. *Ngirchokebai v. Santos*, 3 T.T.R. 337.

In interests of fairness and justice, court will permit defendant who is in default to contest amount of recovery claimed by plaintiff although procedure is not strictly in accord with practice followed in United States. *Ngirchokebai v. Santos*, 3 T.T.R. 337.

Failure of defendant to timely obtain counsel to appear in civil action is not grounds for setting aside default. *Ngirchokebai v. Santos*, 3 T.T.R. 337.

Defendant's failure to answer civil complaint or to retain counsel to represent him until after entry of default does not excuse default. *Ngirchokebai v. Santos*, 3 T.T.R. 337.

### Res Judicata

Doctrine of res judicata inheres in legal systems of all civilized nations as essential to public welfare. *Likinono v. Nako*, 3 T.T.R. 120.

Res Judicata is defined literally as "the matter has been adjudged". *Osawa v. Ludwig*, 3 T.T.R. 465.

The doctrine of res judicata is distinguishable from the double jeopardy provision barring two punishments for the same offense in that it precludes a second trial of the same facts between the same parties. (T.T.C., Sec. 4) *Moolang v. Figir*, 3 T.T.R. 455.

Interests of both the public and parties concerned require that there be an end to time when rights clearly established can be properly questioned, so that public and parties might not be endlessly burdened with dispute. *Kikinono v. Nako*, 3 T.T.R. 120.

Principle of res judicata rests upon ground that party bound by doctrine, or another party in privity with him, has litigated or had opportunity to litigate a question or issue or controversy in former action and may not litigate it again with same opponent or one claiming under him. *Wong v. Sungiyama*, 3 T.T.R. 367.

The doctrine of res judicata is that an existing final judgment rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction, is conclusive of rights, questions, and facts in issue, as to the parties and their privies in all other actions in the same or any other jurisdictional tribunal of concurrent jurisdiction. *Moolang v. Figir*, 3 T.T.R. 455.

It is a fundamental principle of jurisprudence that material facts of questions which were in issue in a former action, and were there admitted or judicially determined, are conclusively settled by a judgment

## JUDGMENTS

rendered therein and that such facts or questions become res judicata and may not again be litigated in a subsequent action between the same parties or their privies. *Osawa v. Ludwig*, 3 T.T.R. 465.

Courts are expected to apply doctrine of res judicata in refusing to reopen matters once decided by court having jurisdiction over them, except where there is strong showing of gross unfairness, fraud, or subsequent occurrences which make it unjust that decision should stand. *Likinono v. Nako*, 3 T.T.R. 120.

The fact that a party failed or neglected to establish certain facts at a former trial does not give his successor a right to do so by filing a new action covering the same subject matter. *Osawa v. Ludwig*, 3 T.T.R. 465.

Where the matter set forth in the complaint and in plaintiff's claim in a new action have been tried and decided in a prior action it cannot be tried again in a new proceeding. *Osawa v. Ludwig*, 3 T.T.R. 465.

In order for doctrine of res judicata to be applied in any court action, it is necessary that same questions were litigated by same parties in prior action. *Wong v. Sungiyama*, 3 T.T.R. 367.

Where same parties litigated same questions in prior court action, court's rulings in that action are binding upon parties in subsequent action and only questions reserved for future decision may be considered in second suit. *Wong v. Sungiyama*, 3 T.T.R. 367.

A criminal judgment, including the provision for restitution under statute, is not a bar to a civil action under the doctrine of res judicata. (T.T.C., Sec. 171) *Moolang v. Figir*, 3 T.T.R. 455.

Where the right of a person to use land as long as he wishes had been settled by judgment in a previous case, under the doctrine of res judicata the same question could not be tried a second time between the same parties. *Yechadrechemai v. Ebau*, 3 T.T.R. 511.

Where an action was filed within one year of the erroneous judgment in a case concerning land in question, court was not bound by the doctrine of res judicata and could decide the present case upon the evidence adduced. *Owang Lineage v. Ngiraikelau*, 3 T.T.R. 560.

Where court in former action between same parties involving same property limited mortgagee's security interest to certain portion of land in question, court in subsequent case must likewise limit mortgage security. *Wong v. Sungiyama*, 3 T.T.R. 367.

### Interest

Interest on judgment begins from date judgment is entered. (T.T.C., Sec. 282) *Torres v. Cruz*, 3 T.T.R. 569.

### Relief From Judgment

In order to maintain the stability of judgments in the Trust Territory the provisions of Rule 18e of the Rules of Civil Procedure must be consistently followed. *Lanilobar v. Kiojan*, 3 T.T.R. 248.

## LARCENY

The failure of a Clerk of Court to provide a translated copy of the judgment to the complaining defendant is not ordinarily a sufficient ground for the opening or vacating of a judgment resulting therefrom. Lanilobar v. Kiojan, 3 T.T.R. 248.

Where testimony recorded in Master's Report was generally favorable to defendants, and if said testimony had been omitted from the Report it would not have strengthened defendant's position in any way, the defendants had not shown that they were materially prejudiced by the Master's mistake so as to entitle them for relief from judgment under Rule 18e of the Rules of Civil Procedure. Lanilobar v. Kiojan, 3 T.T.R. 248.

### Right of Redemption

Where court in previous related case allowed party right of redemption of automobile, right could only be exercised within reasonable time after former judgment. Oderiong v. Adelbai, 3 T.T.R. 21.

## L

### LANDLORD AND TENANT.

#### Leases—Generally

By acknowledging the lessor's ownership, and having taken possession of property in that manner, the lessee is estopped from claiming that the lessor has no rights in the property and that the lessee owns it. Manuel H. v. Yuanita, 3 T.T.R. 538.

#### -Breach

The lessor having first caused trouble by his own wrong cannot properly try to profit from that wrong by throwing off or disregarding the lease agreement any more than the lessees may. Manuel H. v. Yuanita, 3 T.T.R. 538.

While lessor's breach of the lease agreement was wrongful and gave lessees ground for an action against him, it did not justify lessees' trying to repudiate and disregard the agreement. Manuel H. v. Yuanita, 3 T.T.R. 538.

### LARCENY.

#### Petit-Age

Fifteen-year-old defendant is competent under Trust Territory law so far as age is concerned to commit crime of petit larceny. (T.T.C., Sec. 432) Celis v. Trust Territory, 3 T.T.R. 237.

#### -Sentence

In conviction for petit larceny, where one defendant is fifteen 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. (T.T.C., Sec. 397) Celis v. Trust Territory, 3 T.T.R. 237.

## LEGISLATIVE POWER

### LEGISLATIVE POWER.

#### Requirement of Concurrent Action

Where important power is given to two people, its exercise is not to be presumed merely from showing of action by one of them. *Trust Territory v. Saipan Bus Company*, 3 T.T.R. 76.

Where High Commissioner's legislative authority is limited by requiring Secretary of Interior's approval of any proposed new law or any proposed amendment of existing law, legislative authority of Trust Territory can only be exercised by or in accordance with joint action of High Commissioner and Secretary or by those to whom they lawfully delegate it in such a manner as to indicate intention to legislate. (Department of Interior Order No. 2876, Section 3) *Trust Territory v. Saipan Bus Company*, 3 T.T.R. 76.

#### Delegation

Legislative power cannot be delegated at will or validly exercised without some clear indication of intent to make law, usually by enacting or promulgating clause. *Trust Territory v. Saipan Bus Company*, 3 T.T.R. 76.

Delegations of legislative power in Trust Territory indicate intent to work towards a government along lines followed in organizing territories of the United States. *Alig v. Trust Territory*, 3 T.T.R. 603.

#### Grant of Franchise

Franchise cannot be supported as District Order under Trust Territory law where such order must be approved personally by High Commissioner and there is no showing of his intent to legislate as to it. (T.T.C., Sec. 20(d) *Trust Territory v. Saipan Bus Company*, 3 T.T.R. 76.

### LICENSES AND PERMITS.

#### Generally

Terms "license" and "permit" may be interchangeable where each is regularly revocable, does not constitute a contract, is not property in any constitutional sense, and creates no vested interest. *Trust Territory v. Saipan Bus Company*, 3 T.T.R. 76.

Permit which is issued prior to change of law is not terminated or revoked by that law where it is not intended to have retrospective effect or upset permits or licenses issued previously. *Trust Territory v. Saipan Bus Company*, 3 T.T.R. 76.

## M

### MALICIOUS MISCHIEF.

#### Generally

It is possible under Trust Territory law for person to commit act of malicious mischief immediately after committing crime of trespass. (T.T.C., Secs. 398, 401) *Figir v. Trust Territory*, 3 T.T.R. 127.

## MARIANAS LAND LAW

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. (T.T.C., Sec. 398) *Figir v. Trust Territory*, 3 T.T.R. 127.

### Malice

Element of malice is entirely eliminated from offense of malicious mischief in Trust Territory. (Executive Order No. 84, amending T.T.C., Sec. 398) *Figir v. Trust Territory*, 3 T.T.R. 127.

## MARIANAS LAND LAW.

### Generally

Action as to rights in land and transfer thereof under Chamorro custom on Saipan must be decided primarily on basis of local customary law. *Blas v. Blas*, 3 T.T.R. 99.

Many uncertainties as to rights under Chamorro customary law arise from tendency to impose on or read into Chamorro concepts other foreign concepts and to try to explain Chamorro concepts by terms taken from other systems which do not exactly fit them. *Blas v. Blas*, 3 T.T.R. 99.

### Community Property

There are at least two categories of ownership included in so-called community property under Chamorro custom, and one carries with it much greater restriction on its disposition than the other. *Blas v. Blas*, 3 T.T.R. 99.

Chamorro concept of community property has some aspects of community property as generally understood in United States and term may come nearer than any other term commonly used in United States. *Blas v. Blas*, 3 T.T.R. 99.

Although term "community property" is used in connection with land in question, Chamorro concept of community property does not fit exactly with Spanish or French concept or with variations of these in any American jurisdiction. *Blas v. Blas*, 3 T.T.R. 99.

### Family Lands

Chamorros have little concept of absolute right to inherit specific fraction of a deceased's property under Chamorro customary law. *Blas v. Blas*, 3 T.T.R. 99.

Matter of inheritance among Chamorros is obscured by thought of what person should be given on principle of fair disposition according to need, by either head of family before his death or agreement among remainder of family after his death. *Blas v. Blas*, 3 T.T.R. 99.

Under Chamorro custom, land which is *iyon manaina* ("ancestor's land") has special status in Chamorro society and is more respected than land simply bought by individual from outside his family. *Blas v. Blas*, 3 T.T.R. 99.

## MARIANAS LAND LAW

Under Chamorro custom, "ancestor's land" is best described as "family property" in which children, as contrasted with wife or widow, have much greater interest than is usual in case of community property in United States. *Bias v. Bias*, 3 T.T.R. 99.

Under Chamorro custom, "ancestor's land" is for children of one who receives it and is not allowed to go out of line of descendants of ancestor. *Bias v. Bias*, 3 T.T.R. 99.

Under Chamorro custom, "ancestor's land", whether acquired before or after marriage, comes into Chamorro type of community property and as soon as child is born, husband, wife and children are all considered to have interests in it. *Bias v. Bias*, 3 T.T.R. 99.

Where deceased Chamorro made statement in land application that he was claiming as "sole owner," this does not deny daughter's possible interest any more than it does wife's and should be taken simply to mean deceased acknowledged no interest in land outside that of his family. *Bias v. Bias*, 3 T.T.R. 99.

### - "Partida"

Under Chamorro custom, designation of division of family properties (*partida*) is serious and important matter of which all concerned are expected to take careful note. *Bias v. Bias*, 3 T.T.R. 99.

Under Chamorro custom, division of family lands by father is not to be disputed although he is expected to act fairly by Chamorro standards. *Bias v. Bias*, 3 T.T.R. 99.

