

Digest of Cases Reported

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ADMINISTRATIVE LAW

ACTIONS.

A

Standing

Generally, in order to show standing in a case involving the interpretation of law, a person must show that he has an interest in the question in that the enforcement or nonenforcement of the law would be an infringement on his rights, and that he would be directly affected. Wiliander v. Aten, 8 T.T.R. 181.

A public official has the right to know whether a change in his duties has been legally effected, and therefore would have standing to bring suit on the issue. Wiliander v. Aten, 8 T.T.R. 181.

State Election Commissioner had standing to bring action involving the question of interpretation of certain ordinances as to whether an election was necessary, since a public official has the right to know whether a change in his duties has been legally effected. Wiliander v. Aten, 8 T.T.R. 181.

Dismissal

Trial court erred in dismissing suit by public employees against former governor of the State of Truk, alleging privatization program violated, among other provisions, the Truk State Charter, where evidence indicated former governor entered into private sector contracts on a whim, regardless of appropriations or available funds, a practice prohibited by the Charter. State of Truk ex rel. Swain v. Aten, 8 T.T.R. 557.

ADMINISTRATIVE LAW.

Generally

Once a government agency validly promulgates, or is mandated to promulgate, rules it is obliged to conform to such rules. Ogarto v. Johnston, 8 T.T.R. 62.

Judicial Review

Trial court did not lack jurisdiction to hear an appeal by trial *de novo* of a Determination of Ownership by a Land Commission, as it was properly authorized by statute and court rules. (6 TTC § 355; TT Rules App. Proc., R. 15) Apap v. Cabrera, 8 T.T.R. 463.

—Time for Filing Petition

Under the Administrative Procedure Act, a person adversely affected by agency action is entitled to judicial review even if more than 30 days transpire between the agency action and the filing of the petition for review. (17 TTC § 12(2)) Perman v. Government of the Trust Territory, 8 T.T.R. 323.

—Conclusiveness of Decision

Courts of the Trust Territory are not precluded by the finality provision of the Micronesian Claims Act from making determinations as to the rightful recipients of the Commission's awards. Magofna v. Cabrera, 8 T.T.R. 203; Diaz v. Diaz, 8 T.T.R. 264.

ADMINISTRATIVE LAW

Ruling of Trial Court that a decision of the Claims Commission was final and not subject to review was erroneous. *Magofna v. Cabrera*, 8 T.T.R. 203.

Trial court erred, on review of a decision of the Micronesian Claims Commission, in holding that such an award is final and not subject to determination by the courts as to the rightful recipients of such awards. *Diaz v. Diaz*, 8 T.T.R. 264.

—Standards

Review of agency actions by the courts should be carefully used so as not to intrude upon the fellow branches of government which are equal under the separation of powers aspect of a democratic government. *Trust Territory v. Malsol*, 8 T.T.R. 277.

Scope of reviewing court, on appeal of an agency action, is quite narrow in finding whether there is any logical basis for determining the action of the administrative body or officer to be excessive, arbitrary, or capricious, and the courts are loath to interfere with the executive or legislative branches of the government where such interference is unnecessary or unwarranted. *Trust Territory v. Malsol*, 8 T.T.R. 277.

Where there was competent evidence to support decision of Acting District Administrator in dismissing from public service a Supply Officer, trial court erred in ruling that such action was excessive, arbitrary or capricious and overturning the agency action. *Trust Territory v. Malsol*, 8 T.T.R. 277.

—Weight of Evidence

On appeal from trial division's denial of petition for review of personnel board action the appellate division is not to reweigh the evidence and substitute its judgment for that of the personnel board. *Aron v. Trust Territory*, 8 T.T.R. 37.

—Sufficiency of Evidence

Where termination of teacher by district director of education was considered on de novo review by personnel board, teacher could not, on appeal to appellate division, complain he was terminated because of a charge not substantiated at the personnel board hearing, for the hearing before the board was de novo and a full hearing and teacher could not complain that one charge or another was not substantiated at one hearing or another. *Aron v. Trust Territory*, 8 T.T.R. 37.

Land Title Determination

Act of State Doctrine does not preclude the ability of the courts or the Trust Territory from determining whether or not land was purchased by the Japanese government during its occupation at market values, for purposes of determining whether Micronesian inhabitants are entitled to relief for the alleged loss of their land. *Ogarto v. Johnston*, 8 T.T.R. 62.

—Validity

Secretarial Order 2969, which declared that all rulings made by a Land

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Title Officer not otherwise overruled or amended by the High Court of the Trust Territory must stand, is a valid law and cannot be ignored by any governmental entity in the Trust Territory. Jablotok v. Ebots, 8 T.T.R. 506.

—“Res Judicata”

Determination by Land Title Officer as to *dri jerbal* rights of Loelen *weto*, issued pursuant to valid Secretarial Order and never appealed until more than 22 years later, was given *res judicata* effect, which all courts of the Trust Territory were bound to recognize. Jablotok v. Ebots, 8 T.T.R. 506.

—Appeal

An appeal from a determination by a Land Commission to the Trial Division is to be treated and effected in the same manner as an appeal from a District Court in a civil action. (67 TTC § 115) Rosario v. Pelep, 8 T.T.R. 337; Cruz v. Alien Property Custodian of the Trust Territory, 8 T.T.R. 281.

There is statutory authority for the trial division to conduct trials *de novo* from Land Commission determination that are appealed. Truk Trading Co. v. Paul, 8 T.T.R. 515.

The trial court in an appeal from a determination by a Land Commission may review the facts as well as the law, even if no additional evidence is taken. (6 TTC § 355(2)) Rosario v. Pelep, 8 T.T.R. 337.

In light of *Ngikleb v. Ngirakelbid*, 8 T.T.R. 11 (App. Div. 1979), holding that courts of Trust Territory are not precluded from making determinations as to the rightful recipients of Claim Commission awards, trial court erred in not considering the effect of an Amended Determination of Ownership issued by Land Title Officer, in determining the rightful recipient of a Land Commission award. Litulumar v. Teregeyo, 8 T.T.R. 352.

ADMIRALTY.

Unseaworthiness—Generally

The term “unseaworthiness”, in the context of suits to recover for personal injuries, is broad enough to include almost all types of operating negligence in the navigation and management of the ship. Komanta v. Global Assocs., 8 T.T.R. 418.

An “unseaworthiness” claim must be brought against the owner of a vessel and not the shipowner’s agent. Komanta v. Global Assocs., 8 T.T.R. 418.

“Unseaworthiness” claim may be brought against charterer and not owner of a vessel, only if the owner had completely and exclusively relinquished possession, command, and navigation to the charterer, and the charterer was in effect a demise or bareboat charterer. Komanta v. Global Assocs., 8 T.T.R. 418.

ADMIRALTY

—Particular Cases

Corporation which operated and maintained vessel under ultimate control and command of the U.S. Army was not liable under an "unseaworthiness" claim as a demise or bareboat charterer. *Komanta v. Global Assocs.*, 8 T.T.R. 418.

In negligence action brought by employee of tugboat against the corporation which operated and maintained the tugboat, for injuries which occurred in harbor while approaching the dock, judgment for defendant was affirmed, even though the trial court gave an erroneous reason for granting the judgment, since the plaintiff could not prevail in a negligence action since the cause of action was in admiralty, and even if construed as a maritime "unseaworthiness" claim, the proper action was against the owner of the ship, as opposed to its operator. *Komanta v. Global Assocs.*, 8 T.T.R. 418.

ADVERSE POSSESSION.

Family Relationship

Appellant failed to sustain his burden of proving adverse possession on property where contesting party was his brother, since there was not shown a clear, positive and continued disclaimer and disavowal of title. *Eldridge v. Eldridge*, 8 T.T.R. 432.

In a land ownership dispute where one party claimed title by adverse possession, there was not a sufficiently close family relationship to rebut strong evidence of adverse possession, where one party was the child of the grandchild of a sister of the opposing party. *Rosario v. Pelep*, 8 T.T.R. 337.

Particular Cases

Trial court erred in land ownership dispute in not finding that appellant had title by adverse possession, where appellant had continued possession and control of the land for over twenty years after applicable statute went into effect in 1951, including living on the land and conveying portions of it. *Rosario v. Pelep*, 8 T.T.R. 337.

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. *Mereb v. Orrenges*, 8 T.T.R. 123.

It is necessary, in assignments of error, to show specifically wherein the action complained of is erroneous, and how it prejudiced the rights of the appellant. *Mereb v. Orrenges*, 8 T.T.R. 123.

On appeal to the Appellate Division, the burden is upon the appellant to enumerate alleged errors, show specifically wherein the action complained of is erroneous, and show that such errors substantially prejudiced the rights of the appellant. *Magofna v. Cabrera*, 8 T.T.R. 203.

APPEAL AND ERROR

On appeal, the Appellate Division will make every reasonable presumption in favor of correctness of the decision of the lower court and the burden is on the appellant to affirmatively show error. *Eyoul v. Trust Territory*, 8 T.T.R. 242.

The right to appeal can be determined only by the court to which the appeal is taken, and the question, being jurisdictional, may be raised by the court itself. *Nanmworki v. Etscheit*, 8 T.T.R. 287.

Notice and Filing of Appeal—Generally

Timely filing of a notice of appeal is jurisdictional. *In re Angaur Trust*, 8 T.T.R. 610.

Generally, a late filing of a notice of appeal does not vest the Appellate Division with jurisdiction to hear the appeal. *Nauru Local Government Council v. United Micronesian Development Ass'n*, 8 T.T.R. 474.

—Late Filing

Failure to timely file an appeal will bar a litigant from contesting the determination. *Shima v. Hermios*, 8 T.T.R. 622.

Where relevant thirty-day period allowed for filing notice of appeal expired before petitioner filed its notice, even allowing three days for use of the mails, dismissal of the appeal was proper. *In re Angaur Trust*, 8 T.T.R. 610.

—Excuse for Late Filing

Where the delay in the timely filing of a notice of appeal is caused or assisted by an officer of the Court, the Court may assume the appellate jurisdiction. *Nauru Local Government Council v. United Micronesian Development Ass'n*, 8 T.T.R. 474.

Where there was confusion and extensive doubt, due to several procedural irregularities, whether a notice of appeal to the Appellate Division was timely filed, in the interests of justice the appeal was deemed timely, where some of the responsibility for the confusion as to applicable dates was with the Appellate Division itself. *Nauru Local Government Council v. United Micronesian Development Ass'n*, 8 T.T.R. 474.

Separate appeal filed in the Appellate Division by eight individuals “as individual appellants formerly spoken for” by the original respondents to the action, was dismissed, where the record revealed nothing that would indicate that the eight individuals were parties to the action or that their interests were somehow represented by the original respondents. *Nanmworki v. Etscheit*, 8 T.T.R. 287.

Appellate Division of the High Court would refuse to “second guess” the evidence from the Trial Court where misrepresentations were made by counsel in his Notice of Appeal. *Nemek v. Annani*, 8 T.T.R. 150.

Conclusions of law are freely reviewable by an appellate court. *State of Truk ex rel. Swain v. Aten*, 8 T.T.R. 557.

APPEL AND ERROR

De Novo Review

An appellate court reviews conclusions of law on a *de novo* basis. Pwalandin v. Ehmel, 8 T.T.R. 548; State of Truk ex rel. Swain v. Aten, 8 T.T.R. 557.

—Dismissal

Dismissal for failure to state a claim upon which relief can be granted is a ruling on a question of law and is subject to *de novo* review. Simiron v. Trust Territory, 8 T.T.R. 615.

—Foreign Law

Questions of foreign law, like questions of domestic law, are matters that appellate courts may determine *de novo*. Simiron v. Trust Territory, 8 T.T.R. 615.

Reviewability of Issues—Matters Not Raised Below

Complaint that trial court failed to make a certain finding could not be successful on appeal where the finding sought was not raised below. Lota v. Korok, 8 T.T.R. 3.

—Moot Questions

On appeal from deportation order, where, notwithstanding stay of the order by the court, the person voluntarily left the territory, and she could not return to Yap, from which she was ordered deported, without obtaining administrative reentry authorization, any decision by appellate division would be futile as to her permission to remain in Yap under her original right to enter; and the deportation issue was moot and would not be considered. In re Deportation of Blair, 8 T.T.R. 147.

Record on Review—Adequacy

On appeal of trial court judgment, where court reporter could not prepare the transcript of the trial, the case was remanded for a new trial. Suldan v. Etnold, 8 T.T.R. 268.

—Lost Records and Files

Where a timely notice of appeal from a criminal conviction was filed, and transcript of trial record was unavailable for review, there was no choice but to set aside the conviction and remand for a new trial. Trust Territory v. Cantero, 8 T.T.R. 148.

—Designation and Certification

Where court rule was designed to eliminate having court clerks certify everything in the file upon an appeal where there is no need for certification of everything, and to require the appealing counsel to designate what he thought necessary for the appeal, the clerk to then certify what counsel designated, and counsel designated the entire file records without going over them, and many of them were irrelevant, counsel's client

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would be taxed \$300 as a reasonable expense. (T.T. R. App. P. 16) *Thomas v. Trust Territory*, 8 T.T.R. 40.

Function of Appellate Court—Generally

Unless the trial court's findings were clearly erroneous, it is not the function of the appellate court to reweigh the evidence. *Hermios v. Tariotis*, 8 T.T.R. 536.

Scope of Review

Appellate Division must defer to the findings of the trial court if there is any evidence from which the trial court might properly have drawn its conclusion. *Rosario v. Pelep*, 8 T.T.R. 337.

Appellate Division of the High Court on appeal from a decision of the Trial Division cannot reweigh the evidence and decide whether in its opinion it should reach the same or different conclusions as the trial judge did as to the facts. *Mereb v. Orrenge*, 8 T.T.R. 123.

Appellate court has a duty to reverse the trial court if its judgment was clearly erroneous. *Mereb v. Orrenge*, 8 T.T.R. 123.

Appellate Division has the authority in certain situations to reverse and remand based on an appropriate motion before the Court. (TT Rules App. Proc., R. 7) *Otiwii v. Ngireklei*, 8 T.T.R. 205.

—Weight of Evidence

The Appellate Division will not reweigh the evidence as to factual matters which have been tried and decided in the trial court. *Trust Territory v. Camacho*, 8 T.T.R. 273.

Appellate Division's function is not to reweigh the evidence, and it will not set aside the findings of the trial court unless there is manifest error or the findings are clearly erroneous. *Moses v. Ucherbelau*, 8 T.T.R. 217.

Appellate Division may not reweigh the evidence and decide whether it should reach the same conclusion as the lower court as to the facts. *Trust Territory v. Edwin*, 8 T.T.R. 23.

Appellate Division of the High Court has no obligation or power to comply with requests on appeal to reexamine the evidence presented in the lower court. *Kiskaddon v. Johnston*, 8 T.T.R. 310.

—Facts

Appellate court does not reweigh facts *de novo*. *State of Truk v. Aten*, 8 T.T.R. 631.

A finding of negligence by trial court will not be set aside on appeal unless there is manifest error. *Skebong v. Government of the Trust Territory*, 8 T.T.R. 399.

Unless manifest error appears, the findings of the trial court will not be disturbed when supported by competent evidence. *Peter Fisher Trading Pty. Ltd. v. Olikong*, 8 T.T.R. 116.

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The Appellate Division is bound to give due recognition to the findings of fact of the trial court unless there is no evidence to support it or it is clearly erroneous. (6 TTC § 355(2)) Rosario v. Pelep, 8 T.T.R. 337. If the Trial Court finds that there is negligence and/or contributory negligence, such determination will not be set aside by the Appellate Court unless there is manifest error. Ponape Federation of Cooperation Ass'n's v. Hawley, 8 T.T.R. 112.

—Newly Discovered Evidence

The general rule is that a party is barred from introducing new evidence at the appellate level. Uengeni v. Trust Territory, 8 T.T.R. 366.

