

Title 1.

General Provisions.

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CHAPTER 1.

BILL OF RIGHTS.

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| 1. Freedom of religion, speech and press; right of assembly and petition. | language or religion; equal protection. |
| 2. Slavery and involuntary servitude. | 8. Freedom of migration and movement. |
| 3. Unreasonable search and seizure. | 9. Education. |
| 4. Due process of law; double jeopardy; self-incrimination; trial; assistance of counsel; capital punishment. | 10. Imprisonment for failure to discharge contractual obligation. |
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| 6. Excessive bail; excessive fines; cruel and unusual punishments. | 12. Quartering of soldiers. |
| 7. Discrimination on account of race, sex, | 13. Trade and property rights. |
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§ 1. Freedom of religion, speech and press; right of assembly and petition. — No law shall be enacted in the Trust Territory respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people to peaceably assemble and to petition the government for a redress of grievances. (Code 1966: § 1; Code 1970, tit. 1, § 1.)

§ 2. Slavery and involuntary servitude. — Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist in the Trust Territory. (Code 1966, § 2; Code 1970, tit. 1, § 2.)

§ 3. Unreasonable search and seizure. — The rights of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized. (Code 1966, § 3; Code 1970, tit. 1, § 3.)

Cross references. — Searches and seizures, 12 TTC ch. 3.

Seizure and forfeiture — Procedure, 19 TTC

Right protects only defendant's person

or premises. — Where knife placed in evidence in criminal trial was not taken from defendant's person or premises, defendant has no reasonable ground to move for suppression as knife was not illegally obtained. *Nichig v. Trust Territory*, 1 TTR 409 (1958).

Requirement of probable cause. — Probable cause must be established before a search and seizure may be undertaken. In re Lizama, 5 TTR 645 (1972).

Where affidavit in support of motion to compel voice tests of certain suspects failed to establish that the proposed search and seizure was reasonable, did not show facts to indicate why suspicion was directed at named individuals rather than others and contained nothing other than a conclusory averment that

the named individuals were suspect then it did not establish probable cause and the motion to compel tests would be denied. In re Lizama, 5 TTR 645 (1972).

Not only must there be a belief that probable cause exists, but also the circumstances giving rise to this belief must be communicated to the judicial officer from whom the authorization to search is sought. In re Lizama, 5 TTR 645 (1972).

§ 4. Due process of law; double jeopardy; self-incrimination; trial; assistance of counsel; capital punishment. — No person shall be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall any person be compelled in any criminal case to be a witness against himself. In all criminal prosecutions the accused shall enjoy the right to a speedy public trial; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense. No crime under the laws of the Trust Territory shall be punishable by death. (Code 1966, § 4; Code 1970, tit. 1, § 4.)

Cross references. — Eminent domain, 10 TTC. Rights of persons arrested, see 12 TTC § 68.

Rights of defendants, 12 TTC § 151.

NOTES

- I. In General.
- II. Procedure.
- III. Police Power.
- IV. Property.

I. IN GENERAL.

Effect—Prospective only. — This section should be given only prospective and not retrospective effect. Rivera v. Trust Territory, 4 TTR 140 (1968).

Due process protection. — No person in the Trust Territory may be deprived of life, liberty or property without due process of law, nor compelled to be witness against himself. Firetamag v. Trust Territory, 2 TTR 413 (1963).

Right to fair trial. — Under the Trust Territory bill of rights every person charged with crime has an absolute right to a fair and impartial trial, and the duty rests upon the courts, and also upon the prosecuting authorities to see that this right is upheld and sustained. Lizama v. Trust Territory, 3 TTR 436 (1968).

Officials obligated to act fairly. — Due process and equal protection of laws clauses in bill of rights impose obligation on all officials to act reasonably and fairly in accordance with established principles of justice, and not make arbitrary choices or interfere with freedom of action of individuals any more than is

reasonably necessary. Obligation applies to municipalities and well as to others. Mesechol v. Trust Territory, 2 TTR 84 (1959).

Protection does not guarantee success in court. — The mere fact that a person is unsuccessful in a court in a matter involving life, liberty, or property does not show that there has been a violation of due process of law guaranty. Figir v. Trust Territory, 4 TTR 368 (1969).

Proceeding which denies due process results in void judgment. — The general rule is that when the court has jurisdiction by law of the offense charged, and of the party so charged, its judgments are not nullities; however, an unconstitutional statute or a proceeding which denies the accused due process of law, is an exception to the general rule and accordingly results in a void judgment which is subject to collateral attack. Figir v. Trust Territory, 4 TTR 368 (1969).