Under Charilorro custom, father should, before his death, designate division of all family lands, including those brought in by his wife. *Bias v. Bias*, 3 T.T.R. 99;

Under Chamorro custom, *partida* is usually oral, and father may turn over formal ownership at once or retain control and formal ownership of all or part of land either until some later date or until he dies. *Bias v. Bias*, 3 T.T.R. 99.

Where designation of division of family land by deceased Chamorro constituted *partida*, even though formal ownership of land was not transferred to party during deceased's lifetime, party had beneficial interest in it subject to deceased's right to administer it for life or until he turned formal ownership over to her. *Bias v. Bias*, 3 T.T.R. 99.

### —Widow's Rights

Under Chamorro custom, there is no thought of wife acquiring automatically on marriage anything like inchoate right of dower by common law, or idea of widow as statutory heir having right to minimum share of property left by husband on his death which cannot be taken away by will. *Bias v. Bias*, 3 T.T.R. 99.

### -Children's Rights

Under Chamorro custom, children have something more like inchoate right in father's "ancestor's land" than their mother does since such

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land can in case of need be sold by father with consent of children while wife's consent is not needed. *Blas v. Blas*, 3 T.T.R. 99.

Under Chamorro custom, any adult child of person who receives "ancestor's land" has first chance to purchase it at whatever price sale to outsider is being considered. *Blas v. Blas*, 3 T.T.R. 99.

Under Chamorro custom, "ancestor's land" is not to be sold unless absolutely necessary for subsistence of those entitled to it and even then not without consent of all adult children. *Blas v. Blas*, 3 T.T.R. 99.

### Exchanges of Land

Local custom and not American practice controls situation where Chamorro land is exchanged for government land. *Blas v. Blas*, 3 T.T.R. 99.

It has been customary on Saipan in dealing with land trustees concerning exchanges of land not to try to obtain formal appointments of anyone, to represent heirs who are minors where they are interested proportionately with the adult heir and there is no conflict of interest between the adults and the minors, and such agreements are binding and valid as to all the heirs involved. *In re De Castro*, 3 T.T.R. 446.

Chamorro custom clearly recognizes, at least in case of land exchanges made with government where there is express or implied threat of taking, that land acquired in exchange takes place of that given up and carries with it all incidents attached to land given up. *Blas v. Blas*, 3 T.T.R. 99.

As between Chamorro parties, rights in land are determined under Chamorro custom just as if there had been no exchange of land with government and land now in question were lot originally acquired by deceased. *Blas v. Blas*, 3 T.T.R. 99.

Where party's beneficial interest in land is entitled to protection of law, her interest on exchange of original lot for government land has attached to lot received in that exchange. *Blas v. Blas*, 3 T.T.R. 99.

Petitioner having expressly consented to exchange agreements and shared in the use of the lands received in exchange therefore, such agreements having contained a provision releasing government for all claims, was estopped to claim, at a later date, any rent for use of lands so conveyed. *In re De Castro*, 3 T.T.R. 446.

Petitioner was not estopped from claiming lands abutting on those transferred to government simply because certain of these lands were referred to in exchange agreements as being owned by government, since it clearly appeared that the agreements were prepared by the government and executed at its urgent request, with full knowledge that petitioner claimed such land. *In re De Castro*, 3 T.T.R. 446.

While the failure of the government to completely comply with an exchange agreement was not a sufficient breach to warrant a rescission

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of that agreement where the petitioner protested promptly against the change he would be entitled to an equitable adjustment for the difference between the area actually transferred and that agreed upon by express and clearly discernible boundaries, even though the area actually transferred slightly exceeded the estimated area stated in the agreement. In re De Castro, 3 T.T.R. 446.

## MARSHALLS LAND LAW.

### "Iroij Lablab"-Obligations

Under Marshallese custom, decisions of *iroij lablab*, to be effective, must be made like those of responsible officials, with due regard for rights already established. Likinono v. Nako, 3 T.T.R. 120.

Under Marshallese custom, rights once established under *iroij lablab's* predecessors should not be upset without showing of strong cause. Likinono v. Nako, 3 T.T.R. 120.

Principle of *res judicata* should be applied by *iroij lablab* under Marshallese system of land law in making decisions as to rights in land under them. Likinono v. Nako, 3 T.T.R. 120.

### -Powers

The donor of land with *iroij* authority over it may impose conditions upon the gift and when the condition for the gift fails it is within the power of the donor, or his successors to recover the land. Lajutok v. Kabua, 3 T.T.R. 630.

Under Marshallese custom, establishment or reestablishment of *dri jermal* may be accomplished by those having lesser rights in land, without any affirmative act or express decision by *iroij lablab*, but merely with his acquiescence or implied consent. Alek S. v. Lomjeik, 3 T.T.R. 112.

### -Limitation of Powers

Although decisions of *iroij lablab* under Marshallese custom are entitled to great weight, freedom of discretion of *iroij lablab* is more limited than it once was. Likinono v. Nako, 3 T.T.R. 120.

### -"Jebrik's Side" of Majuro

In spite of uncertainties as to exercise of *iroij lablab* powers on "Jebrik's side" of Majuro Atoll, *alab* on that "side" is bound under Marshallese custom to respect rights of others in land of which he is *alab*. Alek S. v. Lomjeik, 3 T.T.R. 112.

### "Alab"

Under Marshallese custom, *alab* is not entitled to decide whether radical change in Marshallese system of land holding is desirable or not. Alek S. v. Lomjeik, 3 T.T.R. 112.

Where situation as to rights and obligations of *alab* is uncertain, and he promptly brings matter to court for determination, his *alab* rights

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will only be temporarily suspended until he demonstrates he is ready to fulfill his *alab* obligations. *Alek S. v. Lomjeik*, 3 T.T.R. 112.

### -Establishment

Under Marshallese custom, if parties' predecessors were mistaken in method of allowing *alab* rights to pass many years ago, it would be unfair now to upset those rights as then recognized without showing fault on part of those who have been exercising these rights since then. *Likinono v. Nako*, 3 T.T.R. 120.

### -Succession

Theory of inheritance of *alab* rights which implies series of arrangements out of ordinary course under Marshallese custom, and which negatives normal inferences to be drawn from undisputed facts, should not be given effect without clear proof. *Likinono v. Nako*, 3 T.T.R. 120.

Under Marshallese custom, where former *alab* attempts to have party made *alab* without necessary approval for changing order of inheritance of *alab* rights, his efforts are insufficient to accomplish their purpose. *Alek S. v. Lomjeik*, 3 T.T.R. 112.

### -Obligations

If *alab* seriously and persistently disregards his obligations under Marshallese custom, court will in extreme cases enjoin him from exercising his *alab* rights and, after notice and opportunity to be heard, appoint someone else to exercise *alab* rights for him. *Alek S. v. Lomjeik*, 3 T.T.R. 112.

Under Marshallese custom, *alab* of land is obligated to cooperate with *leroj erik* and show normal respect for her wishes. *Alek S. v. Lomjeik*, 3 T.T.R. 112.

### "Dri Jerbal"-Establishment

Under Marshallese custom, where actions of previous *alab* are later approved by or on behalf of *leroj erik*, this is sufficient to vest *dri jermal* rights in land until some affirmative action to the contrary is taken by those entitled to exercise *iroij lablab* powers. *Alek S. v. Lomjeik*, 3 T.T.R. 112.

Under Marshallese custom, establishment of *dri jermal* on particular piece of land can be stopped by *iroij lablab* of that land and is supposed to have his consent. *Alek S. v. Lomjeik*, 3 T.T.R. 112.

### -Obligations

Under Marshallese custom, those who have *dri jermal* rights in land are under obligation to respect rights of acting *alab*, provided he in turn fulfills his obligations as *alab*. *Alek S. v. Lomjeik*, 3 T.T.R. 112.

### -Suspension of Rights

Under Marshallese custom, *dri jermals'* disregard of their obligations to *alab* may suspend their rights. *Alek S. v. Lomjeik*, 3 T.T.R. 112.

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Under Marshallese custom, where *alab* disregards parties' *dri jermal* rights, latter are justified in disregarding *alab's* rights pending judicial determination, and their *dri jermal* rights will not be suspended, although persistent refusal to recognize *alab's* rights in future, provided he fulfills his obligations, might give ground for such suspension. *Alek S. v. Lomjeik*, 3 T.T.R. 112.

### MILITARY.

#### Authority Over Civilians

Even under martial law, power of military over persons not in military service is limited to reasonable necessities of the occasion. *Meyer v. Epsom*, 3 T.T.R. 54.

### MORTGAGES.

#### Merger of Title

Although, in general merger of legal and equitable interests occurs only when legal title to all land subject to mortgage liens vests in mortgagee, exception is recognized where parties intend to merge legal and security interests in only part of property subject to mortgage. *Wong v. Sungiyama*, 3 T.T.R. 367.

Where mortgagee and those claiming under him occupy portion of land subject to mortgage with consent and acquiescence of mortgagor, lien interest and legal title in property so occupied are merged, and to that extent mortgage is released. *Wong v. Sungiyama*, 3 T.T.R. 367.

#### Foreclosure

Action to foreclose mortgage is dual in nature, whereby judgment is rendered for amount of money due mortgagee from mortgagor and property is then auctioned at foreclosure sale and amount of judgment paid out of proceeds. *Wong v. Sungiyama*, 3 T.T.R. 367.

Mortgagor may avoid foreclosure sale and subsequent exercise of right of redemption by paying amount of money judgment awarded to plaintiff before Sheriff's sale of land. *Wong v. Sungiyama*, 3 T.T.R. 367.

#### -Sale

Where, at foreclosure sale there are no other bidders or other bidders are unwilling to pay amount of judgment awarded to mortgagee, latter may buy land by bidding amount of his money judgment. *Wong v. Sungiyama*, 3 T.T.R. 367.

#### Redemption

Since Trust Territory law has no prOVISION relating to foreclosure of land mortgages, period of redemption should be reasonable time to be determined by court. *Wong v. Sungiyama*, 3 T.T.R. 367.

If anyone, including mortgagee, buys property at foreclosure sale, mortgagor has period of redemption by paying purchaser amount he paid at sale plus interest. *Wong v. Sungiyama*, 3 T.T.R. 367.

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Where mortgagee and mortgagor agree to extinguish mortgage debt by transfer of land, mortgagor's right of redemption is extinguished as to portion of land transferred. *Wong v. Sungiyama*, 3 T.T.R. 367.

Even if mortgagor and mortgagee evidence no express intent or agreement to extinguish right of redemption in mortgaged property, mortgagor loses such right by failing to pay mortgage debt for nine years after default and by acquiescing in mortgagee's use and occupancy of land during that period. *Wong v. Sungiyama*, 3 T.T.R. 367.

### Tender

Tender of mortgage debt after maturity operates to discharge mortgage and constitutes a defense to foreclosure action. *Wong v. Sungiyama*, 3 T.T.R. 367.

Before a tender which is refused may discharge mortgage debt, tender must be for entire amount of mortgage debt and interest. *Wong v. Sungiyama*, 3 T.T.R. 367.

An offer by mortgagor to "talk about" amount of money she is ready to give mortgagee, and offer that money would soon be available to repay unspecified amount of mortgage debt are not tenders in legal sense sufficient to extinguish mortgage. *Wong v. Sungiyama*, 3 T.T.R. 367.

## MOTOR VEHICLES.

### Generally

Motorist must exercise diligence and caution to avoid collision with pedestrians particularly in view of powerul instrument he is controlling and seriousness of injury it may inflict. *Mesechol v. Trust Territory*, 3 T.T.R. 136.

### Registration Card

Section 811(c) of the Trust Territory Code, relating to motor vehicle registration cards, is a penal statute and must be strictly construed. (T.T.C., Sec. 811(c)» *Palacios v. Trust Territory*, 3 T.T.R. 483.