Trust Territory Government would not be allowed to prove the existence of a relevant Japanese Proclamation by introducing additional evidence at the appellate level, since such evidence properly should have been introduced at trial, particularly in light of the fact that evidence could have been reasonably discovered by the Government had it exercised due diligence at the time of the trial. Uengeni v. Trust Territory, 8 T.T.R. 366.

—Particular Cases

Findings of the trial court are not to be set aside on appeal unless there is manifest error or the findings are clearly erroneous. Diaz v. Diaz, 8 T.T.R. 264.

Where trial court's findings regarding estoppel were not clearly erroneous, and a contrary conclusion was not the only one that could be reasonably drawn from the evidence, on appeal the findings were sustained. Diaz v. Diaz, 8 T.T.R. 264.

Where defendant filed a motion to reverse and remand the judgment of the Trial Court that a decision of the Micronesian Claims Commission was final and conclusive, the Appellate Court found sufficient facts to reverse and remand to the Trial Division to review the matter. Otiwii v. Ngireklei, 8 T.T.R. 205.

Standard of Review—Findings of Fact

A finding of fact is clearly erroneous when the entire record produces the definite and firm conviction that the court below erred. Truk Trading Co. v. Paul, 8 T.T.R. 515.

Burden of Proof

Where trial court erroneously shifted the burden to appellants to prove that respondents entered into a government contract in bad faith, its finding that the contract was entered into in good faith was erroneous. State of Truk v. Aten, 8 T.T.R. 631.

Summary Judgment

No appeal lies from a denial of a motion for summary judgment. Peter Fisher Trading Pty. Ltd. v. Olikong, 8 T.T.R. 116.

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Decision of the trial court denying plaintiff's motion for summary judgment was not reviewable on appeal. *Peter Fisher Trading Pty. Ltd. v. Olikong*, 8 T.T.R. 116.

Evidence

Evidentiary errors are not grounds to reverse a judgment of the trial court unless substantial justice will otherwise be undermined. *Shima v. Hermios*, 8 T.T.R. 622.

Evidentiary errors are not grounds for disturbing a judgment unless substantial justice will otherwise be undermined. *Shima v. Hermios*, 8 T.T.R. 602.

—Admission of Evidence

Trial court has broad powers of discretion concerning admissibility of evidence on relevancy grounds and admission or rejection may be overturned on appeal only if there has been a clear abuse of discretion. *Ngeskebei v. Government of the Northern Mariana Islands*, 8 T.T.R. 16. In dispute over *alab* and *dri jerbal* rights, the court's admission of a letter to the claimant could not have been prejudicial to him, since claimant's land interests were extinguished by virtue of his father's actions, and it therefore could not be of consequence that such letter was admitted endorsing the interests of a competing claimant. *Shima v. Hermios*, 8 T.T.R. 602.

—Supporting Evidence

An appellate court does not reweigh the evidence; if there is any substantial evidence which supports the judgment of the lower court, the appellate court will affirm it. *Pwalendin v. Ehmel*, 8 T.T.R. 548.

—Conflicting

An appellate court accords particular weight to the trial judge's assessment of conflicting and ambiguous facts. *Pwalendin v. Ehmel*, 8 T.T.R. 548.

Where credibility of various witnesses was crucial to outcome of case, there was no basis on appeal to reverse the decision on the basis that the Trial Court was wrong in deciding whom to believe. *Nemek v. Annani*, 8 T.T.R. 150.

—Sufficiency

On review of a challenge to the sufficiency of the evidence in a criminal case, the evidence and the inferences to be drawn therefrom are viewed in a light most favorable to the government. *Trust Territory v. Morei*, 8 T.T.R. 379.

Standard of review in a criminal case in the Trust Territory to a challenge of the sufficiency of the evidence is whether there is substantial credible evidence on the record as a whole to support the verdict, even though there is evidence to the contrary. *Trust Territory v. Morei*, 8 T.T.R. 379.

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A finding of guilt in a criminal case by the Trial Court was upheld where there was very substantial evidence to support such a finding. *Government of the Northern Mariana Islands v. Benavente*, 8 T.T.R. 155. Record and transcript on appeal showed ample grounds for trial court's determination that sufficient evidence was introduced to justify denying motions to dismiss as against individual plaintiffs. *Trust Territory v. Edwin*, 8 T.T.R. 23.

Evidence was sufficient to support trial division's finding that 1952 *kallimur* superceded a 1929 *kallimur*, and to support award of *dri jerbal* rights. *Shima v. Hermios*, 8 T.T.R. 622.

—Weight

Where there was sufficient evidence to support the judgment, appellate court would not reweigh the evidence on appeal. *Hisaiyah v. Hawaiian Flour Mills*, 8 T.T.R. 137.

The Appellate Court cannot reweigh evidence presented to the trial court upon which the judgment is based. *Hisaiyah v. Hawaiian Flour Mills*, 8 T.T.R. 137.

It is not the function of the Appellate Division to reweigh the evidence presented at the trial. *Iderrech v. Ngeskebei*, 8 T.T.R. 201.

It is not the function of the appellate division to weigh evidence anew when the trial court's findings are supported by substantial credible evidence. *Cabrera v. Castro*, 8 T.T.R. 119.

It is not the function of an appellate court to second-guess the trial judge's ability to assess a witness' credibility or veracity, or to determine what weight should be assigned to evidence received by the trial court. *Shima v. Hermios*, 8 T.T.R. 622.

Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous. *State of Truk v. Aten*, 8 T.T.R. 631.

If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeal may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. *State of Truk v. Aten*, 8 T.T.R. 631.

Harmless Error

In land ownership action, even assuming that the admission of certain testimony violated the dead man's rule, such error was harmless. *Pwalendin v. Ehmel*, 8 T.T.R. 548.

—Particular Errors

Where trial court abused its discretion in excluding two pages of a deposition at trial but there was no showing that the excluded pages would have affected the trial court's ruling, reversible error did not exist. *State of Truk v. Aten*, 8 T.T.R. 631.

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Whether it was error for court to take in evidence the prior testimony of an *iroij* as to *iroij's* designation regarding who had *alab* rights in issue in the case was immaterial, for if it was error the error was harmless in view of court's holding that it need not rely on the *iroij's* designation. *Lota v. Korok*, 8 T.T.R. 3.

Prejudicial Error

Comments made in chambers by a trial court judge to counsel is generally not a sufficient ground for mistrial. *United Micronesian Development Ass'n v. New Hampshire Fire Insurance Co.*, 8 T.T.R. 225.

Statement by presiding judge, at a conference in chambers with counsel present, that he felt the verdict would not be in favor of the defendant, was not a sufficient ground for a mistrial. *United Micronesian Development Ass'n v. New Hampshire Fire Insurance Co.*, 8 T.T.R. 225.

Certain possibly improper statements made by defense counsel during closing argument, referring to witnesses as "slick" and "ping pong," were not a valid basis for setting aside the verdict, where the trial court sustained defendant's objection to the use of the statements and made a curative instruction to the jury. *United Micronesian Development Ass'n v. New Hampshire Fire Insurance Co.*, 8 T.T.R. 225.

Affirmance—Grounds

Finding of Trial Court that defendant was negligent was upheld on appeal where no manifest error was present. *Ponape Federation of Cooperation Ass'ns v. Hawley*, 8 T.T.R. 112.

Judgment of the trial court was affirmed on appeal, where ample, competent evidence existed to support its findings and conclusions where challenged by the appealing party. *Moses v. Ucherbelau*, 8 T.T.R. 217.

Where Notice of Appeal did not raise specific errors of law and fact which the court could examine, but merely stated bare allegations as to error, Appellate Division had no alternative but to affirm the judgment of the trial court. *Mereb v. Orrenge*, 8 T.T.R. 123.

Conviction was upheld on appeal, where the notice of appeal did not allege particulars of any error committed by the trial court, but only alleged that the findings of the trial court were contrary to the manifest weight of the evidence. *Eyoul v. Trust Territory*, 8 T.T.R. 242.

Contention of defendant on appeal that each of five grounds of appeal in itself would not justify a mistrial, but all of them accumulated are a basis for error, was without merit, where each of the individual grounds for appeal were without foundation. *United Micronesian Development Ass'n v. New Hampshire Fire Insurance Co.*, 8 T.T.R. 225.

Findings and Conclusions—Determination

Argument that trial court in land ownership dispute failed to make any finding as to ownership of the land was without merit, where the court in its judgment denied to plaintiff the relief sought in the prayer, which was sufficient to determine any and all issues concerning the relief sought in the complaint. *Litulumar v. Teregeyo*, 8 T.T.R. 352.

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—Tests

An appellate court reviews the trial court's findings of fact under a "clearly erroneous" standard. *Pwalendin v. Ehmel*, 8 T.T.R. 548.

Trial court's findings of fact will not be overturned on appeal unless they are clearly erroneous. *Shima v. Hermios*, 8 T.T.R. 602.

Trial court's findings of fact will not be overturned on appeal unless unreasonable and arbitrary. *Shima v. Hermios*, 8 T.T.R. 622.

—Substantial Evidence

Test on appeal of a trial court determination of rights in land is whether substantial evidence supports the finding. *Nashion v. Litiria*, 8 T.T.R. 357.

"Substantial evidence" is that quantum of relevant evidence which a reasonable mind would accept as adequate support for a conclusion. *Nashion v. Litiria*, 8 T.T.R. 357.

Evidence may be "substantial" even though it rationally permits two inconsistent conclusions to be drawn from it. *Nashion v. Litiria*, 8 T.T.R. 357.

—Supporting Evidence

Where plausible evidence relied upon by the trial court supported its findings respondents entered into and completed a government contract in good faith, the findings were not clearly erroneous. *State of Truk v. Aten*, 8 T.T.R. 631.

Where private contractors and government officials admitted that they conspired in a kickback scheme related to a government contract but a permissible view of credible evidence supported trial court's finding that no fraud or collusion affected the contract, inasmuch as no kickbacks were actually paid and no prices were padded, trial court's finding was not clearly erroneous. *State of Truk v. Aten*, 8 T.T.R. 631.

In a dispute over *alab* and *dri jerbal* rights, trial division's findings that claimant's father informed on the *iroij* to the Japanese during the Second World War and was consequently stripped of his land rights was not clearly erroneous, where such facts appeared to have been widely known in the community and were testified to by numerous witnesses, and where claimant's father chose to go to Japan after the war. *Shima v. Hermios*, 8 T.T.R. 602.

—Clearly Erroneous

Findings of fact of the Trial Court will not be set aside unless clearly erroneous. (6 TTC § 355(2)) *Trust Territory v. Risa*, 8 T.T.R. 146; *Ngirmekur v. Municipality of Airai*, 8 T.T.R. 231.

Decision of trial court in a land ownership dispute will not be set aside on appeal unless there is clear and manifest error. *Litulumar v. Teregeyo*, 8 T.T.R. 352.

Because the "clear error" review standard rests upon deference to a trial judge's unique opportunity to evaluate witness credibility, the reviewing

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court should accord weight to the lower court's assessment of conflicting or ambiguous evidence. *Nashion v. Litiria*, 8 T.T.R. 357.

A finding of fact is clearly erroneous when the entire record produces the definite and firm conviction that the court below committed a mistake. *Pwalendin v. Ehmel*, 8 T.T.R. 548.

A finding is clearly erroneous when, even though some evidence supports it, the entire record definitely and firmly convinces the appellate panel that the trial court made a mistake. *Nashion v. Litiria*, 8 T.T.R. 357.

A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. (6 TTC § 355(2)) *State of Truk v. Aten*, 8 T.T.R. 631.

Waiver and Estoppel—Matters Considered

Party which acquiesced in out-of-court view by the court could not come forth on appeal and allege error in regard to the view. *Trust Territory v. Edwin*, 8 T.T.R. 23.

Remand

Where Appellate Division previously found that government contracts violated several laws and were invalid and stated in its remand order that respondents had to overcome a presumption that they were aware of the effect of these laws to recover on quantum meruit for work performed on the contracts, trial court's conclusion as a matter of law that respondents overcame the presumption of knowledge of the State of Truk's contracting requirements because they knew at the time they entered the agreements by negotiation that such a procedure was legal, did not address the Appellate Division's concern for violation of other laws or its specific instructions. *State of Truk v. Aten*, 8 T.T.R. 631.

Case on Remand—Matters Presented

In action for unpaid sales taxes filed by municipality, motion for a continuance of the hearing on remand to allow for the introduction of evidence regarding an alleged set-off was properly denied, where the matter of a set-off was not an issue properly before the court. *Bing & Co. v. Municipality of Darrit*, 8 T.T.R. 529.

In action for unpaid sales taxes filed by municipality, trial court on remand properly refused to allow evidence regarding an alleged set-off, where the assertion of an alleged set-off was first made at the remand hearing. *Bing & Co. v. Municipality of Darrit*, 8 T.T.R. 529.

—New Trial

In action for unpaid sales taxes filed by municipality, it was clear from its opinion that appellate court did not reverse and remand case for new trial but only for trial court to determine amount of tax due. *Bing & Co. v. Municipality of Darrit*, 8 T.T.R. 529.

APPEAL AND ERROR

The granting of a new trial is within the discretion of the trial court and generally will not be disturbed unless that discretion has been abused. (Rules Civil Proc. 47) Cabrera v. Castro, 8 T.T.R. 119.

Trial court did not err in its ruling denying a motion for new trial, where evidence claimed to be newly discovered could clearly have been discovered by proper discovery proceedings at any time before the trial. Cabrera v. Castro, 8 T.T.R. 119.

ASSAULT.

Intent—Type

Criminal assault is a general intent crime. (11 TTC § 201) Ngeskebei v. Government of the Northern Mariana Islands, 8 T.T.R. 16.

An assault is a general intent crime under the definition of general intent as an intent merely to do a violent act. (11 TTC § 201) Ngeskebei v. Government of the Northern Mariana Islands, 8 T.T.R. 16.

Simple assault and assault with a deadly weapon have traditionally been referred to as general intent crimes and what is technically referred to as specific intent is not required, and intent may be implied from the act. (11 TTC § 201) Ngeskebei v. Government of the Northern Mariana Islands, 8 T.T.R. 16.

Defendant who threw a rock into a group of people voluntarily set in motion an instrumentality which carried a very real probability of causing great bodily harm and it did not matter if he did not intend to strike complainant in criminal proceeding, as assault may be committed despite the absence of an intent to injure a particular person, it being a crime where one intends to assault a certain person and mistakenly or inadvertently assaults another person, the intent being transferred from the party who was intended to be injured to the party who was injured, and it also being a crime if one does not intend to injure any person in particular, a person being presumed to do that which he actually does and to intend the consequences which naturally and probably flow from his voluntary acts. (11 TTC § 201) Ngeskebei v. Government of the Northern Mariana Islands, 8 T.T.R. 16.

—Intent Found

Where complaining witness in prosecution for assault by throwing a rock stated that she was in a group of about 25 persons when defendant threw a rock into the group from 20–25 feet away, hitting a person six feet from complainant, it could be found defendant had the intent to commit an assault upon complainant. (11 TTC § 201) Ngeskebei v. Government of the Northern Mariana Islands, 8 T.T.R. 16.

Evidence—Admissible Evidence

In prosecution for assault by throwing of a rock, statements of complaining witness that rock was thrown 20–25 feet into area containing about 25 people, including complainant and her child, that the rock hit a woman about six feet from complainant, and that complainant shouted to defendant that he had almost hit complainant's child, were relevant and

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material in identifying defendant as the rock-thrower and were admissible; and that the testimony may have tended to connect defendant to an assault upon the woman hit with the rock did not render it inadmissible. (11 TTC § 201) *Ngeskebei v. Government of the Northern Mariana Islands*, 8 T.T.R. 16.

ATTORNEY AND CLIENT.

Adequacy of Representation

At trial, ignorance or inadvertence of untrained counsel should not be permitted to stand in the way of the fullest possible consideration of all that may be required to achieve a just result. *Loeak v. Loeak*, 8 T.T.R. 163.