Assignment of case by disqualified judge not violative of due process. — Action of chief justice who is disqualified from hearing case, in assigning case first to one judge then to

another, does not violate plaintiff's right to due process of law. *Sonoda v. Burnett* (App. Div., April, 1977).

Administrative hearing required before deportation. — Failure on part of executive branch to provide an administrative hearing before applying for a deportation order does not constitute a denial of due process. *Trust Territory v. Arce* (App. Div., April, 1976).

Vague statutes violate due process. — A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. *Trust Territory v. Tarkong*, 5 TTR 252 (1970).

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

11 TTC 51, relating to abortion, was so vague and indefinite that its attempted enforcement in case in question constituted a denial of due process and it was, therefore, invalid. *Trust Territory v. Tarkong*, 5 TTR 252 (1970).

Due process protection — Same as provided in U.S. Constitution. — The interpretation and meaning of the due process and equal protection clauses of the United States Constitution are the same as the interpretation and meaning of the due process and equal protection clauses of the Trust Territory bill of rights. *Di Stefano v. Di Stefano*, 6 TTR 312 (1973).

Although the United States Constitution is not directly applicable to the Trust Territory, the constitutional provision as to due process is carried into the Code by section 4. *Trust Territory v. Tarkong*, 5 TTR 252 (1970).

Words of the due process clause, when used in the Trust Territory bill of rights, are presumed to have the same meaning as in the United States, in those situations to which they are applicable. *Ichiro v. Bismark*, 1 TTR 57 (1953).

The words "due process of law," when used by Americans in the Trust Territory bill of rights, must be presumed to mean the same thing they do in the United States in those situations to which they are applicable. *Purako v. Efo*, 1 TTR 236 (1955).

Customary law limits fundamental rights. — Except as may otherwise be determined by the High Commissioner, the Trust Territory bill of rights is limited by existing customary law. *Ichiro v. Bismark*, 1 TTR 57 (1953).

In order to bring ordinance within exception of bill of rights regarding custom, ordinance must be either purely declaratory of present day customary law or merely place some limitation on it. Where ordinance purports to give wide power to newly created body and to

revive type of penalty long in disuse, it does not come within exception of Trust Territory bill of rights regarding custom. *Mesechol v. Trust Territory*, 2 TTR 84 (1959).

U.S. provision for jury trial not applicable. — The United States constitutional provisions on subject of jury trial do not of themselves apply to Trust Territory, which has not been incorporated into the United States. *Sechelong v. Trust Territory*, 2 TTR 526 (1964).

Provisions of amendments to United States Constitution relating to jury trial in civil and criminal cases do not apply to unincorporated territory. *Sechelong v. Trust Territory*, 2 TTR 526 (1964).

No right to jury trial in Trust Territory. — Since there has been no specific action extending right of jury trial to Trust Territory, and provisions of this Code appear inconsistent with thought of jury trials, there is at present no right to trial by jury in the Trust Territory. *Sechelong v. Trust Territory*, 2 TTR 526 (1964).

Denial by court of request for trial by jury does not constitute a violation of rights to due process and equal protection. Right to trial by jury is conspicuous in its absence from section enumerating certain inalienable rights. *Sonoda v. Trust Territory* (App. Div., November, 1976).

II. PROCEDURE.

Opportunity to be heard essential. — An opportunity to be heard is an essential element of due process of law guaranteed by this section. *Ichiro v. Bismark*, 1 TTR 57 (1953).

Due process protection extends to employee of federally-funded program. — Where employee of government-run federally-funded aging program had a clear expectation of continued employment so long as the program was federally approved, funds were available, and his behavior was good, he had an interest in continued employment protected by procedural due process and was entitled to a hearing affording him opportunity to meet charges against him prior to dismissal. *Curley v. Government*, 6 TTR 409 (1973).

Grantee of authority subject to same due process guarantees as grantor. — Unless a contrary intention appears, a person in authority acting under a due process of law guarantee, who grants his discretionary powers to another, is presumed to intend that such authority will be exercised in accordance with such guarantee. Thus, when authorizing a district administrator to revoke parole, the High Commissioner was presumed to intend that such revocation would not be accomplished without notice and an opportunity to be heard being granted the parolee. *Ichiro v. Bismark*, 1 TTR 57 (1953).

Appellate review not required. — Procedural due process does not require appellate review. This is a principle which has been specifically applied to disciplinary proceedings *Abrams v. Trust Territory High Court Disciplinary Panel* (App. Div., May, 1977).