Section 811(c) of the Trust Territory Code, relating to motor vehicle registration cards places the responsibility upon an operator of a motor vehicle to ensure that the registration card is in the vehicle and not to operate any vehicle upon the highways of the Trust Territory unless the vehicle registration card is at that time being carried in the vehicle. (T.T.C., Sec. 811(c)» *Palacios v. Trust Territory*, 3 T.T.R. 483.

The owner of a vehicle who was not in or operating said vehicle at the time it was being operated without carrying a registration card cannot be convicted of a violation of Section 811(c) of the Trust Territory Code which requires that such a card be carried in the vehicle while it is being operated on the highways. (T.T.C., Sec. 811(c)» *Palacios v. Trust Territory*, 3 T.T.R. 483.

## MOTOR VEHICLES

### Parts

Since question of parts attached to automobile is foreign to local custom, matter is governed by rules of common law. (T.T.C., Sec. 22) **Oderiong v. Adelbai**, 3 T.T.R. 21.

Where parts are placed upon automobile with no intention of transferring ownership of parts, they do not constitute accessions to automobile. **Oderiong v. Adelbai**, 3 T.T.R. 21.

Where parts are placed upon automobile with no intention of transferring ownership of parts, they may be owned separately and distinct from automobile itself and do not necessarily become property of person owning automobile. **Oderiong v. Adelbai**, 3 T.T.R. 21.

## MUNICIPALITIES.

### Generally

Municipal officials and civic leaders have legitimate interest in trying to protect welfare of fellow-residents, particularly those in lower income brackets, and trying to see that charges for public utility services are reasonable. **Trust Territory v. Saipan Bus Company**, 3 T.T.R. 76.

Municipality and local betterment association are justified or privileged in trying by lawful means to have community services provided at lower cost to riders than offered by franchised bus company. **Trust Territory v. Saipan Bus Company**, 3 T.T.R. 76.

### Charter

Precedents in United States as to strict construction of municipal charters cannot fairly be applied to charter which grants broad powers in general terms with no detailed limitation of powers. **Trust Territory v. Saipan Bus Company**, 3 T.T.R. 76.

Municipal charter which grants broad powers in general terms indicates legislative intent to control activity of municipality through supervision of District Administrator rather than through detailed limitation of powers. **Trust Territory v. Saipan Bus Company**, 3 T.T.R. 76.

Rule of strict construction of municipal charters followed in United States cannot be applied to that of Tinian where intent of legislature is to control activity of municipality through District Administrator rather than through detailed limitation of municipal powers. **Ambros v. Municipality**, 3 T.T.R. 48.

Where municipal charter grants broad powers in general terms, municipality may engage in public transportation services or subsidize such services by private organization, if all necessary approvals required by charter and necessary license from Trust Territory are obtained. **Trust Territory v. Saipan Bus Company**, 3 T.T.R. 76.

### Powers

Municipality may become obligated on implied contract to pay reasonable value of benefits accepted by it as to which it has general power

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to contract, even though contract under which benefits obtained may have been irregularly made or unenforceable itself. *Ambros v. Municipality*, 3 T.T.R. 48.

State may itself, or through its municipalities, constitutionally engage in large number of business activities commonly carried on by private enterprise, levy tax to support activity, and compete with private interests engaged in like activity. *Ambros v. Municipality*, 3 T.T.R. 48.

Power of state to buy and sell intoxicating liquors within its borders and to authorize municipalities to do so comes within police power. *Ambros v. Municipality*, 3 T.T.R. 48.

Power of state to buy and sell intoxicating liquors within its borders and to authorize municipalities to do so is proper method to accomplish governmental purposes and perform governmental function so far as constitutional limitations are concerned, even though for tax purposes such activity may be considered to be private business. *Ambros v. Municipality*, 3 T.T.R. 48.

Purchase of beer for resale is within power of municipality and not in defiance of any express policy of Trust Territory law. *Ambros v. Municipality*, 3 T.T.R. 48.

## P

### PALAU CUSTOM.

#### Clans

A Palauan clan is no longer a completely independent body and is not allowed to settle its difficulties by physical violence or the threat of it. *Delemel v. Tulop*, 3 T.T.R. 469.

This distinction between title bearer and acting title bearer is that the acting chief functions in place of the true title bearer. *Ngiraiechol v. Inglai Clan*, 3 T.T.R. 525.

#### -Membership

The traditional Palauan clan of pre-contact times is composed of family lineages related by blood and members of that type of clan structure may not intermarry and their clan land is subject to ultimate control by the clan as a whole. *Adelbai v. Ngirchoteot*, 3 T.T.R. 619.

#### -"Rekemesik"

Whether a clan restores the authority of the *Rekemesik* or even whether it selects the *Maderainglai* as *Rekemesik* upon the death of the present titleholder was an internal matter of clan procedure in accordance with traditional custom and the courts would not interfere. *Ngiraiechol v. Inglai Clan*, 3 T.T.R. 525.

#### -Representative of Chief

One of the powers of a chief is to appoint someone to represent him from time to time and it may not be the same person, but that is the

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chief's right rather than a matter for the clan except, in an appropriate case, to concur in the selection. *Ngiraiechol v. Inglai Clan*, 3 T.T.R. 525.

An acting title bearer, being young and healthy does not need a representative and the appointment of one in such circumstances is invalid. *Ngiraiechol v. Inglai Clan*, 3 T.T.R. 525.

If an acting chief, exercising the powers of a titleholder, does not want a representative, none should be appointed. *Ngiraiechol v. Inglai Clan*, 3 T.T.R. 525.

The representative of a title bearer serves for a particular purpose of specific time as an agent of the title bearer. *Ngiraiechol v. Inglai Clan*, 3 T.T.R. 525.

The acting title bearer is selected by the clan while the representative is appointed by the title bearer whether he is the acting or true title bearer; *Ngiraiechol v. Inglai Clan*, 3 T.T.R. 525. -

### —“Maderainglai”

The title known as *Maderainglai* is the Number Two title in the Inglai Clan, and, as such, the holder of that title normally is the successor to the title of *Rekemesik*. *Ngiraiechol v. Inglai Clan*, 3 T.T.R. 525.

### -“Ochell”

In many cases the word *ochell* is applied to strong active members who have come into a Palauan clan without blood relationship in the female line, and in such a case the term *ochell* is used in a figurative or simulated sense. *Delemel v. Tulop*, 3 T.T.R. 469.

A person can be a "strong member" and stand in the position of an *ochell* of the Ngerbuuch Clan and also be a member or even a true *ochell* of some other Anguar Clan or Clans. *Delemel v. Tulop*, 3 T.T.R. 469.

### Lineage-Titles

Under Palau custom, lineage or clan titles generally descend in female line. *Remoket v. Olekeriil*, 3 T.T.R. 339.

### Family Obligations

Where parties are closely related under Palauan custom, they have strong obligation to assist each other and cooperate. *Imeong v. Ebau*, 3 T.T.R. 144.

### -“Ocheraol”

Under Palau custom, one's failure to take part in and contribute generously to close relative's *ocheraol* is serious affront to such relative. *Imeong v. Ebau*, 3 T.T.R. 144.

Failure of party in Palau to participate in close relative's *ocheraol* justifies relative -in revoking use rights in land given to party, provided he does this in considerate manner and gives party reasonable

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opportunity to either purchase land or in some other manner compensate for previous breach of his obligations. *Imeong v. Ebau*, 3 T.T.R.144.

### -Option to Purchase Land

Under Palau custom, a close relative who has use rights in land has two weeks in which to work out proper adjustment to compensate for his breach of obligations before selling land to someone else is totally inadequate time. *Imeong v. Ebau*, 3 T.T.R. 144.

Attempted sale by owner of land to outsider, without giving close relative who has use rights in land an opportunity to work out fair compensation for neglect of his obligations, is invalid as against such relative, and latter still has right to reasonable opportunity to work out agreement to protect his right of possession. *Imeong v. Ebau*, 3 T.T.R. 144.

### Children's Money

Under Palau custom, attempted designation of money paid for food and services as "children's money" is of no legal effect. *Buk v. Basilius*, 3 T.T.R. 150.

Under Palau custom, basic obligation of person holding children's money for safekeeping is to either keep it intact and not use it for any other purpose or, if he pays it out, to replace it with piece of Palauan money of greater value. *Buk v. Basilius*, 3 T.T.R. 150.

Under Palau custom, there is no justification for redesignating, without consent of payee, a payment of children's money that has once been voluntarily made without any indications of fraud or duress. *Buk v. Basilius*, 3 T.T.R. 150.

Where money exchanged for children's money has substantial value, defendant who wrongfully pays out children's money will be credited for value of money paid for it. *Buk v. Basilius*, 3 T.T.R. 150.

Under Palau custom a father may retain the children's money while his adopted son remains a member of the family and the father may transfer it when he, the father, dies, and, if, at any time the money was to be transferred the father's brothers could substitute smaller pieces for the large piece. *Rechemang v. Belau*, 3 T.T.R. 552.

The consent of one entitled to children's money to use the money in land purchase was no more than acquiescence in the revocation of a promise to use the specific piece as children's money. *Rechemang v. Belau*, 3 T.T.R. 552.

### Funeral Meeting

It is customary that the funeral meeting of relatives of the decedent, his surviving spouse and children, when adopted, which is conducted by family, lineage and clan male elders, affirm any dispositions, or promises of gifts made by the decedent during his last illness, and that they agree upon the distribution, in accordance with rules prescribed

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by custom, of the decedent's property not disposed of by him. *Rechemang v. Belau*, 3 T.T.R. 552.

### Widows

Position of widow as considered from Palauan point of view is very different from that of widow under usual American concepts. *Joshua v. Joshua*, 3 T.T.R. 212.

Under Palau custom, except for right to *chelebechiil*, widow's rights in her husband's property are distinctly subordinate to those of his children. *Joshua v. Joshua*, 3 T.T.R. 212.

Under Palau custom, it is function of deceased man's nearest relatives within his lineage to attend to distribution of his property, and widow has no part in this as matter of right once *chelebechiil* has been agreed upon between her relatives and those of deceased. *Joshua v. Joshua*, 3 T.T.R.212.

Under Palau custom, widow has no responsibility, either legal or moral, for support of her stepchildren, unless they are also members of her lineage. *Joshua v. Joshua*, 3 T.T.R. 212.

## PALAU LAND LAW.

### Generally

The generally recognized exception to exclusive land control by lineage is the clan chief's title land and taro paddy. *Adelbai v. Ngirchoteot*, 3 T.T.R.619.

Where High Commissioner's Land Settlement Agreement and Indenture concerning government owned land on Arakabesan Island sought to re-establish former rights rather than to create entirely new ones, such agreement restored the rights in the land in question to those who had acquired such rights directly or indirectly from the persons mentioned and who last held those rights prior to former transfer of land to Japanese interests, or to those who would be their successors in interest had there been no such transfer. *Torul v. Arbedul*, 3 T.T.R. 486.

### Chief's Title Land

Normally chief's title land becomes the residence of the clan titleholder when he assumes the title, even though he may, and usually does, have a home elsewhere. *Adelbai v. Ngirchoteot*, 3 T.T.R. 619.

### Clan Ownership

Purported descent of house site in male line, either to male's heirs or to his clan, is most unlikely under generally recognized Palau custom of descent through female line. *Ngirudelsang v. Itol*, 3 T.T.R. 351.

### -Use Rights

Where previous judgment limited use of clan land to present users and defendant was a user he could build a home on it and live in it, but if he decided not to use the land and the house built on it for himself, or in the event he died, then the use of the land and the house

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would be decided by the clan and the defendant's assigns or heirs would have no claim to it. *Yechadrechemai v. Ebau*, 3 T.T.R. 511.