B

BOUNDARIES.

By Acquiescence

In order to establish a boundary by agreement or boundary by acquiescence, the owners of adjacent properties must have occupied their respective premises up to an open boundary line visibly marked by monuments, fences or buildings and mutually recognized it as the dividing line, for a period at least equal to that of the statute of limitations in case of adverse possession, which is twenty years in the Trust Territory. *Tenorio v. Camacho*, 8 T.T.R. 256.

Finding of trial court that there had been an "agreed boundary" or "boundary by acquiescence" between owners of adjacent properties was erroneous, where the line was not acquiesced in for a period of twenty years. *Tenorio v. Camacho*, 8 T.T.R. 256.

BURGLARY.

Evidence—Sufficiency

Unexplained possession of stolen property is sufficient evidence to convict on a charge of burglary. *Iskawa v. Trust Territory*, 8 T.T.R. 245.

C

CHAMORRO CUSTOM.

"Partida"

In order for a *partida* to take place, certain requirements must be complied with, as listed in *Blas v. Blas*, 3 T.T.R. 99 (1966) and *Muna v. Muna*, 7 T.T.R. 632, 634 (1978). *Diaz v. Diaz*, 8 T.T.R. 397.

CIVIL PROCEDURE.

Federal Rules

Where the High Court Rules of Criminal Procedure are deficient in a procedural matter, the Federal Rules of Criminal Procedure are followed in the absence of any Trust Territory procedural requirement touching upon the point. *Amor v. Trust Territory*, 8 T.T.R. 311.

CIVIL PROCEDURE

Process—Service

Any question of service of process must be properly raised; the party served cannot sit mute. *Itsco v. Trust Territory*, 8 T.T.R. 57.

Defendant receiving actual notice of commencement of various actions could not fail to respond on the theory that in its opinion the process was defective and no responsive pleading was required; even if the service was defective, defendant had a duty to raise the matter by a special appearance contesting service and/or service of process, and upon defendant's failure to do so the court properly gave plaintiffs default judgments. *Itsco v. Trust Territory*, 8 T.T.R. 57.

Process served on person by leaving summons at his alleged employer's store was not a valid service at a person's "place of business", where the person never actually worked at the store itself, and his connection to the store was therefore tenuous at best. (Rules of Civil Proc., Rule 35(c)) *Irons v. Aizawa*, 8 T.T.R. 385.

Consolidation

Trial court's denial of motion for consolidation of two separate cases was not an abuse of discretion, where the two cases did not present a common factual or legal question within the meaning of Trust Territory Rules of Civil Procedure. (Rules of Civil Proc., Rule 34(a)) *Nashion v. Litiria*, 8 T.T.R. 357.

Joinder

Whether a joinder is to be allowed is a matter resting within the sound discretion of the trial court. (Rules of Civil Proc. 14(a), 19(a)) *Hisiah v. Hawaiian Flour Mills*, 8 T.T.R. 137.

There was no abuse of discretion in trial court's denial of defendant's motion for joinder of third party, where the court did not "close the door" on defendant's right to bring suit against the third party but only disallowed a joinder at a late date in the present action. *Hisiah v. Hawaiian Flour Mills*, 8 T.T.R. 137.

Motion To Amend Answer

Pre-trial motion to amend answer, not filed until counsel made an oral request in court on the day of the trial, without any supporting affidavits, was properly denied by the trial court, where basis of the motion was a "notion of duress". *Maie v. Bulele*, 8 T.T.R. 451.

Motion for Continuance—Discretion

The granting of a motion for a continuance is within the sound discretion of the trial court. *State of Truk ex rel. Swain v. Aten*, 8 T.T.R. 557. In suit by state employees against former governor of the State of Truk, court did not abuse its discretion in denying plaintiff's motion for a continuance. *State of Truk ex rel. Swain v. Aten*, 8 T.T.R. 557.

CONSTITUTIONAL LAW

Motion for Relief from Judgment

The Trial Division has jurisdiction to decide a motion for relief from judgment filed after a timely noticed appeal to the Appellate Division, and may adjudicate the motion without applying to the Appellate Division for a remand. (Rules Civil Proc. 48(a)) Camacho v. Naog, 8 T.T.R. 269.

A motion for relief from judgment is not a vehicle for relitigating the merits. (Rules Civil Proc. 48(a)) Camacho v. Naog, 8 T.T.R. 269.

In a civil case, a motion for relief from judgment does not affect the finality of the judgment appealed from. (Rules Civil Proc. 48(a)) Camacho v. Naog, 8 T.T.R. 269.

A motion for relief from judgment is not a substitute for appeal, and provides for extraordinary relief only upon an adequate and clear showing of exceptional circumstances. Camacho v. Naog, 8 T.T.R. 269.

Masters

Land dispute case was not properly referred by trial court to a Master, where witnesses to the case were not inaccessible to the judge, and there was no indication that there was a necessity for a hearing before the court itself could arrange one. Peter v. Alfons, 8 T.T.R. 428.

COMMERCE AND TRADE.

Consignment

In suit for goods allegedly taken by defendant on consignment, where evidence at trial clearly established that defendant operated as but an agent of plaintiff, plaintiff's argument on appeal that defendant took possession of the goods on a consignment basis and therefore must bear the risk of their loss was without merit. Peter Fisher Trading Pty. Ltd. v. Olikong, 8 T.T.R. 116.

CONSTITUTIONAL LAW.

Interpretation

Words appearing in a constitution are presumed to have been used according to their ordinary, plain and natural meaning. Joash v. Cabinet of the Government of the Marshall Islands, 8 T.T.R. 498.

Marshall Islands Constitution does not say that a populated atoll or island has a constitutional right to more than one local government. Joash v. Cabinet of the Government of the Marshall Islands, 8 T.T.R. 498.

Retroactive Effect

A constitutional provision that goes into effect after an event has taken place has only prospective effect and not retroactive effect on such event unless clearly designed to that end. In re Condemnation of Property of Kabua, 8 T.T.R. 581.

CONSTITUTIONAL LAW

Due Process

Notice and an opportunity to be heard are essential elements of due process of law guaranteed by the Trust Territory Bill of Rights. (1 TTC § 4) *Sohram v. Sohram*, 8 T.T.R. 334.

Local Government Act which provided for the amalgamation of local governments did not violate substantive due process, where act had a rational basis, since there was a legitimate purpose in seeking uniformity among the local communities on the islands and atolls. *Joash v. Cabinet of the Government of the Marshall Islands*, 8 T.T.R. 498.

—Remedies for Deprivation

Where defendant was never given an opportunity to review and comment upon Master's Reports, which were the basis for trial court judgment defendant was denied due process of law and judgment was vacated. *Sohram v. Sohram*, 8 T.T.R. 334.

Miranda Warning

Statements made by defendant arrested for attempted rape should have been suppressed at trial, where defendant was not advised of his rights prior to questioning. (12 TTC § 68) *Loney v. Trust Territory*, 8 T.T.R. 318.

Exclusionary Rule

Evidence obtained by police in violation of rights of arrested persons, as set out by statute and judicial decision, shall not be admissible at trials. (12 TTC §§ 68, 70) *Trust Territory v. Abija*, 8 T.T.R. 102.

Jury Trial

Where defendant was charged with counts of grand larceny and cheating, false pretenses, defendant was not entitled to trial by jury, since he was not accused of committing a felony punishable by more than five years imprisonment or by more than a two thousand dollar fine, or both. (5 TTC § 501(1)) *Government of the Northern Mariana Islands v. Benavente*, 8 T.T.R. 155.

Right to Counsel

The right to counsel means a right to effective assistance of counsel. *Amor v. Trust Territory*, 8 T.T.R. 311.

—Preparation of Case

Defense counsel must perform at least as well as a lawyer with ordinary training and skill in the criminal law and must conscientiously protect his client's interest, undeflected by conflicting considerations, and defense counsel must investigate all apparently substantial defenses available to the defendant and must assert them in a proper and timely manner. *Amor v. Trust Territory*, 8 T.T.R. 311.

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—Remedies

Failure to receive effective assistance of counsel did not warrant giving defendant the opportunity to withdraw his guilty plea, where defendant judicially admitted the commission of the offenses alleged in the information. *Amor v. Trust Territory*, 8 T.T.R. 311.

—Particular Cases

Criminal defendant failed to receive effective assistance of counsel before and during arraignment, where counsel had spent only seven minutes with the defendant before the arraignment and had not checked the police report or filed any motion for suppression of evidence. *Amor v. Trust Territory*, 8 T.T.R. 311.

Defendant arrested and charged with attempted rape was denied the right to counsel, where he was never advised of his statutory rights prior to police questioning, he was not given an opportunity to obtain counsel prior to identification proceedings, and prosecution did not make a convincing showing that in-court identification of defendant based on prior out-of-court identification had an independent origin. (1 TTC § 4) *Loney v. Trust Territory*, 8 T.T.R. 318.

Double Jeopardy

Forfeiture proceeding in District Court, filed by Government after defendant's conviction for dynamiting fish, for forfeiture of motor boat and equipment used in the dynamiting offense, was not barred by double jeopardy. *Trust Territory v. Risa*, 8 T.T.R. 146.

CONTRACTS.

Construction—Parol Evidence

A fully integrated agreement of a contractual nature may not be varied by intrinsic evidence, written or oral, so as to add to, subtract from, or contradict its provisions. *Trust Territory v. Edwin*, 8 T.T.R. 23.

Terms—Mutual Agreement

In a breach of contract action, trial court properly concluded that a valid contract had been formed, where two parties exchanged a preliminary series of letters and telexes regarding the possibility of an agreement, proposal of one party by telex was fairly detailed in terms proposed and was of sufficient detail to create an enforceable contract, and acceptance of these terms by the other party was unequivocal. *Nauru Local Government Council v. United Micronesian Development Ass'n*, 8 T.T.R. 474.

Consideration

Court did not err in finding valid consideration which would support a compromise and settlement agreement, where a party surrendered a legal claim, and had an honest and reasonable belief in the validity of the claim. *Reyes v. Camacho*, 8 T.T.R. 171.

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Agreement To Contract in Future

In a breach of contract action, fact that parties intended to be bound by a formal contract yet to be drafted did not definitively prevent a trial court finding that binding obligations, and a contract, in fact already existed between the parties. *Nauru Local Government Council v. United Micronesian Development Ass'n*, 8 T.T.R. 474.

Rescission

Generally, any contract can be rescinded by mutual agreement of the parties. *Reyes v. Camacho*, 8 T.T.R. 171.

An agreement to rescind a contract is like any other contract and requires a meeting of the minds and consideration. *Reyes v. Camacho*, 8 T.T.R. 171.

Whether the parties have mutually agreed to rescind a contract is a question of fact. *Reyes v. Camacho*, 8 T.T.R. 171.

The abandonment of a contract by mutual consent may be held to be effective to discharge its obligations. *Reyes v. Camacho*, 8 T.T.R. 171.

Ordinarily, the abandonment of a contract is a question of fact and will not be set aside on appeal unless clearly erroneous. *Reyes v. Camacho*, 8 T.T.R. 171.

The termination of a contract is not presumed, and the burden of establishing it rests on the party who asserts it. *Reyes v. Camacho*, 8 T.T.R. 171.

Where acts and conduct are relied upon to constitute an abandonment or rescission of a contract, such acts must be positive and unequivocal. *Reyes v. Camacho*, 8 T.T.R. 171.

Finding of Trial Court that there was no mutual agreement, express or apparent, to rescind a compromise and settlement agreement, was not erroneous, where the facts showed there was no discussed and agreed upon decision to mutually rescind the settlement, and while one party appeared to have the intent to breach the settlement agreement, she did in fact perform her part of the agreement. *Reyes v. Camacho*, 8 T.T.R. 171.

Repudiation—Generally

A repudiation of a contract, unlike a renunciation, does not relieve the party in breach of its obligations, but gives the other party a claim for breach of contract. *Nauru Local Government Council v. United Micronesian Development Ass'n*, 8 T.T.R. 474.

Contract involving the sale and delivery of rice was effectively repudiated by the purchasing party, where purchasing party first informed seller of its intent not to buy rice for four months, and then that it would purchase no more rice under the contract. *Nauru Local Government Council v. United Micronesian Development Ass'n*, 8 T.T.R. 474.

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—Effect

Buyer of rice under contract was not relieved of its contractual obligations by the failure of seller to continue deliveries after buyer effectively repudiated the contract, since seller was clearly relieved of its obligations once buyer repudiated, and in fact may have been liable itself for shipping costs of any further deliveries for failure to mitigate damages. Nauru Local Government Council v. United Micronesian Development Ass'n, 8 T.T.R. 474.

Breach—Technical Breach

In action for breach of contract involving the sale and delivery of rice, fact that first delivery of rice was received four months late, and fact that supplier of rice had on hand quantities of rice far in excess of the contract amount, did not demonstrate that the parties did not intend to be governed by their contract, since the acceptance and payment for the late delivery excused any technical breach in the delivery, and the fact that supplier had quantities of rice on hand due to a different agreement was irrelevant. Nauru Local Government Council v. United Micronesian Development Ass'n, 8 T.T.R. 474.

—Damages

Generally, a party not in breach of the contract is entitled either to be put in a position as if the contract had been completed or to be restored to the position in which he or she was before the contract. Nauru Local Government Council v. United Micronesian Development Ass'n, 8 T.T.R. 474.

Damages in a breach of contract action must be established with a reasonable certainty. Nauru Local Government Council v. United Micronesian Development Ass'n, 8 T.T.R. 474.

In action for breach of contract involving the sale and delivery of rice, where seller failed to take action to sell the rice and reduce its damages, seller was denied recovery of the costs of the rice. Nauru Local Government Council v. United Micronesian Development Ass'n, 8 T.T.R. 474.

In action for breach of contract involving sale and delivery of rice, seller was entitled to damages for lost profits. Nauru Local Government Council v. United Micronesian Development Ass'n, 8 T.T.R. 474.

In action for breach of contract involving sale and delivery of rice, seller was not entitled to recover as damages of costs related to storage of the rice, since seller should have, under the circumstances, sold the rice in order to mitigate its damages. Nauru Local Government Council v. United Micronesian Development Ass'n, 8 T.T.R. 474.

In action for breach of contract involving the sale and delivery of rice, seller who was not in breach was entitled to recover the purchase price of the amount of rice the buyer had agreed to purchase, the profit margin, and additional damages flowing from the breach, but not those costs which it would have incurred in the course of the contract nor those losses which could have been avoided by reasonable efforts to mitigate

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its damages. *Nauru Local Government Council v. United Micronesian Development Ass'n*, 8 T.T.R. 474.

Mistake—Unilateral Mistake

Generally, a unilateral mistake will not relieve a party from its obligations under a contract, unless the other party knew or had reason to know of the mistake. *Nauru Local Government Council v. United Micronesian Development Ass'n*, 8 T.T.R. 474.

Party to a contract who makes a unilateral mistake bears the “substantial burden” of proving the other party knew or had reason to know of the mistake in order to relieve the mistaken party from its obligations under the contract. *Nauru Local Government Council v. United Micronesian Development Ass'n*, 8 T.T.R. 474.

In action for breach of contract involving the sale and delivery of rice, where distributor of rice made unilateral mistake of assuming it was the only distributor of Australian rice in the Trust Territory, the distributor did not sufficiently carry its burden of showing that the supplier was aware of distributor's unilateral mistake, so as to relieve supplier from its obligations under the contract, by evidence of statements of distributor's Assistant General Manager, and therefore trial court's implicit finding that supplier was not privy to distributor's unilateral mistake was not erroneous. *Nauru Local Government Council v. United Micronesian Development Ass'n*, 8 T.T.R. 474.

Bona Fide Purchaser

A bona fide purchaser is one who pays a valuable consideration, has no notice of outstanding rights of others, and who acts in good faith. *Namauleg v. Snodgrass*, 8 T.T.R. 80.