Party to disciplinary proceeding entitled to due process. — Disciplinary proceedings are not considered criminal or civil in nature, but are special proceedings, *sui generis*, in the nature of an inquiry concerning the conduct of an attorney as it relates to his fitness to practice law. Such proceedings are not for the purpose of punishment of the attorney but to protect the court and the public from persons unfit to practice a profession imbued with the public trust. Although such proceedings are *sui generis*, a party to them is entitled to procedural due process, i.e., notice of the charges and an opportunity to be heard. *Abrams v. Trust Territory High Court Disciplinary Panel* (App. Div., May, 1977).

Party in interest entitled to be heard concerning appointment of receiver. — Where real party in interest involved in placing corporation into receivership was not given opportunity to be heard prior to original appointment of receiver, an order denying a motion to vacate is appealable. In *re Transpacific Lines, Inc.* (App. Div., September, 1977).

Hearing after ex parte appointment of receiver not violative of due process. — While an ex parte appointment of a receiver may be void under certain circumstances, it is not necessarily void. Such an erroneous appointment may be cured if followed closely by a hearing on the merits. Any defect in the ex parte appointment may be subsequently cured. Where appellants have been given an extensive hearing after ex parte rendering of original order of appointment, appellants have not been deprived of any due process protections. In *re Transpacific Lines, Inc.* (App. Div., September, 1977).

To violate due process, proceeding must deny accused a fair trial. — Only when there has been such a failure in the proceedings that the accused is denied a fair trial can it be said there has been a denial of due process and that the resulting judgment is void and may be set aside on habeas corpus. *Figir v. Trust Territory*, 4 TTR 368 (1969).

Bail restrictions. — Where restrictions placed upon individual released on bail constitute restraint of liberty, relief is ordinarily obtainable by habeas corpus. *Meyer v. Epsom*, 3 TTR 54 (1965).

Individual cannot reasonably be restricted to a small part of area he was formerly allowed use of on Kwajalein Island, in manner closely approaching modified form of house arrest,

while he is supposed to be at liberty on bail. *Meyer v. Epsom*, 3 TTR 54 (1965).

Habeas corpus reaches jurisdictional error only. — A writ of habeas corpus reaches jurisdictional error only and cannot properly be used to serve mere purpose of appeal or writ of error. *Purako v. Efo*, 1 TTR 236 (1955).

Due process extends to government employee concerning his employment. — Employee employed pursuant to contract with government had an interest in continued employment which was protected by due process of law, and could not be dismissed from employment, whether or not for valid reasons, by action which was arbitrary, discriminatory and a denial of fundamental property interests protected by the Trust Territory Code. *Christensen v. M.O.C.*, 6 TTR 346 (1973).

Double jeopardy distinguished from res judicata. — The doctrine of *res judicata* is distinguishable from the double jeopardy provision barring two punishments for the same offense in that it precludes a second trial of the same facts between the same parties. *Moolang v. Figir*, 3 TTR 455 (1968).

Construed in accordance with fifth amendment. — Words of Trust Territory bill of rights prohibiting double jeopardy must be construed in accordance with judicial interpretation of these words in fifth amendment of the United States Constitution. *Paul v. Trust Territory*, 2 TTR 603 (App. Div. 1959).

Erroneous reference by prosecution to law violated. — Where there is error in criminal prosecution in making reference to law violated, and penalties under one law are heavier than penalties under the other, court will eliminate provisions of sentence with regard to imprisonment to avoid possible prejudice and in interests of substantial justice. *Temengil v. Trust Territory*, 2 TTR 31 (1959).

Purpose of public trial. — Purpose of public trial is to protect rights of person accused of crime so that public may see he is fairly dealt with, and to keep judge aware of his responsibility, importance of his work, and fact public has right to know about it. *Firetamag v. Trust Territory*, 2 TTR 413 (1963).

Purpose of public trial in criminal case is defeated if the court is allowed to consider as evidence information passed to it privately or indirectly and not in regular course of judicial proceedings. *Firetamag v. Trust Territory*, 2 TTR 413 (1963).

Requirements of criminal proceedings. — Accused in criminal proceedings in the Trust Territory may only be convicted after trial before impartial court, on basis of information presented as provided by law before court and in presence of interested members of public, subject to certain exceptions involving minors

and scandalous matter. *Firetamag v. Trust Territory*, 2 TTR 413 (1963).

Evidence in addition to confession required. — In order to convict accused in criminal case in the Trust Territory, there must be enough other evidence besides confession so that court is satisfied by confession and other evidence that accused has committed crime charged beyond reasonable doubt. *Firetamag v. Trust Territory*, 2 TTR 413 (1963).