### -Transfer

Clan land could be alienated from clan control through the clan itself being assimilated by another clan when such action was considered advantageous due to declining membership. *Adelbai v. Ngirchoteot*, 3 T.T.R. 619.

When "new" member lineages acquired lands within the clan the lineage had exclusive control over such land, the other lineages separately or comprising the remainder of the clan had no control over a lineage land as is the case of clan control in the traditional clans. *Adelbai v. Ngirchoteot*, 3 T.T.R. 619.

### Lineage Owership

Under Palau custom, clan does not control lineage properties, with certain exceptions. *Remoket v. Olekeriil*, 3 T.T.R. 339.

Under Palau custom, party who is bearer of clan title has no control or interest in lineage land nor in money derived from lineage land. *Remoket v. Olekeriil*, 3 T.T.R. 339.

### -Administration

Under Palau custom, one who has been granted power to administer clan or lineage land may not pass on that power to another, including descendants, without approval of majority of strong clan or lineage members. *Remoket v. Olekeriil*, 3 T.T.R. 339.

Under Palau custom, one who administers lineage lands and who is awarded money for damages to such lands holds such money on behalf of lineage, not solely for personal benefit, and money should be divided equally among all lineage members. *Remoket v. Olekeriil*, 3 T.T.R. 339.

### -Use Rights

Where party in Palau has possessory interest in land as *ochell* of lineage, she may sue in District Court for money damages to land for loss of trees. *Remoket v. Olekeriil*, 3 T.T.R. 339.

### Family Ownership-Survivorship

Upon the death of the oldest member of a family occupying family land, the land goes to the oldest surviving member who also assumes any obligations of the decedent to the other family members, including the children. *Rechemang v. Belau*, 3 T.T.R. 552.

### -Transfer

The principle of American law of joint ownership, with right of survivorship is similar to Palauan land law custom that land purchased by a family belongs to the family and cannot be transferred without consent of the family members even though the oldest member administered and occupied it. *Rechemang v. Belau*, 3 T.T.R. 552.

## PALAU LAND LAW

### Individual Ownership—Decedent's Estates

Section 801 of the Palau District Code impinges upon the funeral meeting custom by providing that lands held in fee simple by an individual which are not disposed of by will shall be inherited, first, by the "oldest living male child of sound mind, natural or adopted". *Rechemang v. Belau*, 3 T.T.R. 552.

### -Transfer

Under Palau custom, party having interest in land cannot transfer it without obtaining consent from her children and other relatives, and her promise to give it to third party has no effect without such consent. *Rudimch v. Chin*, 3 T.T.R. 323.

Under Palau custom, stepson of landowner is authorized to negotiate sale of land in behalf of stepfather and prospective buyer is justified in dealing with stepson. *Rudimch v. Chin*, 3 T.T.R. 323.

Although under Palau custom stepson is authorized to negotiate sale of stepfather's land, owner has right to sell if stepson's prior attempt to sell is not completed for failure to settle on terms. *Rudimch v. Chin*, 3 T.T.R.323.

### Use Rights

Under Palau custom, it is common to give use rights in land to party to live on land for as long as he wants and to build there. *Imeong v. Ebau*, 3 T.T.R. 144.

Palau custom of giving use right to person to live on land for as long as he likes and to build there is important property right similar to "life estate subject to conditions" rather than "tenancy at will" as terms are understood in United States. *Imeong v. Ebau*, 3 T.T.R. 144.

### Japanese Survey—Presumptions

Japanese survey and *Tocho Daicho* ownership listing of land in Palau are presumed to be correct. *Ngirudelsang v. Itol*, 3 T.T.R. 351.

Court follows the *Tochi Daicho* listing of land ownership unless there is clear and compelling evidence it is improper. *Owang Lineage v. Ngiraikelau*, 3 T.T.R. 560.

Presumption that determinations made in official Japanese land survey in Palau Islands are correct covers situation where issues were not in controversy at time survey was made. *Ngirudelsang v. Itol*, 3 T.T.R. 351.

Presumption that determinations made in official Japanese land survey in Palau Islands are correct is strong in case of issues which were matter of controversy at the time, and there must be strong showing that determination in question is wrong to overcome such presumption. *Ngirudelsang v. Itol*, 3 T.T.R. 351.

Presumption that determinations made in official Japanese land survey in Palau Islands are correct is especially strong where listing made in survey was not in individual name of one who was head of group which

## PONAPE LAND LAW

he would ordinarily represent in dealing with outsiders and which now claims interest in the land. *Ngirudelsang v. Itol*, 3 T.T.R. 351.

### -Rebuttal

Determinations made in the official Japanese land survey of about 1938-1941, while not conclusive, are entitled to great weight and the burden is on one who disputes such a determination to show that it is wrong. *Owang Lineage v. Ngiraikelau*, 3 T.T.R. 560.

### Recording

Where purchaser of property in Palau fails to obtain written deed and record it with Clerk of Courts, his interests are unprotected as against subsequent good faith buyer, without notice, who records his deed. *Rudimch v. Chin*, 3 T.T.R. 323.

Party's occupancy of land in Palau since 1946 does not, as matter of law, give notice of claim of ownership as against recorded title determination of 1957, and subsequent purchaser has right to rely on record title and obligation under law' requiring recordation of subsequent interests. (T.T.C., Sec. 1023) *Rudimch v. Chin*, 3 T.T.R. 323.

## PONAPE CUSTOM.

### Family Obligations

Under Ponape custom, there is deep-seated obligation of child to support his or her parent, and obligation of child who is given land by his or her parent to allow parent to use land so long as he lives. *Phillip v. Carl*, 3 T.T.R. 330.

### Adoption

Adoption under Ponape custom did not require confirmation of *Nanmarki* or Governor under German Administration. *Pelipe v. Pelipe*, 3 T.T.R. 133.

Adoption, see, also, Domestic Relations-Adoption

### Illegitimate Child

Under Ponape custom, illegitimate child of man is not to be considered his child or issue, within meaning of inheritance laws, unless child is either adopted or legitimized by being publically acknowledged and accepted into family by man as his child. *Moses v. Moses*, 3 T.T.R. 187.

### .Pingelap-"We'sik"

*Wesik* is the obligation of a donee to provide food to a donor under Pingelap custom. *Sehk v. Sohri*, 3 T.T.R. 420.

## PONAPE LAND LAW.

### Obligation to Support

Under Ponape custom, where father gives land to daughter under obligation to support him for his lifetime, daughter acts contrary to customary obligation when she attempts to control when, where and how she will render support and to withhold support when she deems father

## PONAPE LAND LAW

does not exhibit enough consideration and love for her. Phillip v. Carl, 3 T.T.R. 330.

Where daughter is given land by father under customary Ponapean obligation to support and respect parents for their lifetime, and she grossly fails in such customary obligations, father will be allowed to control division of use of land provided he is reasonable about it. Phillip v. Carl, 3 T.T.R. 330.

Where daughter is given land by father under customary Ponapean obligation to support and respect parents for their lifetime, and she grossly fails in such customary obligations, she thereby loses any right she may have had to control division of use of such land during their lifetime, or to substitute other support in place of allowing parents to obtain their needs from the land. Phillip v. Carl, 3 T.T.R. 330.

### German Land Title-Succession

Adopted son succeeds to property of his father under German land title system in Ponape. Pelipe v. Pelipe, 3 T.T.R. 133.

### Kapingamarangi-Family Ownership

Under Kapingamarangi custom, land is held privately by individuals who then act as trustee or manager for benefit of entire family. Ciroit v. Pahingai, 3 T.T.R. 320.

Under Kapingamarangi custom, each non-holder of land in family has certain use rights in land, which include right to place to live and to share of produce. Ciroit v. Pahingai, 3 T.T.R. 320.

### -Transfers

Under Kapingamarangi custom, although there is only slight preference of man over woman as recipient of title to land, oldest son of previous holder would be very likely candidate for landholder. Ciroit v. Pahingai, 3 T.T.R. 320.

Where party claims land as transferee in line originating with prior owner's son, and line has remained in possession of that line for long period of time, and son's inheritance of title of landholder is in accordance with Kapingamarangi custom, court will not upset finding of master that land belonged to such party. Ciroit v. Pahingai, 3 T.T.R. 320.

Under Kapingamarangi custom, landholder receives title to land by gift or, more often, by oral instructions made when previous holder is ill and feels death is imminent. Ciroit v. Pahingai, 3 T.T.R. 320.

### Pingelap-Family Ownership

Under Pingelap custom, regardless of rights of head of family over land owned by group of which he is leader, he cannot properly rearrange rights in land which have been given long prior thereto to individual member of family as individual property, nor can he exchange rows of taro without consent of owners of rows to be exchanged. Net v. Kapele, 3 T.T.R. 183.

## PUBLIC LANDS

### -Taro Patch

Under Pingelap custom, it is usual for one who makes outright gift of ownership of some part of taro patch to give, at same time, some dry land with it. *Sehk v. Sohn*, 3 T.T.R. 348.

Transfer of taro patch by mother to her daughter is in accordance with prevalent practice of people of Pingelap. *Sehk v. Sohn*, 3 T.T.R. 348.

Under Pingelap custom, fact that person has taken care of land and taro patches for absent relative for number of years does not ordinarily give him any rights in land. *Piter v. Pohl*, 3 T.T.R. 176.

Under Pingelap custom, where person has taken care of land and taro patches for absent relative for number of years, benefits he has received from land are normally considered to adequately compensate him for his work. *Piter v. Pohl*, 3 T.T.R. 176.

Where party and her mother have successively worked taro patch on Pingelap Atoll for over one hundred years, indication of ownership is strong. *Sehk v. Strong*, 3 T.T.R. 348.

### Crops

Where person makes substantial plantings on land in bona fide belief he is entitled to possession, court may grant equitable remedy such as temporary right to harvest. *Pelipe v. Pelipe*, 3 T.T.R. 133.

Party wrongfully claiming possession of land in Ponape who makes plantings should be allowed to obtain benefit of any short-term crops which he has planted. *Moses v. Moses*, 3 T.T.R. 187.

As to long term crops which party wrongfully claiming possession has planted, it is considered that past harvesting has sufficiently compensated him. *Moses v. Moses*, 3 T.T.R. 187.

## PUBLIC LANDS.

### Succeeding Sovereign

So far as property rights are concerned, present government of Trust Territory of the Pacific Islands is in position like that of succeeding sovereign taking over government of land conquered by it or ceded to it by another nation. *Raimato v. Trust Territory*, 3 T.T.R. 269.

### Shore Lands

There is no universal and uniform law as to land under tide waters, and great caution is necessary in applying precedents in one state to cases arising in another. *Protestant Mission v. Trust Territory*, 3 T.T.R.26.

In United States, owner of upland abutting shore does not acquire title to land he creates by unauthorized filling of underwater soil belonging to government. *Protestant Mission v. Trust Territory*, 3 T.T.R. 26.

Under general common law title in soil of sea is in sovereign except insofar as individual has acquired rights in it by express grant, prescription, usage, or by legislation. *Protestant Mission v. Trust Territory*, 3T.T.R.26.

## PUBLIC LANDS

Question of ownership of shore land between high-water and low-water mark and exact limits of private" ownership of land bounded by sea is one peculiarly dependent upon local law. Protestant Mission v. Trust Territory, 3 T.T.R. 26.

No right to filled-in land is created under Trust Territory Code, and only certain rights already in existence were preserved by Code. (T.T.C., Sees. 24 and 32(f)» Protestant Mission v. Trust Territory, 3 T.T.& 26.

Right of government to fill in areas owned by it below high-water mark and to retain ownership of land so made, and to expressly authorize others to do so regardless of wishes of owners of adjoining upland, is recognized in United States. Protestant Mission v. Trust Territory, 3 T.T.& 26.