A bona fide purchaser for value is one who without notice of another's claim of right to, or equity in, the property prior to his acquisition of title has paid the vendor a valuable consideration. *Namauleg v. Snodgrass*, 8 T.T.R. 80.

The burden of establishing that a bona fide purchaser has prior notice of another's claim, right, or equity, rests upon the one who asserts such prior notice. *Namauleg v. Snodgrass*, 8 T.T.R. 80.

The absence of notice of a prior title or interest is an essential requirement in order that one may be regarded as a bona fide purchaser. *Namauleg v. Snodgrass*, 8 T.T.R. 80.

Purchaser of land could rely upon the authority of the land trustee and had no duty to go beyond this authority to be considered a bona fide purchaser. *Namauleg v. Snodgrass*, 8 T.T.R. 80.

Quantum Meruit

Quantum meruit is an equitable doctrine based on concept that no one who benefits by the services or goods provided by another should be unjustly enriched thereby; under such circumstances, the law implies a promise to pay a reasonable amount for the services or goods furnished,

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even absent a specific contract therefor. *State of Truk v. Aten*, 8 T.T.R. 631.

Where a municipality accepts the benefits of an invalid contract, the party with whom it dealt is entitled to *quantum meruit* unless there is a lack of good faith. *State of Truk ex rel. Swain v. Aten*, 8 T.T.R. 557.

Where respondents sought quantum meruit recovery for work performed on contracts entered into with the State of Truk, trial court was to establish quantum meruit on the basis of the reasonable value of the goods and services rendered by respondents to the State of Truk, and in no event could the trial court find that quantum meruit exceeded the contract price for any specific contract entered into. *State of Truk v. Aten*, 8 T.T.R. 631.

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Generally

The courts must determine whether laws or acts of a legislature or council are or are not in conformity with provisions of federal and state constitutions or municipal charters. *Wiliander v. Aten*, 8 T.T.R. 181.

Jurisdiction

Jurisdiction of courts is determined by statute or constitution, not by rules. *Otokichy v. Appellate Division of the Supreme Court*, 8 T.T.R. 295.

—Filing Notice of Appeal

A trial court generally loses jurisdiction to act on the merits of a case after a notice of appeal is timely filed. *Camacho v. Naog*, 8 T.T.R. 269.

—Active Trial

On a complaint and petition for injunctive relief seeking to confirm *alab* rights to *wetoes*, trial court properly denied motion to transfer the case to the Marshall Islands courts based on determination that the case was still in active trial. *Jitiam v. Konou*, 8 T.T.R. 541.

—High Court

High Court of the Trust Territory does not have jurisdiction to enforce its final judgments entered prior to the effective date of the Constitution for the Commonwealth of the Northern Marianas, within the territory of the Northern Marianas. *Sablan v. Sablan*, 8 T.T.R. 127.

The High Court has no jurisdiction over the internal operations of the United States Peace Corps, an agency of the United States, and the trial division could not restrain the corps from revoking the employment contract of one of its volunteers. *Flores v. Peace Corps Micronesia*, 8 T.T.R. 35.

District Court—Jurisdiction

In forfeiture proceeding in District Court, filed by the Government after defendant's conviction for dynamiting fish, for forfeiture of motor boat and equipment used in the dynamiting offense, argument of defendant

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that no weight could be given the conviction in the District Court since it was for a violation of Trust Territory law, rather than Truk District law under which the forfeiture proceedings were brought, was without merit, since it ignored the specific finding of the Trial Court in the forfeiture proceeding that defendant's boat had been used in the commission of the offense. *Trust Territory v. Risa*, 8 T.T.R. 146.

Trial Division of the High Court

On an appeal from the District Court, the Trial Division of the High Court may review the facts as well as the law, even if no additional evidence is taken. *Cruz v. Alien Property Custodian of the Trust Territory*, 8 T.T.R. 281.

Judicial Notice

In land ownership dispute, trial court could properly take judicial notice of an Order of Dismissal entered in a related civil action. (Rules of Evidence, Rule 201) *Lujana v. Clanry*, 8 T.T.R. 441.

In land ownership dispute, where highly relevant Determinations of Ownership of the District Land Title Officer could have been judicially noticed, or introduced as exhibits, based on the holding of *Loeak v. Loeak*, 8 T.T.R. 163 (App. Div. 1980), court should have insured that inexperienced counsel was not prevented by ignorance or inadvertence from introducing such important evidence. (7 TTC § 51; Rules of Evidence, Rule 201) *Lujana v. Clanry*, 8 T.T.R. 441.

—Foreign Law

An appellate court cannot take judicial notice of a foreign law that remains unsettled or is capable of varying interpretations. *Ungeni v. Trust Territory*, 8 T.T.R. 366.

Appellate Division of the High Court would not take judicial notice of an alleged Japanese Proclamation where there was insufficient information in the record with which to finally resolve the critical issue of the foreign law in question. *Ungeni v. Trust Territory*, 8 T.T.R. 366.

Separation of Powers

Trial court did not exceed its scope of judicial authority and violate the doctrine of separation of powers by setting aside an administrative decision of the executive branch, as to the appropriate recipients of legislative operating funds, even though the statute designated chairman of legislative body as the one who administered the designated funds and insured that it was being spent only for purposes specified by statute, since the final power to construe the statute rested with the judicial branch. *Otaor v. Adalbert*, 8 T.T.R. 446.

CRIMINAL LAW.

Jurisdiction—Particular Cases

Trust Territory High Court had original jurisdiction to try Northern Marianas criminal case which occurred prior to the date the transition

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of the Northern Marianas took place. (5 TTC § 53) Government of the Northern Mariana Islands v. Benavente, 8 T.T.R. 155.

Police Officers—Duties

Police officers owe a duty to the public to apprehend law violators. Babauta v. Trust Territory, 8 T.T.R. 196.

Custom

Where a crime is committed the criminal cannot use custom as a shield from prosecution. Ngirmekur v. Municipality of Airai, 8 T.T.R. 231.

Intent

Motive, no matter how compelling, may never make an act lawful which is declared by statute to be a crime. Ngirmekur v. Municipality of Airai, 8 T.T.R. 231.

Statutes

Statutes listing rights of arrested persons and effect of violations of those rights should be strictly interpreted. (12 TTC §§ 68, 70) Trust Territory v. Abija, 8 T.T.R. 102.

Identifications—Right to Counsel

The right to counsel in the Trust Territory applies to all identification proceedings, whether the suspect has been charged or not. Loney v. Trust Territory, 8 T.T.R. 318.

Confrontation for identification purposes in a criminal proceeding is a critical stage, affording an accused the right to the presence of counsel during any police identification proceedings. Loney v. Trust Territory, 8 T.T.R. 318.

Rights of Accused—Generally

Prior to any questioning by police, an arrested person is to be advised of certain rights set forth by statute. (12 TTC § 68) Loney v. Trust Territory, 8 T.T.R. 318.

—Waiver

Any statements made by an arrested individual are not admissible at trial, unless the individual is advised of his or her rights and the individual knowingly and voluntarily waives such rights. Loney v. Trust Territory, 8 T.T.R. 318.

Information

Information charging defendant with two counts of cheating, false pretenses, was sufficient, where the counts were stated in the same language as the applicable criminal statute. (11 TTC § 853) Government of the Northern Mariana Islands v. Benavente, 8 T.T.R. 155.

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—Election of Counts

Under Rules of Criminal Procedure, where defendant was charged with four counts of a crime as follows: count 1, grand larceny; count 2, cheating, false pretenses; count 3, grand larceny; and count 4, cheating, false pretenses, it was not necessary for the prosecution to make an election of the counts it wished to proceed on. (Rules Crim. Procedure, Rule 6F) Government of the Northern Mariana Islands v. Benavente, 8 T.T.R. 155.

Complaint—Sufficiency

Whether a criminal complaint is sufficient is to be determined by practical rather than technical considerations. Trust Territory v. Morei, 8 T.T.R. 379.

For a criminal complaint to stand as sufficient, all that is required is that it adequately inform the defendant of the charge or charges against which he has to defend, and that it be specific enough to support a claim of double jeopardy for future prosecution for the same conduct. Trust Territory v. Morei, 8 T.T.R. 379.

Criminal complaint charging forgery was clearly sufficient, where it charged an intent to defraud each of five named payees. (11 TTC § 701) Trust Territory v. Morei, 8 T.T.R. 379.

Bill of Particulars—Function

The principle function of a Bill of Particulars is to apprise a defendant of essential facts of the crime for which he has been indicted, especially in instances where the indictment itself does little more than track the language of the statute allegedly violated. Trust Territory v. Dabuchiren, 8 T.T.R. 247.

—Fundamental Right

The process of discovery and especially a Bill of Particulars in a criminal case should be a fundamental right and benefit available to all defendants in the Trust Territory. Trust Territory v. Dabuchiren, 8 T.T.R. 247.

—Denial

A prosecutor should not be allowed to deny or avoid a Bill of Particulars by merely stating that it is an unfair procedure. Trust Territory v. Dabuchiren, 8 T.T.R. 247.

—Effect

When a Bill of Particulars has been furnished to the defendant, the Government is strictly limited to particulars which it has specified. Trust Territory v. Dabuchiren, 8 T.T.R. 247.

—Response

Where any request for particulars is granted, Government need not respond with detail envisioned by the motion, and a general disclosure of information sought will suffice, but if the Government cannot safely respond in precise terms because of uncertainty as to facts, it should

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respond in approximate terms. *Trust Territory v. Dabuchiren*, 8 T.T.R. 247.

—Particular Cases

Where defendant was charged with embezzlement, and sought a Bill of Particulars, asking what was done with the embezzled money, and the prosecutor answered by stating it was unknown, and yet at trial prosecutor introduced two witnesses who testified as to the use of the money, the prosecutor's conduct was prejudicial to the defendant and was sufficient to set aside defendant's conviction. *Trust Territory v. Dabuchiren*, 8 T.T.R. 247.

Discovery

Where prosecution did not respond to a motion for discovery and failed to provide certain documents to the defendant, but did provide them on order of the court prior to trial, a continuance granted by the Trial Court to allow defendant to examine the documents was a sufficient remedy. *Government of the Northern Mariana Islands v. Benavente*, 8 T.T.R. 155.

Evidence—Materiality

Any competent evidence logically tending to prove a defendant's connection with a crime is material and is to be judged not only upon what it shows standing alone, but also on whatever inferences may be drawn when it is viewed in connection with other evidence. *Ngeskebei v. Government of the Northern Mariana Islands*, 8 T.T.R. 16.

—Acts and Statements Collateral to Offense

Evidence of conduct collateral to offense with which an accused is charged, criminal or otherwise, may be inadmissible if it fails to be probative of the charged offense. *Ngeskebei v. Government of the Northern Mariana Islands*, 8 T.T.R. 16.

Competent and relevant evidence of guilt of crime charged is not made inadmissible merely because it tends to show the commission of another offense. *Ngeskebei v. Government of the Northern Mariana Islands*, 8 T.T.R. 16.

—Accomplice Testimony

At criminal trial, testimony of an accomplice need not be supported by independent corroborating evidence. *Government of the Northern Mariana Islands v. Benavente*, 8 T.T.R. 155.

At criminal trial, testimony of an accomplice did not need to be supported by independent corroborating evidence, since the trier of fact could make a determination on what credibility should be given such testimony, and since in any event admission into evidence of relevant documentary evidence tended to corroborate the accomplice testimony and therefore negated any such requirement. *Government of the Northern Mariana Islands v. Benavente*, 8 T.T.R. 155.

CRIMINAL LAW

—Circumstantial Evidence

Circumstantial evidence may be sufficient to establish guilt beyond a reasonable doubt. *Trust Territory v. Morei*, 8 T.T.R. 379.

Attempt

An attempt to commit a crime requires specific intent, the performance of an act towards the commission, and the failure to consummate the act. *Trust Territory v. Rodriquez*, 8 T.T.R. 491.

Criminal statute defining "attempts" does not permit or allow any transferred intent or vicarious criminal liability; a bystander to an attempted crime is not included in the coverage of the statute. (11 TTC § 4) *Trust Territory v. Rodriquez*, 8 T.T.R. 491.

Plea Bargaining

When a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be a part of the inducement or consideration, such promise must be fulfilled. *Amor v. Trust Territory*, 8 T.T.R. 311.

—Violation of Agreement

Government's violation of a plea bargain agreement upon which the defendant relied in good faith mandates that the judiciary prescribe a remedy that insures the defendant is not prejudiced by such violation. *Cantero v. State of Ponape*, 8 T.T.R. 331.

Probation

Probation is a judiciary function. (11 TTC § 1460) *Amor v. Trust Territory*, 8 T.T.R. 311.

Sentence given to criminal defendant, under which defendant was not placed on probation, but Probation Officer was given authority to determine whether the defendant could be released during the confinement, was invalid and therefore void as to limitations set upon the defendant's release while in prison, since the issuance of commitment order placed defendant within jurisdiction of executive branch, and therefore court could not transgress into the province of executive branch by setting limitations on defendant's release. *Amor v. Trust Territory*, 8 T.T.R. 311.

Pardon and Parole

Confinement in jail, pardon and parole, and commutation of sentence are executive functions. (3 TTC § 540, 11 TTC § 1501) *Amor v. Trust Territory*, 8 T.T.R. 311.

—Power To Grant

Order of revocation of parole by High Commissioner entered on February 1, 1980 was without effect, since by the date of the order the applicable statutory provision had been repealed, and since the order was inconsistent with the express constitutional authority of the President of the Federated States of Micronesia. (11 TTC § 1501(1)) *Loney v. Trust Territory*, 8 T.T.R. 152.

DECEDENTS' ESTATES

Appeals

In contrast to a civil appeal, a criminal appeal necessarily and wholly removes the cause from the trial court's jurisdiction. *Camacho v. Naog*, 8 T.T.R. 269.

Unlike the disposition of civil motion for relief from judgment, the modification of a criminal sentence affects the finality of the judgment under pending review. *Camacho v. Naog*, 8 T.T.R. 269.

—Scope of Review

Appellate Division has an obligation, in a criminal appeal, to consider the evidence in the light most favorable to the government. *Eyoul v. Trust Territory*, 8 T.T.R. 242.

It is not the province of the Appellate Division to substitute its belief as to what the trier of fact should have found and must sustain the verdict if there is sufficient competent evidence in the record to support the lower court's finding. *Eyoul v. Trust Territory*, 8 T.T.R. 242.

—Findings

A finding is not clearly erroneous if there is substantial evidence to support it. *Government of the Northern Mariana Islands v. Benavente*, 8 T.T.R. 155.

CUSTOM.

Generally

Trial court improperly determined that a custom was invalid, on the basis that it was infrequently used, where testimony revealed the custom was used twice in German times and once in Japanese times, since the viability of a custom is not abrogated merely because of the relative infrequency of its implementation. *Ngirmekur v. Municipality of Airai*, 8 T.T.R. 231.

Conflict With Law

Public policy forbids the enforcement of those customs which are inherently disruptive of maintaining law and order. *Ngirmekur v. Municipality of Airai*, 8 T.T.R. 231.

Trial court properly interfered with the exercise of police power implemented through custom, where trial court awarded damages sustained as a result of forcible eviction of plaintiff from his property by the defendant-municipality. *Ngirmekur v. Municipality of Airai*, 8 T.T.R. 231.

D

DECEDENTS' ESTATES.

Limitation of Actions

For purposes of statute of limitations, petitioner's cause of action, concerning rights in an estate due to alleged interest in land owned by

DECEDENTS' ESTATES

decedent, accrued when upon decedent's death, children of decedent began to assert adverse claims. *In re Estate of Taitano*, 8 T.T.R. 325.

Probate petition claiming rights in an estate due to claimed interest in land owned by decedent was governed by two-year probate statute of limitations, and not by twenty-year statute of limitations for actions for recovery of interest in land, or 120 day limit for appeals from Land Commission determinations. (6 TTC §§ 302, 304; 67 TTC § 115) *In re Estate of Taitano*, 8 T.T.R. 325.

Distribution

Under common law rules of inheritance in effect in Micronesia, where there is no surviving spouse, the children and descendants of deceased children take the entire estate, to the exclusion of other blood relatives. *Kapileo v. Olopai*, 8 T.T.R. 259.

DEEDS.

Consideration—Presumptions

Consideration was presumed where deed recited that 1,200 German marks were paid the sellers of land for the land. *Thomas v. Trust Territory*, 8 T.T.R. 40.

Rescission

Grantor could not unilaterally rescind quitclaim deed which did not recite any condition following delivery and acceptance. *Pwalendin v. Ehmel*, 8 T.T.R. 548.

Where grantor delivered quitclaim deed to property and it was accepted and recorded, grantor's subsequent attempt to rescind the conveyance by executing a will devising the property to another was without legal effect. *Pwalendin v. Ehmel*, 8 T.T.R. 548.

DOMESTIC RELATIONS.

Divorce—Custody

With respect to custody of an illegitimate child as between two opposing parents, although the best interests of the child is the ultimate concern, the natural mother has a *prima facie* right to custody, and that right will not be defeated except upon a clear showing that she is not a fit person to be given custody. *Eram v. Threadgill*, 8 T.T.R. 345.

Trial court did not err, in child custody proceeding, by not considering Trukese customary law, where there was sufficient case law and statutory law on the subject to allow the court to render a decision. *Eram v. Threadgill*, 8 T.T.R. 345.

Trial court decision to award custody of child to mother was proper, where evidence showed that mother had cared for and supported the child for over one year prior to the child's removal from her custody, had nurtured the baby with extra care because of the child's allergy to certain foods, had travelled many thousands of miles to fight a valiant battle to regain custody, prospects of continued care, support and education of

ELECTIONS

the child by the mother were good, and nothing in the evidence indicated that she was an unfit mother. *Eram v. Threadgill*, 8 T.T.R. 345.

—Final Judgment

A “final judgment” in a divorce action occurs when the decree of divorce is entered. *Sablan v. Sablan*, 8 T.T.R. 127.

E

ELECTIONS.

Powers of Court

The courts have jurisdiction to hear matters arising out of disputes over election contests. *Chutaro v. Election Commissioner of the Marshall Islands*, 8 T.T.R. 209.

While the legislature should have power to decide how and when its members are elected, when the legislative power denies to the electorate their right to vote, the courts should be allowed to look into the cause of the denial in an effort to correct the problem. *Chutaro v. Election Commissioner of the Marshall Islands*, 8 T.T.R. 209.

Holdings of *Liberty Party v. Election Commissioner*, 3 T.T.R. 293 (1967), and *Basilus v. Election Commissioner*, 5 T.T.R. 290 (1970), that election contests were beyond the control of the judicial power, are overruled. *Chutaro v. Election Commissioner of the Marshall Islands*, 8 T.T.R. 209.

Irregularities—Right to Contest

Fact that candidate did not have poll watchers at each polling place did not mean he waived his right to contest the election on the basis of illegal votes cast. (43 TTC §§ 406, 407) *Chutaro v. Election Commissioner of the Marshall Islands*, 8 T.T.R. 209.

—Remedies

When it is determined that illegal votes are cast in an election, the first effort that should be made is to purge the poll by proving which ballots are illegal and rejecting them. *Chutaro v. Election Commissioner of the Marshall Islands*, 8 T.T.R. 209.

In an election where illegal votes were cast which were not distinguishable from the legal votes, remedy of a recount by the Election Commissioner was inadequate, since a recount would only verify the count, and solve no problem as far as the illegal votes were concerned. *Chutaro v. Election Commissioner of the Marshall Islands*, 8 T.T.R. 209.

Where in an election where illegal votes exceeded the margin between the winner and second-place finisher, and there was no way to distinguish the illegal from the legal votes, the proper remedy was to hold the election invalid and order a new election to be held immediately. *Chutaro v. Election Commissioner of the Marshall Islands*, 8 T.T.R. 209.

Where election held two years previously was ruled invalid and a new election was ordered, candidate who had served two years in the legisla-

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ture could be considered a de facto member and was therefore entitled to retain any salary paid to him as a member. *Chutaro v. Election Commissioner of the Marshall Islands*, 8 T.T.R. 209.

EMBEZZLEMENT.

Elements of Offense

The crime of embezzlement contains three elements: (1) lawfully obtaining the personal property of another; (2) taking and carrying away of that property without the owner's knowledge or consent; and (3) having the intent to convert it to his own use. (11 TTC § 854) *Trust Territory v. Sugiyama*, 8 T.T.R. 374.

In order to convict a defendant of embezzlement, it is necessary that the government prove beyond a reasonable doubt each and every element of the crime. (11 TTC § 854) *Trust Territory v. Sugiyama*, 8 T.T.R. 374. Public official's conviction for embezzlement was reversed, where the government could not prove the necessary element of initial "lawful possession" of the embezzled property, since uncontradicted evidence showed that another official withdrew funds from an agency account, and gave it to the public official, and therefore the public official never had "lawful possession" of the funds. (11 TTC § 854) *Trust Territory v. Sugiyama*, 8 T.T.R. 374.

EMINENT DOMAIN.

Generally

Trust Territory of the Pacific Islands clearly has the power to acquire land by eminent domain. 10 TTC § 1 *et seq.* *In re Condemnation of Property of Kabua*, 8 T.T.R. 581.

In the Trust Territory, landowners are afforded greater protection against condemnation than those in the United States. 10 TTC § 57. *In re Condemnation of Property of Kabua*, 8 T.T.R. 581.

Scope of Trust Territory's eminent domain power is subject to the limitation that there be payment of just compensation and that any taking be for a public use. *In re Condemnation of Property of Kabua*, 8 T.T.R. 581.

Trust Territory has the authority to condemn lands for the use of the United States Department of the Army when an agreement for the use of the privately owned land cannot be negotiated with the landowners. *In re Condemnation of Property of Kabua*, 8 T.T.R. 581.

Statutory Provisions

In condemnation proceeding where use of the property was for a period of years, and not an outright taking, statutory requirement that property owner execute a quitclaim deed in favor of government was not applicable. 10 T.T.C. § 57(c). *In re Condemnation of Property of Kabua*, 8 T.T.R. 581.

ESTOPPEL

Public Use

Trust Territory has no authority to condemn land unless the condemnation is for the benefit of the people of the Trust Territory. *In re Condemnation of Property of Kabua*, 8 T.T.R. 581.

Whether a "use" is in fact a "public use" is ultimately a judicial question. *In re Condemnation of Property of Kabua*, 8 T.T.R. 581.

Trial court properly found that Trust Territory's condemnation of land for the use of the United States Department of the Army constituted a "public use." *In re Condemnation of Property of Kabua*, 8 T.T.R. 581.

Hearing

In the absence of any statutory requirement that a pre-taking hearing must take place, a landowner is only entitled to be heard on the amount of just compensation that the government owes as a result of the taking. *In re Condemnation of Property of Kabua*, 8 T.T.R. 581.

Compensation

In condemnation proceeding, where property owners would have to give up their right to challenge the validity of the taking of the property if they withdrew compensatory funds deposited with the court, property owners' rights under Trust Territory Bill of Rights were denied. 1 TTC § 4. *In re Condemnation of Property of Kabua*, 8 T.T.R. 581.

In condemnation proceeding, trial court's determination as to the amount of just compensation to be awarded was remanded, where there was no indication how the final award figure was reached. *In re Condemnation of Property of Kabua*, 8 T.T.R. 581.

In a condemnation proceeding, where amounts deposited for benefit of property owners were constructively unavailable, trial court on remand was ordered to award interest until the date the property owners were given the opportunity to withdraw the deposited funds. *In re Condemnation of Property of Kabua*, 8 T.T.R. 581.

ESTOPPEL.

Generally

Question of the existence of an estoppel is a question to be settled by the trier of the facts, the trial court, where there is a dispute as to the facts involving estoppel. *Diaz v. Diaz*, 8 T.T.R. 264.

The determination of the trier of fact of estoppel is binding on appeal unless the contrary conclusion is the only one that can reasonably be drawn from the evidence. *Diaz v. Diaz*, 8 T.T.R. 264.

Collateral Estoppel

Collateral estoppel is an affirmative defense which must be raised by an answering party at an earlier stage than appeal. (Rules of Civil Proc., Rule 8) *Diaz v. Diaz*, 8 T.T.R. 397.

EVIDENCE.

Relevancy

Relevancy of evidence is to be determined by whether the evidence gives rise to reasonable inferences regarding contested issues or throws any light upon them. *Ngeskebei v. Government of the Northern Mariana Islands*, 8 T.T.R. 16.

Weight

The weighing of evidence in a condemnation proceeding is within the sole province of the fact-finder, and an appellate court must not reweigh the evidence. *In re Condemnation of Property of Kabua*, 8 T.T.R. 581.

In action for compensation for damages to taro and soil the trial court was not compelled to accept either in whole or in part any one of the various conflicting statements made by witnesses as to the extent, nature or value of the damage. *Trust Territory v. Edwin*, 8 T.T.R. 23.

Circumstantial

Circumstantial evidence sufficiently supported a finding of the trial court that there was a transfer of real property. *Muna v. Trust Territory*, 8 T.T.R. 131.

Documents

In land ownership dispute, consideration by the trial court of an Order of Dismissal in a related civil action was not improper, where such Order of Dismissal was relevant to the case. *Lujana v. Clanry*, 8 T.T.R. 441.

—Admissibility

Admission of documentary evidence is left to the sound discretion of the trial court. *State of Truk ex rel. Swain v. Aten*, 8 T.T.R. 557.

In suit by public employees against former Governor of Truk, trial court erred in refusing to admit into evidence documents, which at prior hearing in same case court had found the documents authentic. *State of Truk ex rel. Swain v. Aten*, 8 T.T.R. 557.

In suit by public employees against former governor of Truk, trial court's exclusion of 1983 audit report was erroneous. *State of Truk ex rel. Swain v. Aten*, 8 T.T.R. 557.

In suit by public employees against former governor of Truk, trial court's ruling admitting into evidence 1984 audit report was upheld. *State of Truk ex rel. Swain v. Aten*, 8 T.T.R. 557.

Depositions—Admissibility

The admissibility of a deposition is within the sound discretion of the trial judge, and the judge's finding will not be overturned absent an abuse of discretion. *State of Truk ex rel. Swain v. Aten*, 8 T.T.R. 557.

A deposition may only be used under one of the following conditions:

- 1) the deposition is offered to impeach the deponent as a witness; or
- 2) the deposition is one of a person authorized to testify on behalf of a

EVIDENCE

public or private corporation; or 3) the deposition is of an unavailable witness. (Rules Civil Proc. 26) Choban v. Trust Territory, 8 T.T.R. 467.

A deposition not offered and admitted into evidence cannot be considered by the trier of fact. Choban v. Trust Territory, 8 T.T.R. 467.

Since a deposition is only secondary evidence, a trial court errs by admitting a deposition without an adequate foundation that the necessary conditions for its admission are satisfied. (Rules Civil Proc. 26) Choban v. Trust Territory, 8 T.T.R. 467.

Counsel at trial cannot argue from a deposition which has not been properly admitted into evidence. Choban v. Trust Territory, 8 T.T.R. 467.

It was error for trial judge to allow counsel to argue from a deposition which had not been properly admitted into evidence, and for the trial judge to state from the bench at trial that he, too, had read the deposition. Choban v. Trust Territory, 8 T.T.R. 467.

At trial, use of deposition of plaintiff which was not properly admitted into evidence constituted reversible error, where trial court relied heavily on plaintiff's testimony in rendering his verdict for defendants, and the deposition contained prior inconsistent statements of plaintiff, and therefore may have affected the trial court's judgment Choban v. Trust Territory, 8 T.T.R. 467.

In suit by state employees against former governor of the State of Truk, deposition was erroneously excluded from evidence, where the court did not review the deposition *in camera*. State of Truk ex rel. Swain v. Aten, 8 T.T.R. 557.

There was no error in the admission at trial of a deposition, where the witness was situated several hundred miles from the site of the trial, the defendant waived his appearance in the deposition taken and was represented by counsel, and defendant's counsel had indicated he "might not object" to its admission. Maie v. Bulele, 8 T.T.R. 451.

View—Purpose

One of the purposes of a view of the evidence out of court is to assist in gauging and estimating the reliability of the testimony given. Trust Territory v. Edwin, 8 T.T.R. 23.

In action for compensation for damages to taro and soil, wherein defendant claimed court's view of the taro patches was objectionable in that a certain finding could be derived only from the view and a view is never permissible for the purpose of admission of substantive evidence, it was unnecessary for court on appeal to select the precise line of authority, among conflicting lines, as to the purpose of a view and whether it constitutes evidence; the evidence sufficiently supported the judgment for plaintiff. Trust Territory v. Edwin, 8 T.T.R. 23.

Opinion—Generally

A party may testify as to the value of his own property. Irons v. Aizawa, 8 T.T.R. 385.

EVIDENCE

In an action for damage to real property due to dredging operation, it was error for the trial court to refuse to allow the plaintiff to testify as to the value of his property after the dredging operation. *Irons v. Aizawa*, 8 T.T.R. 385.

Expert Testimony

Trier of fact is not bound by expert testimony and may disregard the testimony of such expert witnesses if their testimony was not convincing. *In re Condemnation of Property of Kabua*, 8 T.T.R. 581.

Hearsay—Admissibility

Hearsay testimony is admissible if it comes within one of the recognized exceptions. *Shima v. Hermios*, 8 T.T.R. 602.

In a dispute over *alab* and *dri jerbal* rights, admission of hearsay testimony about general knowledge in the community with regard to the ownership of the *wetos* in question, and particularly in regard to whether claimant's father had been dispossessed of these *wetos* was not reversible error, where such testimony came within two of the recognized exceptions for hearsay testimony. *Shima v. Hermios*, 8 T.T.R. 602.

—Particular Cases

It was not erroneous for the trial judge in rendering judgment in land dispute to give little or no weight to hearsay evidence and to refuse to admit an unauthenticated tape recording offered without proper foundation. *Shima v. Hermios*, 8 T.T.R. 622.

In an action seeking specific performance of a compromise and settlement agreement, there was no prejudicial error in the admission of a document which may have contained hearsay, where the document had relevance to support consideration for the compromise agreement, and there was no direct objection to its admission on the basis of hearsay, and any hearsay objections would probably have been met by valid exceptions to the hearsay rule. *Reyes v. Camacho*, 8 T.T.R. 171.

Best Evidence Rule

The best evidence rule applies not when a piece of evidence sought to be introduced has been recorded, but when it is the content of the written instrument itself which is sought to be proved. *Nauru Local Government Council v. United Micronesian Development Ass'n*, 8 T.T.R. 474.

The best evidence rule does not prohibit the introduction of testimonial evidence to establish damages even though there may be documentary evidence of these facts. *Nauru Local Government Council v. United Micronesian Development Ass'n*, 8 T.T.R. 474.

F

FORGERY.

Agency Defense

To support an allegation that an endorsement of a check was made in an agency capacity, albeit without authority, as a defense to the crime

FORMER ADMINISTRATIONS

of forgery, the agency capacity must be evidenced on the face of the checks or there must be testimony of an agency relationship or of oral representations that defendant was acting in such a capacity. *Trust Territory v. Morei*, 8 T.T.R. 379.

Defense to the crime of forgery that endorsement of check was made in an agency capacity was without merit, where defendant first raised such an issue on appeal, presented no testimony at trial as to the existence of an agency representation, and since defendant's initials appearing on the checks were insufficient evidence of an agency relationship. *Trust Territory v. Morei*, 8 T.T.R. 379.