Trust Territory Code Section 32, with a prior determination by the Japanese administration that all marine areas below the ordinary high watermark belong to the **government**, has completely superseded any rights that owners of a reef or water over the reef may formerly have had in abutting swamp lands, or any rights that abutting land-owners may previously have had to swamp lands between their dry landholdings and deep water. Peretiw v. Meriam, 3 T.T.& 495.

### Use Rights

Claim to land on Ponape Island based solely on oral statements of Political Affairs Officer of Navy Administration is insufficient, since officer's position did not carry with it implied authority to convey ownership of government land. Protestant Mission v. Trust Territory, 3 T.T.R.26.

## PUBLIC NUISANCE

### Generally

Inhaling gasoline vapors by a child does not constitute committing a nuisance under Section 408 of the Trust Territory Code. In re Ichiro, 3 T.T.R. 406.

## PUBLIC UTILITY.

### Generally

Where local betterment association's transportation service is offered to all Micronesians who ask to take" advantage of it, it does not meet test for exemption from classification as public utility. Trust Territory v. Saipan Bus Company, 3 T.T.& 76.

Fact that person or organization conducting type of activity ordinarily done as a business runs it as low cost without any attempt at profit does not relieve activity from license requirements of law. Trust Territory v. Saipah Bus Company, 3 T.T.R. 76.

Providing commuting **transportation** service, offered during hours of **day** when it is normally wanted, to all Micronesians on island in Micronesia where Micronesians overwhelmingly predominate in **population**,

## REAL PROPERTY

even though done at cost, constitutes engaging in public transportation and requires license from Trust Territory Government as public utility. (Congress of Micronesia Public Law No. 1-6) Trust Territory v. Saipan Bus Company, 3 T.T.R. 76.

### R

#### REAL PROPERTY.

##### Adjudication of Ownership

Magistrate and Assistant Magistrate have no authority to adjudicate ownership of land. *Toris v. Farek*, 3 T.T.R. 163.

##### Accretion

Where an area becomes dry land as a result of natural forces it is owned by the owner of the original portion as an accretion to it. *Pereti v. Meriam*. 3 T.T.R.495.

##### Boundaries

When definite boundaries are either uncertain or in dispute, lines agreed upon or generally recognized and accepted, even though erroneous, are accepted by courts. *Ngirudelsang v. Itol*, 3 T.T.R. 351.

##### Quiet Title-Presumption of Ownership

Working land for over one hundred years raises a presumption of ownership without clear evidence to the contrary. *Sehk v. Sohn*, 3 T.T.R. 420.

##### -Laches

After a lapse of 35 years without any protest against the open possession of the land by others every reasonable presumption would be made in favor of the exchange transferring such land which a plaintiff was seeking to upset. *Pereti v. Karimina*, 3 T.T.R. 533.

##### Forcible Detainer

In statutory forcible detainer actions in United States, right of possession only is involved and title or conflicting interests in land may not be considered by courts. *Remoket v. Olekerii*, 3 T.T.R. 339.

Trust Territory law which gives District Court jurisdiction to determine right to immediate possession of land is similar to forcible entry and detainer action, which is regarded as possessory action, in which plaintiff need not be owner of property in dispute and issue of title is not raised. (T.T.C., Sec. 138) *Remoket v. Olekerii*, 3 T.T.R. 339.

##### Deed of Transfer

A deed of transfer is insufficient to vest title in the "transferee" if he was not otherwise entitled to the land transferred. *Rechemang v. Belau*, 3 T.T.R. 552.

## **REAL PROPERTY**

### **Improvements**

Where one enters upon land without any reasonable and honest belief that he has a true right to do so he cannot properly charge the owners for whatever improvements he may have made on the land. *Narruhn v. Sale*, 3 T.T.R. 514.

Even if one enters upon land in good faith, with reasonable and honest belief in his right to do so, the only compensation to which he would be entitled for improvements would be the amount that the value of the land was increased by the improvements, or for the value of the labor and materials employed in making such improvements, whichever is least. *Narruhn v. Sale*, 3 T.T.R. 514.

Where one had no reasonable basis for believing he was entering land as a matter of right, he acquired no rights in his planting on the land and was not entitled to any compensation for any improvement he may have made. *Pereti v. Karimina*, 3 T.T.R. 533.

Party who places structure on land, without buying lot and with notice of third party's claim of ownership of property, has no rights in land nor in cement block structure she built on it. *Itol v. Sakuma*, 3 T.T.R. 358.

### **RECKLESS DRIVING.**

#### **Generally**

In construing legislation regarding crime of reckless driving, American precedents and theories must be considered and applied in Trust Territory. (T.T.C., Sec. 815(b), as amended) *Haruo v. Trust Territory*, 3 T.T.R.39.

In order to find person guilty of reckless driving under Trust Territory law, trial court must be satisfied beyond reasonable doubt that accused has either wilfully or negligently driven so badly that there was good reason to expect he would injure persons or property which he know or should have known were in a position where they might be injured, or which he should have expected might properly be in such a position. T.T.C., Sec. 815(b),as amended) *Haruo v. Trust Territory*, 3 T.T.R. 39.

#### **Actual Injury**

No actual Injury to persons or property is necessary in order to constitute offense of reckless driving within meaning of Trust Territory Code. (T.T.C., Sec. 815(b)» *Mesechol v. Trust Territory*, 3 T.T.R. 136.

Trial court may find accused was driving in such a manner as to be likely to endanger pedestrian, within meaning of Trust Territory law defining reckless driving, even though pedestrian was not actually injured. (T.T.C., Sec. 815(b), as amended) *Ngirasmau v. Trust Territory*, 3 T.T.R.140.

#### **.Fault**

It is possible for minor accident to occur without there having been

## RECKLESS DRIVING

substantial deviation from ordinary standard of care. *Borja v. Trust Territory*, 3 T.T.R. 254.

One is not to be held absolutely liable for any injuries caused by accidents in which he may become involved, but only for injuries caused by accidents for which he is to blame in some manner because of wilful wrong or negligence. (T.T.C., Sec. 815(b), as amended) *Haruo v. Trust Territory*, 3 T.T.R. 39.

Higher degree of blame is generally required for criminal liability than would be sufficient for civil liability. *Haruo v. Trust Territory*, 3 T.T.R. 39.

Elimination of words "so as to endanger" and retention of words "in such a manner as to be likely to endanger" in Trust Territory law defining reckless driving import legislative intention to require showing of substantial blame or fault. (T.T.C., Sec. 815(b), as amended) *Haruo v. Trust Territory*, 3 T.T.R. 39.

Amendment to Trust Territory law defining reckless driving was not intended to make one criminally liable for crime simply for being involved in accident regardless entirely of question of blame. (T.T.C., Sec. 815(b), as amended) *Haruo v. Trust Territory*, 3 T.T.R. 39.

In amending Trust Territory law defining reckless driving, authorities intended to make clear that some more serious fault than simple negligence must be shown, and that violation is substantial misdemeanor warranting substantial sentence if guilt is shown. (T.T.C., Sec. 815(b), as amended) *Haruo v. Trust Territory*, 3 T.T.R. 39.

Mere fact accused in criminal prosecution was driver of vehicle involved in accident does not raise inference he is guilty of reckless driving nor of simple negligence as basis of civil liability. (T.T.C., Sec. 815(b), as amended) *Haruo v. Trust Territory*, 3 T.T.R. 39.

Where accused in criminal prosecution was not driving vehicle recklessly or with gross, wilful or wanton disregard of lives or safety of public, charge of reckless driving cannot be sustained. *Borja v. Trust Territory*, 3 T.T.R. 254.

In criminal prosecution for reckless driving, where charge cannot be sustained and accused's driving does not constitute substantial deviation from standard of care of reasonable man, there can be no finding of guilt of lesser included offense of negligent driving. *Borja v. Trust Territory*, 3 T.T.R. 254.

### Likely to Endanger

Words "likely to endanger" as used in Trust Territory law defining reckless driving refer to conduct which it is naturally to be expected will cause danger. (T.T.C., Sec. 815(b), as amended) *Haruo v. Trust Territory*, 3 T.T.R. 39.

Words "likely to endanger" as used in Trust Territory law defining reckless driving do not cover all conduct which may possibly result in danger, particularly if result is because of some circumstance one

## RECKLESS DRIVING

would not ordinarily anticipate. (T.T.C., Sec. 815(b), as amended) Haruo v. Trust Territory, 3 T.T.R. 39.

Trust Territory law defining reckless driving is intended to cover situations where driver causes undue risk of injury to persons who either actually are or who it should reasonably be expected may properly be in position where they are likely to be injured, or where property similarly situated is likely to be injured. (T.T.C., Sec. 815(b)) Mesechol v. Trust Territory, 3 T.T.R. 136.

### Speed

Driving slightly in excess of speed limit does not necessarily, taken all alone, constitute reckless driving. (T.T.C., Sec. 815(b)) Mesechol v. Trust Territory, 3 T.T.R. 136.

Driving at excessive speed under Circumstances showing danger to persons or property may constitute reckless driving even though speed is within fixed limit for particular place. (T.T.C., Sec. 815(b)) Mesechol v. Trust Territory, 3 T.T.R. 136.

### Mutual Fault .

In accident between two automobiles, both drivers may be guilty of reckless driving. (T.T.C., Sec. 815(b), as amended) Ngrasmau v. Trust Territory, 3 T.T.R. 140.

### Seittenc'e

If accused in criminal prosecution is found guilty of offense of reckless driving in new trial after remand, sentence should be substantial and matter not treated lightly or as minor traffic violation. (T.T.C., Sec. 815(b), as amended) Haruo v. Trust Territory, 3 T.T.R. 39.

## S

### STATUTES.

#### Construction

It is not for courts to question or pass of wisdom of legislative intent, but to allow it full effect within legal limits. Ambros v. Municipality, 3 T.T.R. 48.

## T

### TORTS.

#### Generally

Tort is legal term for wrong independent of contract, including both wilful and negligent wrongs. Ychitaro v. Lotius, 3 T.T.R. 3.

Individual should be liable in damages for injuries caused by negligence or wilful wrong. Ychitaro v. Lotius, 3 T.T.R. 3.

## TORTS

The same act may constitute both a crime and a tort and there may be civil recovery as well as criminal prosecution. *Moolang v. Figir*, 3 T.T.R. 455.

Torts, see, also, Truk Custom-Torts

### Immunity-Government

Immunity extends to municipal corporations which are not liable for torts committed in course of purely governmental functions. *Ychitaro v. Lotius*, 3 T.T.R. 3.

### -Public Employees

Immunity of school and municipal corporation does not extend to individual whose wrongful conduct caused injury, whether he is public officer or employee. *Ychitaro v. Lotius*, 3 T.T.R.3.

Board of education is not liable for torts committed in exercise of governmental function, but where members are sued in individual capacities, no legal theory insulates public official from personal tortious acts. *Ychitaro v. Lotius*, 3 T.T.R. 3.'

Fact that defendant in tort action was public school teacher at time of incident does not relieve him of liability he might otherwise have. *Ychitaro v. Lotius*, 3 T.T.R. 3.

### Malice

Where malice is necessary for liability or equitable relief, this does not necessarily involve any element of ill will or hatred. *Trust Territory v. Saipan Bus Company*, 3 T.T.R. 76.

Malice in relation to tort or civil wrong regularly involves wrongful act, intentionally done without justification or excuse, or wish to injure regardless of social duty and rights of others. *Trust Territory v. Saipan Bus Company*, 3 T.T.R. 76.

### Negligence

Liability for negligence in situations not clearly covered by local custom in part of Trust Territory concerned must be governed by common law principles so far as not governed by any written law. *Ychitaro v. Lotius*, 3 T.T.R. 3.

Common law concept of negligence is very broad. *Ychitaro v. Lotius*, 3 T.T.R. 3.