Particular Cases

Ample evidence existed to support defendant's conviction for forgery. (11 TTC § 701) *Trust Territory v. Morei*, 8 T.T.R. 379.

FORMER ADMINISTRATIONS.

Official Acts

Failure by Trust Territory Government to prove the existence of a Japanese Proclamation, which allegedly showed that disputed land was in fact public land, was fatal to any statutory claim the Government may have had over the disputed land. (67 TTC §§ 1, 2) *Ungeni v. Trust Territory*, 8 T.T.R. 366.

Policy Letter P-1, an administrative policy letter issued in 1947 announcing Trust Territory Government's willingness to return land taken by Japanese government in cases where fair compensation was not received, was a mere statement of policy, and does not have the force and effect of law. (Policy Letter P-1, December 29, 1947.) *Ogarto v. Johnston*, 8 T.T.R. 62.

Where Japanese administration in survey of private land undertaken in 1941 affirmed a subdivision on certain property on Ponape, and appellant and his predecessors in interest could have contested this registration in the courts during Japanese and American times but did not do so until 1980, appellant lost whatever rights he may previously have had in the land. *Eldridge v. Eldridge*, 8 T.T.R. 432.

Redress of Prior Wrongs—Exception to Applicable Doctrine

Doctrine of "prior wrongs" was inapplicable to a case where an alleged Japanese Proclamation on or about 1937 declared all property below the high water mark, including tidelands, to be public domain, since such a taking occurred only eight years prior to the succession of the United States and two years after Japan's resignation from the League of Nations, and there existed no practical or viable means by which redress could have been obtained from the Japanese Administration. *Ungeni v. Trust Territory*, 8 T.T.R. 366.

HOMICIDE

H

HOMICIDE.

Attempted Murder

Where during a joint escape, one prisoner shot and injured a police officer, and there was no finding of intent by two other escaping prisoners to attempt to murder the officer, nor any act toward the commission of the crime, the two other escaping prisoners could not be convicted of attempted murder. (11 TTC § 4) Trust Territory v. Rodriquez, 8 T.T.R. 491.

Murder in Second Degree—Felony Murder

Attempted felony murder is a legal impossibility. (11 TTC § 4) Trust Territory v. Rodriquez, 8 T.T.R. 491.

Government could not prosecute co-felons under "common law" felony-murder rule, since no person is subject to criminal prosecution in Trust Territory except under *written* law. (1 TTC § 103) Trust Territory v. Rodriquez, 8 T.T.R. 491.

Charge of second-degree murder based on felony-murder rule against two prisoners escaping from prison was erroneous, where charge was based on a shooting by a third escaping prisoner in which a police officer was injured but not killed, since without a homicide the felony-murder rule is not applicable. (11 TTC § 752) Trust Territory v. Rodriquez, 8 T.T.R. 491.

Second-degree murder statute was not properly applied against two prisoners who were in the act of escaping from prison when a third escaping prisoner shot and injured a police officer, since language of felony-murder provision makes it clear that only the person who actually kills another while perpetrating a felony is liable, and not other participants in the felony. (11 TTC § 752) Trust Territory v. Rodriquez, 8 T.T.R. 491.

Second-degree murder statute was not properly applied against two prisoners who were in the act of escaping from prison when a third escaping prisoner shot and killed a person, since language of felony-murder provision makes it clear that only the person who actually kills another while perpetrating a felony is liable, and not other participants in the felony. (11 TTC § 752) Trust Territory v. Rodriquez, 8 T.T.R. 491.

J

JUDGES.

Conflict of Interest—Particular Cases

Trial judge did not abuse his discretion by refusing to recuse himself *sua sponte* from case merely because the judge was a party-litigant in another case in which counsel for appellant was the attorney for the other side. Truk Trading Co. v. Paul, 8 T.T.R. 515.

Disqualification—Affidavits

Facts presented by affidavit in support of a motion to disqualify a judge

JUDGMENTS

are to be taken as true, though they are subject to determination of their legal sufficiency. (5 TTC § 351) Hamo v. Gianotti, 8 T.T.R. 50.

—Justified

Where head of Micronesian Legal Services Corporation sent judge a letter referring to deterioration of their professional relationship and advising that legal services attorneys would not appear before the judge until the situation was fully resolved, and during a conference between the two there was a confrontation and unfortunate language by the judge, setting a pattern of continuing conflict between the judge and legal services attorneys, and the Senate of the Interim Congress of Micronesia asked the Secretary of the Interior to suspend the judge, pending an investigation, there was an appearance that judge would be unable to act with impartiality in matters where legal services attorneys were involved, and events must have inevitably produced a degree of prejudice against the attorneys on the judge's part, and application for mandamus to compel judge to recuse himself in all pending cases represented by the legal services attorneys would be granted, without thereby approving of the actions of such attorneys which create prejudice. (5 TTC § 351) Hamo v. Gianotti, 8 T.T.R. 50.

—Not Justified

Contention that trial judge was not impartial in trying and adjudicating case was without merit, since there was no evidence to support such an allegation. Irons v. Aizawa, 8 T.T.R. 385.

JUDGMENTS.

Service—Mail

Argument that Trust Territory Rules of Procedure do not permit service of a judgment by mail was rejected. In re Angaur Trust, 8 T.T.R. 610.

Damages

There is no requirement that the plaintiff must prove the amount of damages with absolute or mathematical certainty. Irons v. Aizawa, 8 T.T.R. 385.

Limitation by Pleadings

Where plaintiff suing for damages for loss of taro plants due to oil spill caused by defendants' negligence pled the loss of 500 plants the court was not limited to finding he lost 500 plants and could grant judgment for the loss of 950 plants. Trust Territory v. Edwin, 8 T.T.R. 23.

“Res Judicata”

Trial division was without authority under the doctrine of *res judicata* to redetermine *alab* rights to a *weto* that had been the subject of a final judgment. Shima v. Hermios, 8 T.T.R. 622.

JUDGMENTS

Default

Fact that judgment entered after a trial on the merits at which defendants received notice, but did not appear, was erroneously captioned as a "default judgment" was not a ground for reversal of the judgment, as it was a mere matter of semantics, since the court in fact properly followed procedure for a trial on the merits where defendants do not appear. (6 TTC §§ 51-54) *Apap v. Cabrera*, 8 T.T.R. 463.

—Setting Aside

Defendant moving for default judgments to be set aside on ground it had a meritorious defense was not entitled to have its motion granted where it did not state with particularity what the defense was. *Itsco v. Trust Territory*, 8 T.T.R. 57.

Interest

The allowance of interest in a condemnation proceeding is a matter of individual discretion. *In re Condemnation of Property of Kabua*, 8 T.T.R. 581.

JURY.

Sequestration

Generally, a mere violation of a sequestration order does not compel the trial court to declare a mistrial. *United Micronesian Development Ass'n v. New Hampshire Fire Insurance Co.*, 8 T.T.R. 225.

Deliberations

The general rule is that the haste or shortness of time taken by a jury in arriving at its verdict has no effect upon the validity of the verdict. *United Micronesian Development Ass'n v. New Hampshire Fire Insurance Co.*, 8 T.T.R. 225.

Special Questions

The submission of specific questions to the jury at the close of trial is within the discretion of the trial court. *United Micronesian Development Ass'n v. New Hampshire Fire Insurance Co.*, 8 T.T.R. 225.

L

LACHES.

Generally

Laches is an equitable doctrine where the court is called upon to balance the equities. *Pwalendin v. Ehmel*, 8 T.T.R. 548.

Whether laches applies to a given case depends upon the circumstances of the particular case and is a question primarily addressed to the discretion of the Trial Court. *Nanmworki v. Etscheit*, 8 T.T.R. 287.

The issue of laches turns on the circumstances of a given case and it is best left to the trial court's discretion. *Pwalendin v. Ehmel*, 8 T.T.R. 548.

LIMITATION OF ACTIONS

Particular Cases

Laches was not a bar to a claim brought by the Alien Property Custodian, since the Trust Territory is not subject to the defense of laches without its consent. *Cruz v. Alien Property Custodian of the Trust Territory*, 8 T.T.R. 281.

Where a Micronesian citizen waited until approximately eleven years after the death of his father, and approximately eighteen years after the transfer of land, before bringing suit against the Trust Territory Government for specific performance of a land exchange agreement between his father and the Government, even assuming the statute of limitations did not apply, the doctrine of laches would bar the action. *Royse v. Trust Territory*, 8 T.T.R. 189.

LEGISLATURE.

Delegation of Authority

Power of the Cabinet and the Minister of Local Affairs under the Local Government Act of 1980, to amalgamate local governments, is a proper delegation of legislative authority. *Joash v. Cabinet of the Government of the Marshall Islands*, 8 T.T.R. 403.

Nitijela—Determination of Membership In

Article of the Charter of the Nitijela which gives that legislative body the right to determine the qualifications of its members does not give the Nitijela the arbitrary and capricious right to exclude those minority members who do not agree with the majority. (Charter of the Nitijela, Article III, Section 3) *Loeak v. Nitijela*, 8 T.T.R. 87.

Once the legislature goes beyond Charter provisions which prescribe qualifications, it does not have the authority or power to exclude a duly elected member. (Charter of the Nitijela, Article III, Section 3) *Loeak v. Nitijela*, 8 T.T.R. 87.

When Nitijela, after being advised of the judicial determination of status of petitioner as duly elected representative, and after being served with a Writ of Mandamus, refused to comply with Writ of Mandamus and did not allow petitioner to be sworn in as a duly elected representative, legal existence of the Nitijela terminated and all further purported actions it took were null and void and of no effect. *Loeak v. Nitijela*, 8 T.T.R. 87.

—Powers

Nitijela is empowered to enact legislation which is necessary and proper to carry out any powers vested to it by the Constitution. *Joash v. Cabinet of the Government of the Marshall Islands*, 8 T.T.R. 498.

LIMITATION OF ACTIONS.

Generally

While statutes of limitation are intended to be somewhat mechanical in their application, they represent a considered policy decision on the part of the legislature that the right to be free of stale claims in time comes

LIMITATION OF ACTIONS

to prevail over the right to prosecute them. *Trust Territory v. Konou*, 8 T.T.R. 522.

Court's Function

Court's function is not to inquire as to the individual fairness of the application of a statute of limitations, since the courts cannot dissolve the statute of limitations into a doctrine of laches. *Trust Territory v. Konou*, 8 T.T.R. 522.

Trust Territory Government

The Trust Territory Government, when acting as a trustee, cannot assert the statute of limitations as a defense. *Ogarto v. Johnston*, 8 T.T.R. 62.

—Trusteeship

Statutes of limitation bar recovery where Trust Territory citizens wait too long to file a claim against the Government; the United Nations Trusteeship Agreement does not create a strict formal trust relationship precluding application of statutes of limitation. *Trust Territory v. Konou*, 8 T.T.R. 522.

—Particular Cases

Landowners who counterclaimed against the Trust Territory Government seeking restoration to possession of land, and compensation for use of the land from 1944 to 1980 were barred from recovery by 20-year statute of limitations for recovery of land, and 6-year statute of limitations on claims for compensation for the use of the land. (6 TTC §§ 302, 305) *Trust Territory v. Konou*, 8 T.T.R. 522.

Settlement Negotiations

It is well recognized that settlement negotiations do not prevent statute of limitations from running. *Trust Territory v. Konou*, 8 T.T.R. 522.

Discovery Rule

Exception to two-year statute of limitations for medical malpractice is where the plaintiff can show that the accrual of the cause of action was delayed to a later date because he did not discover or could not have reasonably discovered the claim he had for malpractice. (6 TTC § 308) *Borja v. Trust Territory*, 8 T.T.R. 425.

There was no basis to toll the two-year statute of limitations for medical malpractice, where plaintiff experienced physical difficulties after the allegedly negligent surgery, and told the attending physician that "I sue you because you make the wrong operation". *Borja v. Trust Territory*, 8 T.T.R. 425.

Land Title Officer's Determination

Failure to appeal a land title officer's determination within one year will bar a litigant from contesting that determination. *Jitiam v. Konou*, 8 T.T.R. 541.

MARSHALLS CUSTOM

Recovery of Land

The statute of limitations begins to run in a land case when the land owners are put on notice. (6 TTC § 302) *Trust Territory v. Tudela*, 8 T.T.R. 307.

Land trustee for heirs of landowner was barred by six-year statute of limitations from contesting title of government to land which was the subject of a land exchange agreement with government signed by landowner more than twenty years previously. (6 TTC § 305) *Trust Territory v. Camacho*, 8 T.T.R. 273.

Heirs of landowner who signed a land exchange agreement with the government were barred by twenty-year statute of limitations from bringing suit to be declared owners of either the land exchanged or the land received by landowner, where they made no effort to become parties to any suit until seven months after 20-year period had passed. (6 TTC § 302) *Trust Territory v. Camacho*, 8 T.T.R. 273.

Since statute of limitations for land claims went into effect in 1951, any claim of ownership of the land through possession of the land adverse to the title holder begins to toll in 1951, even if it began earlier. *Rosario v. Pelep*, 8 T.T.R. 337.

—Particular Cases

Statute of limitations barred the bringing of an action against the Trust Territory Government, concerning a land exchange agreement, where the cause of action arose eighteen years earlier. *Castro v. Trust Territory*, 8 T.T.R. 194.

Statute of limitations was not a bar to an action against Trust Territory to recover certain real property or, in the alternative, damages for loss of the property, where claimant believed the land to be family property, and issue of ownership never arose until claimant learned the land had been sold by the government to a third party, at which time the statute began running. (6 TTC § 302) *Trust Territory v. Tudela*, 8 T.T.R. 307.

Medical Malpractice

Where a medical malpractice cause of action arose more than two years prior to the filing of the complaint, the action was barred by the statute of limitations. (6 TTC § 303) *Borja v. Trust Territory*, 8 T.T.R. 425.

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MARSHALLS CUSTOM.

“Alab”—Approval of Wills

Iroij could not without justification properly approve will giving *alab* rights where the approval would cut off the rights of the person who had the *alab* rights by reason of matrilineal succession. *Lota v. Korok*, 8 T.T.R. 3.

MARSHALLS CUSTOM

—Succession to Rights

Where matrilineal line through which rights of last *alab* (prior to dispute over *alab* rights) were derived was not extinct, appellee, as a member of that lineage, took the *alab* rights through that line and appellant's claim to patrilineal succession must necessarily fail. Lota v. Korok, 8 T.T.R. 3.

“Iroij Lablab”—Presumption of Reasonable Determinations

Determinations by an *iroij* are presumed to be reasonable and proper unless it is clearly shown they are not. Lota v. Korok, 8 T.T.R. 3.

—Approval of Wills

Party claiming on one day of trial that he did not know why *iroij* had not approved will under which he claimed an interest in land, and claiming the next day that *iroij* had withheld approval because *iroij* had wanted to give the land to the other party of the action because that party had a child by the younger brother of the *iroij*, failed to carry the burden of showing that the *iroij* had acted unreasonably. Lota v. Korok, 8 T.T.R. 3.

—Succession

Trial court properly made finding that no Marshallese custom exists allowing devolution of the *Iroij Lablab* title to a non-blood son of the deceased *Iroij*, and that for purpose of succession to the title of *Iroij Lablab*, there is no customary equivalent to a natural born blood heir. Loeak v. Loeak, 8 T.T.R. 456.

At trial in which dominant issue was whether defendant's father was a “blood son” of an *Iroij Lablab*, there was no prejudicial error in the admission of testimony concerning defendant's father's skin and hair color, and admission of will of the *Iroij Lablab*, since this evidence had obvious relevance, its admission was discretionary with the trial court, and its weight was subject to determination by that court. Loeak v. Loeak, 8 T.T.R. 163.