Actionable negligence is violation of duty to use care. *Ychitaro v. Lotius*, 3 T.T.R. 3..

Negligence is omission to do something which reasonable man guided by considerations which regulate conduct of human affairs would do, or doing something which reasonable man would not do. *Ychitaro v. Lotius*, 3T.T.R. 3.

If person's negligence causes injury to person or property of another as natural, direct and immediate result of the negligence, negligent person will be held liable to pay injured person value in money of dam-

## TORTS

age caused, provided injured person was acting properly at time of injury. *Ychitaro v. Lotius*, 3 T.T.R. 3.

Where court found liability for damages arising out of automobile accident in Palau District, case involved new element introduced by outsiders, not covered by local custom, and governed by rules of common law. (T.T.C., Sec. 22) *Ychitaro v. Lotius*, 3 T.T.R. 3.

Liability for damages arising out of motorboat accident is governed by rules of common law. *Ychitaro v. Lotius*, 3 T.T.R. 3.

Where defendant in negligence action is public school teacher, question of liability should be governed by American common law rules since matter of schools and responsibility of teachers is foreign to Truk custom and there is no express provision as to teacher's liability in written enactment. *Ychitaro v. Lotius*, 3 T.T.R. 3.

### -Standard of Care

In determining what is reasonable care in action for tort, standards of people and area involved must be considered. *Ychitaro v. Lotius*, 3 T.T.R. 3.

Teacher has duty to use reasonable care to protect students from danger. *Ychitaro v. Lotius*, 3 T.T.R. 3.

Teacher has duty to prevent third persons from intentionally harming students or conducting themselves in such manner as to create unreasonable risk of harm to students. *Ychitaro v. Lotius*, 3 T.T.R. 3.

### -Contributory Negligence

Motorist cannot escape responsibility for his own negligence just because some third person was also negligent at same time and contributed toward dangerous situation. *Ngirasmau v. Trust Territory*, 3 T.T.R. 140.

### -Vicarious Liability

Public schools and boards which control them are not held liable for injuries caused to pupils by negligence of teachers or other employees of school in performance of their duties. *Ychitaro v. Lotius*, 3 T.T.R. 3.

### Interference with Contractual Relations

Considerations of public health, morals and welfare are ordinarily held to be justification for interference with another's contract, and whether such justification exists is largely question of fact, the standard being reasonable conduct under all the circumstances. *Trust Territory v. Saipan Bus Company*, 3 T.T.R. 76.

Where acts of party were entered into deliberately and hurt business of another, acts could be considered to have been done with implied malice or "malice in law" if done without justification or excuse. *Trust Territory v. Saipan Bus Company*, 3 T.T.R. 76.

## TORTS

Implied malice can be understood as liability for purposely causing third person to break a contract, unless one is in position which gives him privilege to do so. *Trust Territory v. Saipan Bus Company*, 3 T.T.R. 76.

### Wrongful Death

Where court can find no custom as to liability in money damages for unintentionally causing death, it must hold that liability for wrongful death which is not wilful does not depend on custom but on other parts of law. *Ychitaro v. Lotius*, 3 T.T.R. 3.

Teacher who permits students to over-crowd boat which he is operating so that boat capsizes and child drowns is negligent, and his negligence is proximate cause of child's death. *Ychitaro v. Lotius*, 3 T.T.R. 3.

Torts---Wrongful Death, see, also, *Truk Custom-Torts---Wrongful Death*

### -Personal Representative

Personal representative of deceased may bring any action for wrongful death such as would have entitled party injured to maintain action if death had not ensued. (T.T.C., Sec. 25(a) and (b)» *Ychitaro v. Lotius*, 3 T.T.R. 3.

Requirement of bringing action for wrongful death in name of personal representative of deceased is procedural matter which should not affect question of liability except to protect defendant from actions by other claimants. *Ychitaro v. Lotius*, 3 T.T.R. 3.

Logical person to represent deceased in wrongful death action in Truk is father or maternal uncle of deceased child. *Ychitaro v. Lotius*, 3 T.T.R.3.

### -Damages

In wrongful death action, court may grant money damages to next of kin only for pecuniary injury and not for sorrow or grief. *Ychitaro v. Lotius*, 3 T.T.R. 3.

Pecuniary benefits in wrongful death action include present value of future services and value of any services rendered immediately before death. *Ychitaro v. Lotius*, 3 T.T.R. 3.

In case of a child, pecuniary damages in wrongful death action is the excess in present value in dollars of services which next of kin might reasonably have expected from deceased, reduced by the additional expense which they would have incurred in raising her. *Ychitaro v. Lotius*, 3 T.T.R. 3.

Past expenditures for child is not proper measure of damages in action for wrongful death of child. *Ychitaro v. Lotius*, 3 T.T.R. 3.

Court may award damages in wrongful death actions not exceeding ten thousand dollars, proportional to pecuniary injury resulting from such death, to surviving spouse, children or other next of kin. (T.T.C., Sec. 25(b) and (c)» *Ychitaro v. Lotius*, 3 T.T.R. 3.

## TORTS

### —Generally

Pecuniary loss to members of a family are awarded generally when there has been a wrongful death, but not for injuries which result in a loss from which the victim of an injury may recover. *Ngeruengl v. Ramangesawul*, 3 T.T.R. 403.

The measure of damages for personal injury is compensation for the injured party's loss and this includes special damages and compensation for pain and suffering. *Rubelukan v. Falewaath*, 3 T.T.R. 410.

It always is the obligation of the plaintiff to produce itemized records to support his claim for damages for personal injury. *Rubelukan v. Falewaath*, 3 T.T.R. 410.

Where injured party was not billed for and did not pay certain expenses resulting from his injury he is not entitled to any recovery for them. *Rubelukan v. Falewaath*, 3 T.T.R. 410.

Compensation for an injured party's loss is subject to reasonable precise measurement because it includes costs of medical services, hospitalization, and related costs such as travel expenses, room and board in connection with treatment and other incidental and directly related expenditures. *Rubelukan v. Falewaath*, 3 T.T.R. 410.

An injured person's losses may be included in a recovery of damages caused by personal injury and these losses include medical expenses, including travel costs if the injury requires treatment or hospitalization, loss of earnings or loss of earning capacity if the injury prevents return to former work and pain and suffering. *Ngeruengl v. Ramangesawul*, 3 T.T.R. 403.

### -Loss of Earnings

Loss of earnings, an element of special damages resulting from personal injury, are subject to mathematical calculation, subject, however, to any reductions due to what is called "avoidable consequences". *Rubelukan v. Falewaath*, 3 T.T.R. 410.

Special damages for loss of earnings must be clearly and specifically shown and where they are not recovery will be denied. *Rubelukan v. Falewaath*, 3 T.T.R. 410.

An injured party's loss also includes loss of earnings when there is total disability and compensation for reduction of earning ability if the injury is semi-permanent or permanent. *Rubelukan v. Falewaath*, 3 T.T.R. 410.

The hardship upon an individual's family resulting from loss of earnings is not appropriate for additional recovery to the injured person's loss of earnings. *Ngeruengl v. Ramangesawul*, 3 T.T.R. 403.

### -Mitigation

An injured party is bound to exercise reasonable diligence in securing medical aid, to take all reasonable medical means to promote recovery

## TRESPASS

and to prevent any aggravation of the injury thereby aiding in the speedy cure of the injury. *Rubelukan v. Falewaath*, 3 T.T.R. 410.

Where long periods of delay in obtaining medical aid and the resultant delay in the "cure" were attributable to the injured person he was not entitled to loss of earnings for the full period of his disability. *Rubelukan v. Falewaath*, 3 T.T.R. 410.

### -Pain and Suffering

Pain and suffering of one who suffers personal injury is an appropriate subject of compensation. *Ngeruangl v. Ramangesawul*, 3 T.T.R. 403.

Pain and suffering is recognized as a principal element of damages for Personal injury, although it is impossible to calculate with any degree of certainty. *Rubelukan v. Falewaath*, 3 T.T.R. 410.

There can be no real measurement of the value in dollars of pain and suffering, rather it is a matter within the discretion of the court and is based upon all surrounding circumstances. *Ngeruangl v. Ramangesawul*, 3 T.T.R. 403.

Pain and suffering also includes damages resulting from the anguish of surgical operation or medical treatment reasonably required by an injury. *Rubelukan v. Falewaath*, 3 T.T.R. 410.

## TRESPASS.

### Generally

In order for acts set forth in Trust Territory Code to constitute trespass, they must be done without committing or attempting to commit any of certain other crimes mentioned therein. (T.T.C., Sec. 401) *Figir v. Trust Territory*, 3 T.T.R. 127.

Phrase "beforementioned crimes" referred to in Trust Territory statute on trespass refers to all crimes previously listed in Section C (Crimes Against Property) of Chapter Six, among which is amended crime of malicious mischief. (T.T.C., Sec. 401) *Figir v. Trust Territory*, 3 T.T.R. 127.

### Intent

Claim of right made in good faith, even though erroneous, is good defense to charge of criminal trespass. (T.T.C., Sec. 401) *Tasio v. Trust Territory*, 3 T.T.R. 262.

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. (T.T.C., Sec. 401) *Tasio v. Trust Territory*, 3 T.T.R. 262.

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. (T.T.C., Sec. 401) *Tasio v. Trust Territory*, 3 T.T.R. 262.

## TRUK CUSTOM

### TRUK CUSTOM.

#### Lineage

A young child in acquiring benefits from his lineage is bound by all proper actions taken by the then adult members of the lineage during his minority. *Pereti v. Karimina*, 3 T.T.R. 533.

#### Care During Last Illness

Where parties who rendered care to lineage member in his last illness are entitled to compensation from lineage, parties may only claim as creditors of lineage and not as owners of any particular piece of lineage land. *Lasu v. Petero*, 3 T.T.R. 199.

While matrilineal lineage cannot properly deny obligation to pay compensation in one form or another for care rendered to lineage member in his last illness, if lineage failed without good cause to provide proper care for their deceased member, compensation need not necessarily be in land, but may be paid in goods or money. *Tasu v. Petero*, 3 T.T.R. 199.

#### Marriage-Breach of Marital Duty

Action for damages under Truk custom for breach of marital duty can be brought either by injured spouse or by anyone who has traditional authority to speak for his or her lineage. *Ketari v. Taro*, 3 T.T.R. 279.

Right to damages under Truk custom for breach of marital duty cannot be split, and once adjudication has been made between offending party and injured spouse or his or her lineage, this ends right of both injured spouse and lineage to further damages for incident covered by adjudication. *Ketari v. Taro*, 3 T.T.R. 279.

*Chapen assong* may become due without any divorce under Truk custom. *Ketari v. Taro*, 3 T.T.R. 279.

#### Divorce-Civil Liability

If divorce under Truk custom takes place either as result of or as part of same act which gave rise to *chapen assong*, *chapen moula* cannot then properly be demanded in addition to *chapen assong*. *Ketari v. Taro*, 3 T.T.R. 279.

If party in Truk seeks divorce through court action for one of grounds set forth in Trust Territory Code, no question of *chapen moula* should arise in connection with it. *Ketari v. Taro*, 3 T.T.R. 279.

Action brought in Community Court between Trukese spouses for customary damages settles right to damages between them, so that after Community Court judgment becomes final, no further right exists against spouse for same cause litigated in that action. *Ketari v. Taro*, 3 T.T.R. 279.

#### Torts

Under Truk custom, there may be no such thing as liability for negligence, there being no middle ground between absolute liability for all

## TRUK LAND LAW

harm inflicted or intentional wrongs only. *Ychitaro v. Lotius*, 3 T.T.R. 3.

Torts, see, also, Torts-Generally

### -Wrongful Death

Under Truk custom, deaths caused **unintentionally** have been forgiven where person causing death has shown proper regret, sorrow, and sympathy for surviving members of family or lineage of deceased. *Ychitaro v. Lotius*, 3 T.T.R. 3.