At trial to determine who succeeded to the rights of an *Iroij Lablab* upon his death, where the critical issue was whether defendant's father was a “blood son” of the former *Iroij Lablab*, trial court erred in only considering actual paternity in resolving the matter, and rejecting any consideration of whether defendant's father was other than “adopted”, where defendant's father was born to *Iroij Lablab*'s wife, in his house, and was accepted as his son, and under the custom one “born in the household” regardless of paternity is considered the same as a “blood child”. Loeak v. Loeak, 8 T.T.R. 163.

“Kallimur”

Trial court correctly found that a *kallimur* was entitled to great weight and presumed to be reasonable and proper. Maie v. Bulele, 8 T.T.R. 451.

MARSHALLS LAND LAW

MARSHALLS LAND LAW.

“Alab”

On appeal from judgment of trial division holding that appellee was *alab* of four *wetos*, claim was rejected that one of the *wetos* awarded was not on the list of *wetos* in issue. *Shima v. Hermios*, 8 T.T.R. 627.

“Bwilok”

Trial court properly found that a *bwilok* existed and that the *iroijs* confirmed such *bwilok*, based on testimony determined to be reliable and documentary evidence. *Shima v. Hermios*, 8 T.T.R. 627.

—Evidence

Trial division’s finding that a *bwilok* occurred was upheld as not clearly erroneous, based on evidence that members of the original *bwij* left the atoll shortly after the dispute, indicating the consent of the original *bwij* to the new arrangement, and that nobody contested the succession to *alab* by a member of the successor *bwij*. *Shima v. Hermios*, 8 T.T.R. 606.

—Particular Cases

In action contesting *alab* and *dri jerbal* rights to various *wetos* on Wotje Atoll, judgment of the trial division that a *bwilok* occurred and that the successor *bwij* acquired complete jurisdiction was affirmed, and distribution of funds pursuant to the Micronesian Claims Act of 1971 were ordered to be made as a one-third share for the *alab* and a two-thirds share for the *dri jerbal*. *Shima v. Hermios*, 8 T.T.R. 606.

“Dri Jerbal”—Evidence

In action contesting *alab* and *dri jerbal* rights to various *wetos* on Wotje Atoll, objection that certain exhibit did not refer to the *wetos* by name failed, where there was other evidence in the case from which the identity of the *wetos* was made clear. *Shima v. Hermios*, 8 T.T.R. 606.

“Iroij Lablab”—Powers

Under Marshallese custom, the power to establish or terminate land interests lies with the *iroij lablab* or with persons holding that authority. *Nashion v. Litiria*, 8 T.T.R. 357.

“Jebrik’s Side” of Majuro—“Droulul”

On *Jebrik’s Side* the *Droulul* holds and exercises *iroij lablab* authority. *Nashion v. Litiria*, 8 T.T.R. 357.

The *Droulul* is a committee composed of individuals holding rights as *iroij erik*, *alab* or *dri jerbal*. *Nashion v. Litiria*, 8 T.T.R. 357.

On *Jebrik’s Side*, termination or change of land interests must have the “approval and acquiescence” of the *Droulul*. *Nashion v. Litiria*, 8 T.T.R. 357.

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Any delegation of the *Droulul's* authority must be either "definite" or "specifically conferred" at a meeting of which the whole *Droulul* had adequate notice and in which all members had reasonable opportunity to participate. *Nashion v. Litiria*, 8 T.T.R. 357.

In a Marshallese land dispute, finding of trial court that *Droulul* did not give approval for sale of land was not erroneous, where only evidence that *Droulul* delegates its authority in land matters to party who approved sale was the party's own bald and unsubstantiated claims, which the trial court evidently concluded lacked credibility. *Nashion v. Litiria*, 8 T.T.R. 357.

Droulul's failure to expressly repudiate a sale of land on *Jebrik's Side* did not amount to approval of the sale by acquiescence, since exercise of the *Droulul's* powers must be by approval and acquiescence, and substantial evidence supported a finding that valid approval was not given by the *Droulul*. *Nashion v. Litiria*, 8 T.T.R. 357.

Dri jerbal holders, acting alone, lacked legal competence to authorize a sale of Marshalls land on *Jebrik's Side*. *Nashion v. Litiria*, 8 T.T.R. 357.

"Leroij"—Powers

As a general matter, a *leroij* (or the male counterpart, *iroij*) does have the power to determine the rights of subordinate landowners. *Shima v. Hermios*, 8 T.T.R. 622.

—Weight of Decisions

A decision of a *leroij* to change the rights of subordinate landowners is entitled to great weight and will be upheld unless unreasonable and arbitrary. *Shima v. Hermios*, 8 T.T.R. 622.

"Marlap" Land

In a dispute over *alab* and *dri jerbal* rights, claimant's contention that land was *marlap* land and could not be taken away without good reason, even if accepted, was to no avail, since claimant's father's act of betrayal in informing on the *iroij* to the Japanese during the Second World War supplied a sound and persuasive reason to cut off *alab* and *dri jerbal* rights in any event. *Shima v. Hermios*, 8 T.T.R. 602.

MICRONESIA.

Supreme Court—Jurisdiction

Federated States of Micronesia Supreme Court did not have jurisdiction to hear a criminal case which arose out of offenses allegedly committed in one of its states prior to the effective date of the National Criminal Code. *Otokichy v. Appellate Division of the Supreme Court*, 8 T.T.R. 295.

MUNICIPALITIES.

Powers

Appropriate means to exercise police power rests with the discretion of municipal authorities, and courts will not interfere unless the means

NEGLIGENCE

employed amount to unreasonable and oppressive interference with individual and property rights. *Ngirmekur v. Municipality of Airai*, 8 T.T.R. 231.

Even though Cabinet ordered Municipalities to amalgamate pursuant to Local Government Act of 1980, where neither the Municipalities nor the Cabinet had taken action to complete the amalgamation, and the effective date of the new constitution had not yet arrived, Municipalities retained their taxing powers. *Municipality of Darrit v. Althea Bing & Co.*, 8 T.T.R. 415.

Sovereign Immunity—Not Applicable

Where a municipality through its officials, agents or employee is engaged in positive misfeasance or wrongful acts as distinguished from mere negligence, the municipality sheds its mantle of immunity from tort liability. *Ngirmekur v. Municipality of Airai*, 8 T.T.R. 231.

Trial court properly denied motion to dismiss action brought against municipality, where it was alleged that actions of municipality involved a wilful tort and not simple negligence or a failure to perform some duty. *Ngirmekur v. Municipality of Airai*, 8 T.T.R. 231.

N

NEGLIGENCE.

Generally

Negligence is a question of fact. *Skebong v. Government of the Trust Territory*, 8 T.T.R. 399.

Tests and Standards

One who undertakes to warn the public of danger and thereby induces reliance must perform his "good Samaritan" task in a careful manner. *Babauta v. Trust Territory*, 8 T.T.R. 196.

Comparative Negligence—Generally

Modification of common-law contributory negligence rule by adoption of a comparative negligence rule is a matter which should be dealt with by legislative rather than by judicial action. *Ponape Federation of Cooper-ation Ass'ns v. Hawley*, 8 T.T.R. 112.

Public Employees

Where certain individuals had been throwing stones and discharging firearms at plaintiff's house, and police officers suggested to plaintiff that he and his family should vacate the premises and if they did so, the police would look after the property, and after plaintiff and his family vacated the house it was destroyed, since the police had undertaken the duty to protect plaintiff's house, and plaintiff had relied upon their assurances, the police were subject to liability for failure to exercise reasonable care in performing their undertaking. *Babauta v. Trust Territory*, 8 T.T.R. 196.

PALAU LAND LAW

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PALAU LAND LAW.

Use Rights

Palau "use right" is an important property right similar to a life estate, subject to condition, and far different from a tenancy at will as those terms are understood in the United States. Beans v. Mesechebal, 8 T.T.R. 107.

There must be a showing of good reason whenever there is a reassignment of use rights. Beans v. Mesechebal, 8 T.T.R. 107.

Boundary Lines

An unascertained or disputed boundary line dividing the lands of adjoining owners may be permanently and irrevocably established by a parol agreement of the adjoining owners. Moses v. Ucherbelau, 8 T.T.R. 217.

Where members of two clans agreed to establish and did establish boundary lines which were later formalized in an official map, the boundary lines were known by the general populace, and acquiescence in the agreed upon boundary lines by both clans continued for a period of more than twenty years, and both clans accepted quitclaim deeds from the government based upon such boundary lines, the trial court properly found a binding agreement between the two clans with respect to the boundary lines. Moses v. Ucherbelau, 8 T.T.R. 217.

In a dispute over boundary lines, trial court did not err in refusing to place disputed land in a constructive trust, on the basis that one of the parties submitted false information concerning the correct boundaries, since nothing in the record supported such an allegation. Moses v. Ucherbelau, 8 T.T.R. 217.

Clan Ownership—Transfer

Chief of clan has no authority to dispose of clan land without the consent of the clan. Beans v. Mesechebal, 8 T.T.R. 107.

Senior members of the clan or lineage must unanimously consent before a transfer of clan land is effective. Beans v. Mesechebal, 8 T.T.R. 107.

Clan land may be transferred to an individual only upon the approval of all adult strong members of the clan. Beans v. Mesechebal, 8 T.T.R. 107.

Where the consent of all the senior members of the owning clans was not obtained, purported "use right" grant of clan land to appellee was without effect. Beans v. Mesechebal, 8 T.T.R. 107.

Under Palauan customary land law the only way clan or lineage land can be transferred is when the consent of the senior members of the clan is obtained. Thomas v. Trust Territory, 8 T.T.R. 40.

It would be presumed that head of clan had the consent of the senior members of the clan to sign deed transferring ownership of clan land where no evidence appeared of any attempt of the clan to rescind or revoke the transfer. Thomas v. Trust Territory, 8 T.T.R. 40.

PLEADINGS

Where clan head transferred clan land by deed and there was no evidence clan attempted to rescind or revoke the transfer, the clan was estopped from denying the transfer. *Thomas v. Trust Territory*, 8 T.T.R. 40.

—Release

Where German Government was deeded clan land by head of clan in 1909, and the Japanese later acquired the mineral rights, and apparently did not also acquire the land itself, when the United States took the island containing the land the United States acquired all rights of prior sovereigns, including the German Administration's rights to the lands transferred by the 1909 deed; and as rights of the United States were represented by the Trust Territory, when the clan, in the 1960's, filed a claim to the land and was given a quitclaim deed in exchange for a release of the claim, the clan received consideration for its release and the government gave up its interest in the land, except for land retained under the quitclaim deed for United States Coast Guard use. *Thomas v. Trust Territory*, 8 T.T.R. 40.

Alienation of Land of Another Clan

Palauan customary land law provides that a head of one clan cannot alienate land belonging to another clan. *Thomas v. Trust Territory*, 8 T.T.R. 40.

Where there were 18 clans on island and the heads of three clans signed deed transferring ownership of the island to the German Government, the signatories did not have authority to transfer the whole island, but the clan heads who did sign could and did transfer the land of their clans. *Thomas v. Trust Territory*, 8 T.T.R. 40.

PARTNERSHIP.

Existence—Generally

Whether a partnership exists depends upon the intent of the parties *Song v. Fejeran*, 8 T.T.R. 252.

—Particular Cases

Where facts showed that parties intended to enter into business wherein one party furnished capital and property and the other party ran the business with an intent to share in the profits, this constituted the legal entity of a partnership, regardless of what the parties called their arrangement. *Song v. Fejeran*, 8 T.T.R. 252.

PLEADINGS.

Capacity of Party

Where caption of complaint named plaintiff only in his individual capacity, and complaint averred that he was the owner of the land in question in the case, and where it was not until well into the trial that defendant was first made aware that plaintiff owned the land in common with his seven brothers, trial court properly limited plaintiff's recovery to one-eighth of the damages to the land. *Irons v. Aizawa*, 8 T.T.R. 385.

PLEADINGS

While it is not necessary to assert the capacity of a party to sue, nor to plead his appointment as representative, the caption should, however, show in what capacity the plaintiff is suing; otherwise a defendant would have no notice of what he is actually defending against. Irons v. Aizawa, 8 T.T.R. 385.

Issues Pleaded

Award of damages for lost cows was not erroneous because not requested by the pleadings, where plaintiff pleaded generally as to loss of property, and there was sufficient proof in the trial as to the loss and value of personal property, i.e., the cows. Cabrera v. Castro, 8 T.T.R. 119.

—Agency

In suit for goods allegedly taken by defendant on consignment, where defendant indicated in his enumerated affirmative defenses that he was not indebted to plaintiff under any consignment agreement, the issue of agency was properly before the trial court, and there was no further requirement under the Rules of Civil Procedure to specifically describe the concept of agency in the pleadings. (Rules of Civil Proc. 8) Peter Fisher Trading Pty. Ltd. v. Olikong, 8 T.T.R. 116.

Counterclaim

Trial court correctly denied a post-judgment motion for findings on a putative counterclaim, where neither the court or the opposing party received reasonable notice before trial of the alleged counterclaim, and the counterclaim was not properly pleaded, since it did not include a demand for judgment, and the claim was not raised at a pretrial conference. Nashion v. Litiria, 8 T.T.R. 357.

PONAPE LAND LAW.

Inheritance

Under Ponapean custom, father, as "administrator" of land for his minor child, had no authority to grant the land to someone outside the family. Eldridge v. Eliam, 8 T.T.R. 438.

PROPERTY.

Abandoned Property—Japanese "Zero" Aircraft

In a case involving the determination of ownership of remnants of a Japanese "zero" aircraft, trial court properly found, based on evidence, that the aircraft was located on Wojalen *weto*. Hermios v. Tartios, 8 T.T.R. 536.

In a case involving the determination of ownership of remnants of a Japanese "zero" aircraft, trial court properly found that appellee had the authority to act as "*emman ladrik*" for the *alab* of the land where the aircraft was located. Hermios v. Tartios, 8 T.T.R. 536.

In a case involving the determination of ownership of remnants of a Japanese "zero" aircraft, trial court properly concluded that the aircraft belonged to the appellees, under the principles of abandoned prop-

REAL PROPERTY

erty, where appellees presented evidence that their lineage reduced the aircraft to its possession by clearing away the brush surrounding the aircraft prior to its removal. *Hermios v. Tartios*, 8 T.T.R. 536.

"Alab" Rights—Particular Cases

On a complaint and petition for injunctive relief seeking to confirm *alab* rights to *wetoes*, evidence presented supported trial court's determination as to proper distribution of rents between the parties. *Jitiam v. Konou*, 8 T.T.R. 541.

On a complaint and petition for injunctive relief seeking to confirm *alab* rights to *wetoes*, trial court properly recognized validity of *katleb* arrangement based on determination of land title officer in 1959. *Jitiam v. Konou*, 8 T.T.R. 541.

Sale of—Truk Law

It is well recognized as a rule of law in Truk that lineage land cannot be transferred, distributed or sold by an individual member of the lineage without the consent of all adult members of that lineage. *Truk Trading Co. v. Paul*, 8 T.T.R. 515.

In action to determine ownership of land in Truk, trial correctly held that there was no adverse possession, where there was no showing of obvious hostile possession to the world at large. *Truk Trading Co. v. Paul*, 8 T.T.R. 515.

In action to determine ownership of land on Truk, trial court did not err when it determined that alleged sale of land by chief of lineage was invalid, since there was no evidence that the chief received consent from others in the lineage when he purportedly executed the sale of the property. *Truk Trading Co. v. Paul*, 8 T.T.R. 515.

In action to determine ownership of land in Truk, trial court correctly held that purported buyer's act of recording deed could not create title by adverse possession as against rightful owner, since recording statutes exist for the buyer's protection against subsequent purchasers. *Truk Trading Co. v. Paul*, 8 T.T.R. 515.

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REAL PROPERTY.

Adjudication of Ownership

Valid transfer of land can be made by a land trustee without the approval of all the land owners. *Namauleg v. Snodgrass*, 8 T.T.R. 80.