Under Truk custom, there is no consensus on matter of liability for unintentionally causing death. *Ychitaro v. Lotius*, 3 T.T.R. 3.

Under Truk custom, in former times, compensation for death was paid by transfer of land from lineage of wrong-doer to lineage of deceased. *Ychitaro v. Lotius*, 3 T.T.R. 3.

If there is liability for money damages under traditional Truk custom for unintentionally causing death, it should go to deceased's lineage rather than to father. *Ychitaro v. Lotius*, 3 T.T.R. 3.

Wrongful Death, see, also, Torts-Wrongful Death

### Wills

Under Truk custom, deathbed will of family land supersedes any previous wills, written or otherwise. *Irons v. Mailo*, 3 T.T.R. 194.

Under Truk custom, even though deceased's statement of his wishes regarding succession to family land over which he has control is clear, it may not control. *Irons v. Mallo*, 3 T.T.R. 194.

Under Truk custom, wills of family land do not have same authoritative force as valid will in United States, but require consent of family either before or after death. *Irons v. Mailo*, 3 T.T.R. 194.

Truk custom, whereby testator may make later change in will of family land without consent of person whom he has previously designated to receive land, applies also to will of testator's individual land. *Irons v. Mailo*, 3 T.T.R. 194.

## TRUK LAND LAW.

### Generally

Written authorization from Japanese Government superseded and limited whatever government representatives may orally have said regarding ownership of land. *Pereti v. Meriam*, 3 T.T.R. 495.

### Lineage Ownership-Gifts

Under Truk custom, gift of lineage land by lineage member to his sons as payment for care rendered by them in his last illness is subject to review by matrilineal family. *Lasu v. Petero*, 3 T.T.R. 199.

### -Sales

Where the head of the lineage agreed to the sale of lineage land, within lineage approval, and accepted payments toward it the pur-

## TRUK LAND LAW

chaser may retain possession until he has been repaid in full or the head of the lineage dies, whichever happens first. *Yaruteru v. Angar*, 3 T.T.R. 543.

Payment to and acceptance by brother of owner of land lineage had an interest in, and payment to such owner's daughter and division with owner's adult children, in accordance with Trukese custom, indicated lineage approval of sale of lineage land. *Akos v. Orem*, 3 T.T.R. 504.

### -Transfers

Under Truk custom, *afokur* have no right to interfere with disposition of land by lineage. *Pinar v. Kantenia*, 3 T.T.R. 158.

While land owned by a Trukese lineage cannot be transferred without the unanimous consent of the members, and a lineage is not barred from disposing of its land just because it has among its members some small children. *Peretiw v. Karimina*, 3 T.T.R. 533.

### —Use Rights

Under Truk custom, use of lineage land by *afokur* with consent of lineage is in accord with custom, but rights of *afokur* depend upon permission, and extended permission gives no right of ownership. *Pinar v. Kantenia*, 3 T.T.R. 158.

### Group Ownership

Under Truk custom, a number of people may share in use of same piece of land and take what they want from it without express arrangement between them as to physical division of land or rotation of harvesting, and matter is controlled by general obligation to cooperate and take reasonable amount of produce. *Mita v. Piriska*, 3 T.T.R. 168.

Where parties in Truk are members of group which is entitled to share fairly in use of properties in accordance with custom, exact method of sharing should be worked out within group and finally stated by group's leader. *Wanter v. Fertun*, 3 T.T.R. 172.

No attempt should be made by courts to determine division of use of property in Truk where members of group are entitled to share in use rights, unless and until parties have made every reasonable effort to work out determination within group and entire group has had chance to be heard on the matter. *Wanter v. Fertun*, 3 T.T.R. 172.

### Family Land-Transfers

Under Trukese custom family land cannot be lawfully transferred without the unanimous consent of at least all the adult members. *Narruhn v. Sale*, 3 T.T.R. 514.

### Individual Ownership-Transfers

Under Truk custom, where man makes gift of his individual land to his wife and her children, he usually contemplates retaining at least a certain amount of control over land so long as he lives. *Angkel v. Maipi*, 3 T.T.R. 154.

## TRUK LAND LAW

Where husband gives his individual land to his wife and her children, and both husband and wife later actively join in sale of land and wife receives part of purchase money, their actions are sufficient under Truk custom to pass to purchaser whatever interest either of them or their minor children have in land which they purported to sell. *Angkel v. Maipi*, 3 T.T.R. 154.

### Use Rights

Cooperation between relatives in use of land is common under Truk custom and does not establish rights of ownership. *Toris v. Farek*, 3 T.T.R. 163.

Lessor is entitled to no compensation for coconut trees cut down by the lessees where the trees were either old and not bearing well or trees it was reasonable for them to cut down to make room for their new house. *Manuel H. v. Yuanita*, 3 T.T.R. 538.

Any power a village chief might have over the use and distribution of certain mangrove trees in a swamp would not carry with it the right to transfer ownership of any part of the swamp from the Government. *Pereti v. Meriam*, 3 T.T.R. 495.

Chief's giving of permission to block up a bridge so that part of a swamp would become suitable for the planting of taro was not sufficient to transfer ownership of that part from the Government. *Pereti v. Meriam*, 3 T.T.R. 495.

While none of the parties had any right, as against the Government, to any part of Government owned land in question, those who first took possession of any part of the area were entitled to retain possession and use unless and until the Government took some action on the matter. *Pereti v. Meriam*, 3 T.T.R. 495.

### Adverse Possession

As to the land in question none of the parties had any right to interfere with the prior possession of any other party and those who pulled up plantings by others there and then made plantings of their own in the same location, or who mixed their plantings in among earlier ones by others, gained by so doing no rights as against those who first took possession of that land. *Pereti v. Meriam*, 3 T.T.R. 495.

### Agreement to Support

Where transfer of land in Truk is conditioned on donee staying with donor on land and taking care of her for rest of her life, and donee fails to do this, transfer fails and donor has right under Truk custom to disregard or cancel it. *Mita v. Piriska*, 3 T.T.R. 168.

### Ownership Disqualification

During Japanese times, a Japanese was prohibited from owning land in Truk unless he was married to a Trukese, and he could then hold land only in name of Trukese wife or children. *Caipot v. Narruhn*, 3 T.T.R. 18.

## TRUK LAND LAW

Transfer of land by Japanese owner who was subject to disqualification, to son who is Trukese and entitled to hold land, passed lawful ownership to son. *Caipot v. Narruhn*, 3 T.T.R. 18.

### **Mortlock Islands**

Sale or gift of family land in Mortlocks to outsider is invalid without unanimous consent of all adult members, and without such consent lineage head has no right of sale. *Fred v. Airinios*, 3 T.T.R. 274.

Those to whom use rights in lineage property in Mortlocks have been assigned hold under lineage, subject to its control in accordance with local custom, no matter how long they or their predecessors in interest may have been in possession. *Fred v. Airinios*, 3 T.T.R. 274.

Under Mortlocks custom, lineage members have duty to cooperate and advance their mutual interests, and lack of such cooperation does not give lineage members power to sell or give away lineage properties. *Fred v. Airinios*, 3 T.T.R. 274.

**If** those to whom use rights in lineage property in Mortlocks have been assigned persist in denying lineage rights, this is adequate ground for lineage to reassign use rights to someone else. *Fred v. Airinios*, 3 T.T.R. 274.

Under custom on Lukunor and common law principles once an exchanged parcel of land is reclaimed by one side the other may reclaim their parcel originally given up in the exchange. *Lof v. Lukeren*, 3 T.T.R. 519.

An *afokur* of the lineage, while having no absolute rights in exchanged lands in question, could reasonably expect to be allowed a certain amount of use of the land along with the defendant owner, daughter of deceased owner, provided he cooperated with her. *Lof v. Lukeren*, 3 T.T.R. 519.

Once it is established that a piece of land in Mortlocks is lineage land, the granting of use rights in it, even to a member of the lineage" is not any more readily to be presumed to constitute a transfer of ownership than in the case of permission to use granted to an *afokur*. *Sirom v. Piranis*, 3 T.T.R. 522.

**In** the Mortlocks a lineage is entitled to divide up lineage land provided they do so after fair consideration of the matter and subject to the use rights held by another, and the lineage cannot oust the one holding the use rights without showing good cause. *Sirom v. Piranis*, 3 T.T.R. 522.

Under Mortlock custom, where land is given to child by his father's lineage, child's lineage is expected to give land in exchange. *Lusper v. Fatiol*, 3 T.T.R. 35.

Under Mortlocks custom, where land is given to child by his father's lineage and child's lineage gives land in return, child has right to use land given to him as long as he lives, but his matrilineal lineage is considered to own land. *Lusper v. Fatiol*, 3 T.T.R. 35.

## TRUSTEESHIP

Under Mortlocks custom, where land is given to child by his father's lineage and child's lineage gives land in return, child has no right to give land received by him to his own children without consent of his matrilineal lineage. *Lusper v. Fatiol*, 3 T.T.R. 35.

Under Mortlocks custom, where land is given to child by his father's lineage, and individual related to child in male line gives land to that lineage in exchange, that individual is considered to own land received by child, and latter cannot dispose of it without individual's consent. *Lusper v. Fatiol*, 3 T.T.R. 35.

The holder of use rights to lineage land in the Mortlocks is entitled to harvest from trees which he has planted on the land as long as he lives and the trees last as long as he fulfills his obligations to his lineage. *Sirom v. Piranis*, 3 T.T.R. 522.

### TRUSTEESHIP.

#### Generally

Although Trust Territory is definite geographical area, it is merely name under which United States carries out its obligations as administering authority under Trusteeship Agreement. *Alig v. Trust Territory*, 3 T.T.R. 64.

Trust Territory is not real legal entity since it speaks, operates and acts as part of executive department of United States through Secretary of Interior. *Alig v. Trust Territory*, 3 T.T.R. 64.

Although Trust Territory of the Pacific Islands is means by which United States carries out certain responsibilities as administering authority under Trusteeship Agreement, it also has some separate standing administratively, and therefore cannot be considered merely agency of the United States in all cases. *Alig v. Trust Territory*, 3 T.T.R. 603.

#### Administering Authority-Powers

Although United Nations Charter and Trusteeship Agreement set out terms of trust, United States as administering authority must itself determine how terms of trust shall be carried out. *Alig v. Trust Territory*, 3 T.T.R. 64.

United States, as administering authority of Trust Territory, has full powers of administration, legislation and jurisdiction over territory subject to provisions of Trusteeship Agreement and may apply to territory such laws of United States as it deems appropriate. (Trusteeship Agreement, Art. 3) *Trust Territory v. Ngiralois*, 3 T.T.R. 303.

Administering authority's full power of legislation in Trust Territory includes right to delegate it. *Trust Territory v. Ngiralois*, 3 T.T.R. 303.

#### Trusteeship Agreement

United Nations Charter, in setting up international trusteeship system, makes definite provision for enforcement of this system through Trusteeship Council, General Assembly and, in case of strategic trusteeships,

## TRUSTEESHIP

the Security Council. (United Nations Charter, Chapters XII, XIII)  
Alig v. Trust Territory, 3 T.T.R. 603.

Trusteeship Agreement is part of law of Trust Territory and its meaning is subject to adjudication by court in accordance with usual rules of judicial construction. Trust Territory v. Ngiralois; 3 T.T.R. 303.

Type of trusteeship system created by United Nations Charter does not create trust capable of enforcement through the courts. Alig v. Trust Territory, 3 T.T.R. 603.

Trusteeship Agreement does not create such trusts as courts of equity can enforce. Alig v. Trust Territory, 3 T.T.R. 64.

## TRUST TERRITORY.

### Applicable Law

Rules of common law as expressed in restatements of law and generally understood and applied in United States are rules of decision in courts of Trust Territory in cases to which they apply, in absence of written or customary law. (T.T.C., Sees. 20, 21, 22, 24) Yehitaro v. Lotius, 3 T.T.R. 3.

### Suits Against

Although Trust Territory of the Pacific Islands is not a sovereign in international sense, it may still be granted sovereign immunity. Alig v. Trust Territory, 3 T.T.R. 603.

Delegation of legislative power to Trust Territory of the Pacific Islands, even though subject to some limitations, gives Trust Territory quasi-sovereignty or qualified sovereignty, carrying with it attribute of immunity from suit without its own consent. Alig v. Trust Territory, 3 T.T.R. 603.

Even if legal trust, as distinguished from political trust, were involved in setting up of Trust Territory, principle of government's immunity from suit without its consent would still prevent maintenance of action against Trust Territory for return of property taken by Japanese Government in 1931. Alig v. Trust Territory, 3 T.T.R. 603.

Suit is one against Trust Territory Government where individuals named as defendants are sued purely by title, there are no allegations as to what specific part any of them has taken in wrongs alleged, there is no allegation any of them was exceeding his delegated powers in occupying land in question, or that any was in possession of land in anything other than his official capacity. Alig v. Trust Territory, 3 T.T.R. 603.

Suit against Trust Territory and certain of its officers for return of land taken by Japanese Government and for damages and rents comes within doctrine of sovereign immunity, whereby government is immune from suit without its consent. AUG v. Trust Territory, 3 T.T.R. 603.

## TRUST TERRITORY

### Immigration -

Since Trust Territory of the Pacific Islands is strategic trusteeship, entry into it by noncitizens is forbidden without permission of United States as administering authority. (T.T.C., Sec. 667) Meyer v. Epsom, 3 T.T.R. 54.

### Land Law

Land law custom, as it existed in 1941, remains operative and in effect in Trust Territory except when changed by express written enactment. (T.T.C., Sec. 24) Rudimch v. Chin, 3 T.T.R. 323.

### -Limitations

The twenty-year statute of limitations within which an action to recover land may be brought is not a bar to recovery until 1971. (T.T.C., Sec. 316) Pennov. Katarina, 3 T.T.R. 416.

### -Determination of Ownership

A determination of ownership under Office of Land Management Regulation No. 1, unappealed from, has a standing similar to a judgment between the parties. In re De Castro, 3 T.T.R. 446.

### -Effect of Title Determination

When title determination has become final, it prevails over any claims or interests thereafter asserted which are founded upon land custom existing prior to the determination. (Office of Land Management Regulation No. 1) Rudimch v. chin., 3 T.T.R. 323.

### -Ownership Disqualification

Disqualification from holding title to land is matter of which only government can take advantage. (T.T.C., Sec. 900) Caipot v. Narruhn, 3 T.T.R. 18.

Disqualification from holding title to land because of nationality is matter of which only government can take advantage. Osawa v. Ludwig, 3 T.T.R. 594.

Person subject to disqualification as land owner can continue to exercise rights of ownership until government acts on matter. (T.T.C., Sec. 900) Caipot v. Narruhn, 3 T.T.R. 18.

### Employee Death Benefits

Provisions regarding payments due beneficiary of deceased employee of Trust Territory Government are based on American precedents rather than on Palau custom. Joshua v. Joshua, 3 T.T.R. 212.

Provisions regarding payments due beneficiary of deceased Trust Territory employee control payment of death benefits regardless of whether person specified in directive would be entitled to inherit any funds or property deceased might have. (Memorandum of High Commissioner, January 17, 1964) Joshua v. Joshua, 3 T.T.R. 212.

## TRUST TERRITORY

Court will not modify or qualify effect of clear provisions of directive of High Commissioner as to payment of death benefits due under Trust Territory law to beneficiaries of Trust Territory employees. (Memorandum of High Commissioner, January 17, 1964) *Joshua v. Joshua*, 3 T.T.R. 212.

Under death benefit plan for Trust Territory Micronesian employees, payment is to be made to immediate beneficiary and paid in accordance with Personnel Manual, in absence of designated beneficiary evidenced by signed statement from employee. (Memorandum of High Commissioner, January 17, 1964) *Joshua v. Joshua*, 3 T.T.R. 212.

Compensation due employee by Government of Trust Territory is payable to employee's beneficiary, and if no beneficiary is designated, it is payable in first instance to widow or widower alive on date title to payment arises. (Trust Territory Personnel Manual, p. 17A.2) *Joshua v. Joshua*, 3 T.T.R. 212.

### Kwajalein

Since Kwajalein Test Site is part of Trust Territory of the Pacific Islands, Trust Territory laws apply there. (T.T.C., Sec. 35) *Meyer v. Epsom*, 3 T.T.R. 54.

Laws of Trust Territory are applicable to Kwajalein Atoll. *Meyer v. Trust Territory*, 3 T.T.R. 586.

Although part of Trust Territory, Kwajalein is under control of United States Army and is restricted in accordance with directives issued by commanding officer. *Meyer v. Trust Territory*, 3 T.T.R. 586.

Army authorities have wide discretion in dealing with persons on Kwajalein Test Site as many activities carried on there are of classified and sensitive nature. *Meyer v. Epsom*, 3 T.T.R. 54.

When party accepts appointment in Kwajalein, he knows that his rights as United States citizen are subject to controls existing on Kwajalein. *Meyer v. Trust Territory*, 3 T.T.R. 586.

By consenting to employment on Kwajalein Test Site, individual agrees to degree of restraint usual there for persons in his position, and he has voluntarily given up his liberty of action to that extent. *Meyer v. Epsom*, 3 T.T.R. 54.

Consent to employment on Kwajalein Test Site carries with it obligation to act in open and straightforward manner, and obligation continues even though individual's permission to be normally on Test Site has been revoked. *Meyer v. Epsom*, 3 T.T.R. 54.

Army has right to put person released on bail off of Kwajalein Test Site if it so desires provided this is done in reasonably safe manner without use of any more force than reasonably necessary. *Meyer v. Epsom*, 3 T.T.R. 54.

## U

## UNITED STATES.

## Treaties

Treaty entered into by United States becomes part of the municipal law and is binding on all judicial tribunals within United States, both state and federal. *Trust Territory v. Ngiralois*, 3 T.T.R. 303.

## Suits Against

It rests with Congress to determine not only what United States may be sued for but in what courts suit may be brought. *Alig v. Trust Territory*, 3 T.T.R. 64.

Jurisdiction of suits against United States whether by counterclaim or by direct action does not exist without specific Congressional authority. *Alig v. Trust Territory*, 3 T.T.R. 64.

Doctrine of sovereign immunity may be applied to certain territories of United States even though legislative determinations of government involved are subject to possible change at discretion of Congress of United States. *Alig v. Trust Territory*, 3 T.T.R. 603.

High Court of Trust Territory has no Congressional authority to entertain suits of any kind against United States. *Alig v. Trust Territory*, 3 T.T.R. 64.

Unless and until Congressional authority exists for actions against United States to be brought in Trust Territory court, court has no jurisdiction to entertain them. *Alig v. Trust Territory*, 3 T.T.R. 64.

Where suit is captioned as suit against Trust Territory and certain of its officers but is actually suit against United States, it cannot be entertained in Trust Territory courts. *Alig v. Trust Territory*, 3 T.T.R. 64.

Contention that individual defendants are sued in individual rather than official capacity is without merit when judgment would expend itself on public treasury or domain or interfere with public administration or effect of judgment would be to restrain government from acting or compel it to act. *Alig v. Trust Territory*, 3 T.T.R. 64.

## W

## WILLS.

## Oral

Testimony of interested party that he has heard about oral will from beneficiary of that will, allegedly made in absence of witnesses is, without other evidence, insufficient as matter of law to meet burden of establishing existence of will. *Mwokin v. Sairenios*, 3 T.T.R. 346.

## -Evidence

Hearsay evidence of plaintiff that his father, the beneficiary under an alleged will, had told him of its having been made, without other evi-

## WILLS

dence is insufficient as a matter of law to show the existence of an oral will. *Sehk v. Sohn*, 3 T.T.R. 420.

### Y

#### YAP LAND LAW.

##### Patrilineal Ownership

Words "own" and "owner" are misleading in reference to land in Yap Islands, since traditional method of landholding is by paternal family or household groups. *Moolang v. Toruuan*, 3 T.T.R. 219.

Right of immediate possession and use of land in Yap Islands regularly descends within paternal extended family. *Moolang v. Toruuan*, 3 T.T.R.219.

Paternal family groups in Yap Islands normally have right of immediate possession and use of land subject to certain rights in people outside of, that family group; *Moolang v. Toruuan*, 3 T.T.R. 219.

Under Yapese system of land rights, theory as to rights in land based on matrilineal inheritance is inapplicable to rights of possession and use. *Moolang v. Toruuan*, 3 T.T.R. 219.

Although under Yap custom inheritance of land rights continues largely within patrilineal extended family, court must consider fact that former owner adopted minor party and indicated his intent that he succeed him in lands involved. *Moolang v. Toruuan*, 3 T.T.R.69.

##### -Supervision

Under Yap custom, head of family does not control family lands merely for his own benefit as if they were his individual property, but as trustee for whole family. *Moolang v. Toruuan*, 3 T.T.R. 219.

Under Yap custom, when man in control of land dies leaving no adult son, control normally passes to his next older brother or person considered to be "brother under the custom" as head of family, in preference to son who is still a child., *Moolang v. Toruuan*, 3 T.T.R. 219.

Under Yapese system of land ownership, small child, even if he is true son of deceased man formerly in control of land, cannot be expected to exercise that control unless and until he becomes either actual senior male member of family or is accepted by adults in family as its active leader. *Moolang v. Toruuan*, 3 T.T.R. 219.

##### -Use Rights

Under Yap custom, while former holder of use rights in land may express desire during his last illness as to disposition of such rights upon his death, such desire is not binding upon family. *Moolang v. Toruuan*, 3 T.T.R. 69.

Under Yap custom, expressed desire of former holder of use rights in land as to disposition of rights upon his death, although not binding,

is factor to be considered by family in determining future control of land. *Moolang v. Toruuan*, 3 T.T.R. 69.

Adopted Child

Under Yap custom, minor adopted child is entitled to be considered part of adoptive paternal family group holding rights of possession and use in land if he lives with and fulfills all his obligations to that family as adopted member thereof. *Moolang v. Toruuan*, 3 T.T.R. 219.

Under Yap custom, adopted child cannot reasonably expect to acquire land rights from family which adopts him unless child stays with and fulfills obligations as member of that family. *Moolang v. Toruuan*, 3 T.T.R. 219.

Under Yap custom, when adopted child does not remain with and fulfill obligations to adopted family, family is justified in treating child as if he is no longer connected with family. *Moolang v. Toruuan*, 3 T.T.R. 219.

Under Yap custom, rights in land to which adopted child is entitled as result of adoption remain in paternal family into which child is adopted. *Moolang v. Toruuan*, 3 T.T.R. 219.

Under Yap custom, true father of minor adopted child is not entitled to exercise rights in land to which adopted child is entitled as result of adoption, unless he can obtain permission of former owner's paternal family and exercises rights in cooperation with family in accordance with reasonable directions of its acting head. *Moolang v. Toruuan*, 3 T.T.R. 219.

Under Yap custom, true parents of child cannot properly control land rights which child may be entitled to as result of adoption. *Moolang v. Toruuan*, 3 T.T.R. 219.

"Mafen" Rights

*Mafen* rights to land in Yap Islands regularly descend in matrilineal line, often from paternal grandfather's or great-grandfather's sisters who have married into other lines or from female ancestor who married into lineage having the use rights. *Moolang v. Toruuan*, 3 T.T.R. 219.