Where land was transferred by Japanese corporation to a private citizen in 1944, the land was not affected by the Vesting Order of 1951, and therefore the proper title to the property was in person who bought the land from the private citizen, and not in the government. *Cruz v. Alien Property Custodian of the Trust Territory*, 8 T.T.R. 281.

REAL PROPERTY

—Evidence

A claim of ownership may be evidenced by conveying or devising the land. *Rosario v. Pelep*, 8 T.T.R. 337.

In a Marshallese land dispute, evidence of correspondence by and to the Chief Justice of the Appellate Division submitted for the purpose of proving the validity of certain points of law contained in the correspondence was properly excluded, since statements in a letter could not legally contravene the proper principles of law applicable to the case. *Nashion v. Litiria*, 8 T.T.R. 357.

There was no error by the trial court in receiving testimony as to an alleged transfer of real property that occurred prior to 1941, since the transaction occurred at least 35 years before, the jurisdiction allows transfers of land to be made orally, and the Japanese invasion resulted in the destruction of many of the land documents of that period. *Muna v. Trust Territory*, 8 T.T.R. 131.

Quiet Title—Laches

Trust Territory courts in handling actions to quiet title to land are expected to aid those who have been reasonably active in pressing their claims, but to refuse relief to those who have not made proper efforts to press their claims. *Nanmwarki v. Etscheit*, 8 T.T.R. 287.

The doctrine of laches or stale demand barred appellants from asserting any right or title in land, where the alleged error in the chain of title occurred in 1895, and in the intervening years no claim of an interest in the land was made by appellants or their predecessors in interest. *Nanmwarki v. Etscheit*, 8 T.T.R. 287.

It would be unconscionable to allow a claim of ownership of land where the alleged error in the chain of title occurred in 1895, the party claiming title and their predecessors in interest did not take any prior action consistent with a claim of ownership, and the possessors of the land expended money and made improvements on the land. *Nanmwarki v. Etscheit*, 8 T.T.R. 287.

Invocation of the doctrine of laches or stale demand to bar a claim to ownership of land based on an alleged defect, in title of present possessor occurring in 1895, did not contradict the customs and traditions of Nett Municipality and was not contrary to the Constitution of the Federated States of Micronesia. *Nanmwarki v. Etscheit*, 8 T.T.R. 287.

Use Right

In a land ownership dispute, fact that claimant's grandfather had cleared and worked the disputed land did not provide a basis for determining ownership rights of claimant; the grandfather simply had "use right" by Carolinian custom. *Igitol v. Nekai*, 8 T.T.R. 412.

Transfers Generally

There was sufficient evidence to support a finding of trial court that claimant to property acquiesced in and was bound by transfer of the

RELEASE

property by her sister to another party, where the claimant had testified that she relied upon her sister to file a claim for the property, and she had never attended any meetings of the family regarding family lands, and other evidence also supported the finding. *Muna v. Trust Territory*, 8 T.T.R. 131.

Negligence—Damage Shown

Judgment that oil spill from gas station and power plant damaged plaintiffs' fields was supported by evidence that plant and station were in the vicinity of, and on higher ground than, the fields, and that in the operation of the facilities diesel fuel spilled onto the ground and into ditches and was carried to plaintiffs' fields. *Trust Territory v. Edwin*, 8 T.T.R. 23.

Damages—Loss of Use

Loss of use of taro lands due to oil spilled upon them because of negligence of defendants could be awarded by the court in damages action. *Trust Territory v. Edwin*, 8 T.T.R. 23.

Micronesian Claims Act—Contested Awards

Micronesian Claims Act provision stating that settlements and payments shall be final and conclusive for all purposes and not subject to review precludes appeals from final decisions of the claims commission in granting or denying claims and appeals challenging the amounts awarded, but does not preclude the courts from making determinations as to and among the rightful recipients of the awards. *Ngikleb v. Ngirakelbid*, 8 T.T.R. 11.

—Procedure

Party who sought review of a decision of the War Crimes Commission by filing suit against one of the recipients of the monies awarded, used an improper method to review such awards; the proper method was to appeal to the Trial Division of the High Court or to a court having jurisdiction. *Kapileo v. Olopai*, 8 T.T.R. 259.

Eviction

The killing of a human being is justified only in the narrowest of circumstances, and never, under any circumstance, can it be utilized as a lawful evictionary measure. *Ngirmekur v. Municipality of Airai*, 8 T.T.R. 231.

RELEASE.

Construction—Error in Preparation

Where government prepared release form signed by person whose land was damaged by government's oil spill, the government, absent justifiable excuse, could not later claim it erred in its creation. *Trust Territory v. Edwin*, 8 T.T.R. 23.

RELEASE

—Construction Against Drafter

A release should be strictly construed against the party drafting it.
Trust Territory v. Edwin, 8 T.T.R. 23.

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STATUTES.

Construction

For a statute to be judicially rendered unconstitutional, its invalidity must be proven unequivocally and by highly persuasive, clear and convincing evidence. Joash v. Cabinet of the Government of the Marshall Islands, 8 T.T.R. 498.

Where governor of the State of Truk instituted "privatization program" in which various public works projects were contracted to the private sector, and where funds to pay the contracts were never appropriated, and resulted in a deficit, the acts of the governor violated the Truk State Financial Management Act. F.M.A. § 2. State of Truk ex rel. Swain v. Aten, 8 T.T.R. 557.

Suit by public employees against former governor of State of Truk stated a cause of action for violation of the State Budget Act, prohibiting expenditure of state funds absent a legislative budget bill or an appropriation. State of Truk ex rel. Swain v. Aten, 8 T.T.R. 557.

Trial court properly found that former governor of Truk had not violated the Executive Branch Organization Act (EBOA) by letting public works contracts to private firms. E.B.O.A. § 6. State of Truk ex rel. Swain v. Aten, 8 T.T.R. 557.

In suit by public employees against former governor of State of Truk, where former governor had entered into private sector contracts for public works projects, the trial court erroneously found that Public Service System Act (PSSA) had not been violated, since PSSA requires certification for all services exempted from it and mandated that former governor produce evidence of certifications. State of Truk ex rel. Swain v. Aten, 8 T.T.R. 557.

—Legislative Intent

Monies appropriated by statute to be used to defray the actual costs and expenses of the members of the House of Chiefs of the Palau Legislature in the discharge of official duties were erroneously paid to a chief, where the chief was prohibited, due to conflict of interest, from attending legislative meetings and had appointed another to attend the legislative sessions and perform the duties of a member. Otaor v. Adalbert, 8 T.T.R. 446.

—Retrospective Effect

Generally, whether a statute is given retrospective operation depends on whether it is remedial or procedural, in the absence of specific statutory direction or legislative history indicating a contrary intent; if, however, it affects substantive rights it can be given only prospective application. Hamo v. Gianotti, 8 T.T.R. 50.

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Right to trial before an unbiased judge is a substantive one, not necessarily dependent on statute, is essential to due process and thus a constitutional right, and a statute designed to provide a means of obtaining disqualification of a judge for bias is clearly remedial or procedural, serving to implement the basic due process right and should be applied retrospectively. (5 TTC § 351) *Hamo v. Gianotti*, 8 T.T.R. 50.

Strict Construction

When interpreting a criminal statute, the language of the statute must be strictly construed. *Trust Territory v. Sugiyama*, 8 T.T.R. 374.

The presumption of a statute's constitutionality is a strong one. *Joash v. Cabinet of the Government of the Marshall Islands*, 8 T.T.R. 498.

Purpose

The purpose of the Truk State Financial Management Act is to ensure that public funds are used only as provided by law. F.M.A. § 2. *State of Truk ex rel. Swain v. Aten*, 8 T.T.R. 557.

Election Laws—Construction

Where Mayor and Council Members were elected to two-year terms pursuant to municipal ordinance, and during their tenure the municipal ordinance was amended to provide for a four-year term for both the Mayor and Council Members, amended ordinances were not applicable to the incumbent office holders, who therefore had to stand for election after a two-year term, since to hold otherwise would constitute a legislative appointment of these office holders. *Wiliander v. Aten*, 8 T.T.R. 181.

T

TAXATION.

Sales Tax—Jurisdiction

In action for unpaid sales taxes filed by municipality, trial court had subject matter jurisdiction to hear the case on remand, since the trial judge in his discretion determined that the case was still in active trial. *Bing & Co. v. Municipality of Darrit*, 8 T.T.R. 529.

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Damages—Actual Damages

In negligence action, plaintiffs could recover separate award for actual damages incurred for hospital bills, transportation and daily cost of living, in addition to statutory award allowed for pecuniary damage, and the aggregate from these damages may exceed the \$100,000 statutory limitation for pecuniary damages. (6 TTC § 203) *Skebong v. Government of the Trust Territory*, 8 T.T.R. 399.

—Compensatory Damages

Trial court's award of \$7,025.50 in compensatory damages, in tort action brought against municipality for damage to property sustained when plaintiff was evicted, was proper, notwithstanding the exclusion of in-

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ventory list of items allegedly lost or damaged as documentary evidence, where plaintiff read from this list at trial, the aggregate worth of items on the list far exceeded amount awarded by court, and the court based its appraisal in part on its first-hand viewing of some of the items that were damaged. *Ngirmekur v. Municipality of Airai*, 8 T.T.R. 231.

—Pain and Suffering

On appeal of negligence action brought by parents of deceased child, where transcript of trial contained a detailed summary of the problems incurred by the parents and the anguish they went through as they watched their daughter weaken and subsequently die, trial court's award of \$40,000 for pain and suffering of the parents were upheld. (6 TTC § 203) *Skebong v. Government of the Trust Territory*, 8 T.T.R. 399.

Punitive Damages

In the absence of statutory authority, there is no right to recover punitive damages against a municipal corporation. *Ngirmekur v. Municipality of Airai*, 8 T.T.R. 231.

Trial court erred as a matter of law when it made an award of punitive damages against a municipality, since it was against public policy. *Ngirmekur v. Municipality of Airai*, 8 T.T.R. 231.

In tort action brought against municipality and its agents, award of punitive damages against individual agents of municipality, as opposed to municipality itself, was proper. *Ngirmekur v. Municipality of Airai*, 8 T.T.R. 231.

—Particular Cases

In action for damage due to dredging operation, testimony that a certain number of fish per week were caught in waters adjacent to property, that the fish had a specified value by weight, and that since the alleged damage to the property, there were no longer any fish there, was sufficient to provide a calculable amount of damages as to the value of the loss of fishing on the property. *Irons v. Aizawa*, 8 T.T.R. 385.

In negligence action, trial court's award of \$55,000 in pecuniary damages was erroneous, where the sole explanation of the court for making its award was a reference to Palauan custom which did not appear in the testimony, and therefore there was not a sufficient basis for such an award. *Skebong v. Government of the Trust Territory*, 8 T.T.R. 399.

TRIAL.

Parties—Dismissal

Dismissal of a party following the opening statement of opposing counsel is proper when it contains admissions which are fatal to plaintiff's case. *State of Truk ex rel. Swain v. Aten*, 8 T.T.R. 557.

In suit by state employees against former governor of the State of Truk, court did not abuse its discretion in determining that legislature's Special Investigating Committee (SIC) should not be a party to the lawsuit. *State of Truk ex rel. Swain v. Aten*, 8 T.T.R. 557.

TRUST TERRITORY

Trial court improperly dismissed a defendant following the opening statement of counsel, since the opening statement did not contain admissions fatal to plaintiff's case. *State of Truk ex rel. Swain v. Aten*, 8 T.T.R. 557.

Conduct of Trial

Trial court is given great latitude in the conduct of the trial. *State of Truk ex rel. Swain v. Aten*, 8 T.T.R. 557.

The conduct of a trial is left to the discretion of the trial court. *State of Truk ex rel. Swain v. Aten*, 8 T.T.R. 557.

Decision by trial court as to the conduct of a trial will be overturned only where a party can show the court abused that discretion. *State of Truk ex rel. Swain v. Aten*, 8 T.T.R. 557.

Agreement of Counsel—Opening Statement

Opening statement is not evidence and in fact can be waived. *State of Truk ex rel. Swain v. Aten*, 8 T.T.R. 557.

Instructions

In many instances improper remarks of counsel, in the opening statement, during the trial, or in the concluding argument, may be cured by an instruction to the jury. *United Micronesian Development Ass'n v. New Hampshire Fire Insurance Co.*, 8 T.T.R. 225.

TRUSTEESHIP.

Trusteeship Agreement—Generally

One of the express purposes of the Trusteeship Agreement is for the administering authority to ensure that the Trust Territory plays its part in maintaining international peace and security. *In re Condemnation of Property of Kabua*, 8 T.T.R. 581.

TRUSTS.

Statute of Limitations

Where a strict formal trustee-cestui que trust relationship exists, the statute of limitations may not be a defense. *Royse v. Trust Territory*, 8 T.T.R. 189.

The rule that the statute of limitations does not run against an express trust is inapplicable to trusts created by implication or operation of law. *Royse v. Trust Territory*, 8 T.T.R. 189.

TRUST TERRITORY.

District Legislatures—Status

The Yap District Legislature was created as a part of the Trust Territory Government, is an agency of that government, and is not an autonomous body. (3 TTC § 2) *Falegorong v. Trust Territories*, 8 T.T.R. 6.

TRUST TERRITORY

Employees—District Legislature Employees

An employee of the Yap District Legislature is an employee of the Trust Territory Government. *Falegorong v. Trust Territories*, 8 T.T.R. 6.

Negligence—District Legislature Employees

Trust Territory was liable for damages resulting from the negligence of an employee of the Yap District Legislature while driving a motor vehicle within the course and scope of his employment. (9 TTC § 251) *Falegorong v. Trust Territories*, 8 T.T.R. 6.

Suits Against—Sovereign Immunity

The Trust Territory is immune from suit without its consent. *Cruz v. Alien Property Custodian of the Trust Territory*, 8 T.T.R. 281.

In a complaint alleging injury to the plaintiff through his having been shot by defendant policeman, motion to dismiss the Government as a defendant was properly granted where plaintiff's claim clearly arose from an assault and battery. (6 TTC § 252(5)) *Salons v. Trust Territory*, 8 T.T.R. 141.

In a complaint alleging injury to the plaintiff through his having been shot by defendant policeman, motion to dismiss the Government as a defendant was properly granted, where the plaintiffs' claim in substance arose from an assault and battery, even though the plaintiffs alleged negligence on the part of the government. (6 TTC § 252(5)) *Yamada v. Trust Territory*, 8 T.T.R. 144.

W

WATERS.

High Watermark—Government Ownership

Any traditional fishing rights are subject to the inherent rights of the government as owner of all marine areas below the high watermark. 67 TTC § 2. *Simiron v. Trust Territory*, 8 T.T.R. 615.

Traditional owners of marine areas below the high watermark were not entitled to compensation for alleged damage to their fishing rights caused by government dredging operations, since the government, as owner of all marine areas below the high watermark, had the absolute right to conduct such dredging operations. *Simiron v. Trust Territory*, 8 T.T.R. 615.

Decision in *Nipwech Ungeni v. Trust Territory of the Pacific Islands*, 8 T.T.R. 366 (1983), placing the burden on the government to prove whether the Japanese took ownership of marine areas below the high watermark is overruled; Appellate Division reached conclusion, as a matter of law, that the Japanese owned all marine areas below the high watermark during their administration of the islands. *Simiron v. Trust Territory*, 8 T.T.R. 615.

WITNESSES

WITNESSES.

Surprise Testimony

Admission of surprise testimony by witness was not erroneous where party calling witness had no knowledge of the surprise testimony before trial, and parties whom testimony may have adversely affected could have requested a continuance for time to meet this new evidence, but did not. *Muna v. Trust Territroy*, 8 T.T.R. 131.

Expert Witness—Qualifications

The qualifications of an expert is strictly within the discretion of the trial judge and his discretion will not be questioned unless a clear abuse is obvious. *Babauta v. Trust Territory*, 8 T.T.R. 196.