Inapplicability of U.S. decision concerning confessions. — In recognizing Trust Territory realities, court will not consider recent United States Supreme Court decision (*Escobedo v. Illinois*) on exclusion of confessions as evidence in criminal proceedings. *Meyer v. Trust Territory*, 3 TTR 586 (App. Div. 1965).

Admissibility of confessions. — The mere fact that an accused was in custody of the police when he made his confession does not make it inadmissible; nor does any illegal detention there may have been after the confession was given make it inadmissible. *Eram v. Trust Territory*, 3 TTR 442 (1968).

Rights of accused under Miranda decision. — The Miranda decision concerning "custodial interrogation" requires that prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has right to the presence of an attorney, either retained or appointed, however, the person may waive those rights provided the waiver is made voluntarily, knowingly and intelligently. *Trust Territory v. Poll*, 3 TTR 387 (1968).

Under the Miranda decision the mere fact that an accused person may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned. *Trust Territory v. Poll*, 3 TTR 387 (1968).

Weight accorded to U.S. Supreme Court decisions. — Decision of the United States Supreme Court concerning protection against self-incrimination and the right to counsel are entitled to great weight as precedents from another jurisdiction and should be recognized as goals to be reached so far as they are applicable to conditions existing in the Trust Territory. *Trust Territory v. Poll*, 3 TTR 387 (1968).

Confessions. — Conviction resulting from use of coerced confession is no less void because accused testifies in proceedings that he never in fact confessed, voluntarily or involuntarily. *Rungun v. Trust Territory*, 1 TTR 601 (App. Div. 1957).

Where evidence falls far short of showing affirmatively that alleged confession is voluntary in fact, and confession is left in

evidence after objection is raised to it in the criminal prosecution, the accused is prejudiced thereby and finding of guilt and sentence will be set aside. *Haruo v. Trust Territory*, 1 TTR 565 (App. Div. 1952).

In criminal prosecution, once it becomes clear to court that the accused's basic defense is that alleged confession is involuntary and untrue, it is the duty of the court to reopen question of whether confession is in fact voluntary, make a careful investigation into circumstances surrounding its giving, including consideration of experience and intelligence of accused, just as if objection to admission of confession had been made when it was originally offered or express motion had been made to strike it out. *Haruo v. Trust Territory*, 1 TTR 565 (App. Div. 1952).

It is not necessary in the Trust Territory courts for the prosecution to prove corpus delicti beyond reasonable doubt independent of accused's confession outside of court, but it is sufficient if the confession is corroborated by other substantial evidence and the court is satisfied beyond a reasonable doubt upon all the evidence, including the confession, that the accused committed the crime. *Bisente v. Trust Territory*, 1 TTR 327 (1957).

Effect of hearsay evidence. — Allowing prosecution in criminal trial to identify allegedly stolen property by reported statements of unnamed persons not made in court, deprives judge of opportunity to consider their behavior on witness stand in determining how fully and exactly they should be believed. And where it is extremely doubtful whether trial court would have found the accused guilty without improperly received evidence which covers a vital point in the case, finding of guilt will be reversed on appeal. *Borja v. Trust Territory*, 1 TTR 280 (1955).

Postponement of trial. — Where criminal trial is completed within 18 days after incident involved, and accused consents to postponement, there is no basis for any claim of abuse of discretion by trial court. *Figir v. Trust Territory*, 3 TTR 127 (1966).

Postponement — Waiver of right to speedy trial objection. — By consenting to postponement of criminal trial, accused waives any objection he might otherwise have to delay as an interference with his right to speedy trial. *Figir v. Trust Territory*, 3 TTR 127 (1966).

Postponement not to be used to avoid trial. — In criminal proceedings, accused cannot consent either personally or through counsel to postponement of trial and then use postponement as ground for avoiding trial. *Figir v. Trust Territory*, 3 TTR 127 (1966).

Delays in prosecution not resulting in prejudice. — Where delays in prosecution of criminal case are due in part to absences of public defender, district attorney and essential

witness from Trust Territory, and affidavits stating case would be dismissed enabled defendant to obtain employment, accused suffered no prejudice beyond that which ensued from ordinary and inevitable delay. *Trust Territory v. Ogo*, 3 TTR 287 (1967).

If delay in prosecution of criminal case is result of deliberate or negligent actions on part of prosecutor and he fails to show accused suffered no serious prejudice beyond that which ensued from ordinary and inevitable delay, defendant's sixth amendment rights have been denied. *Trust Territory v. Ogo*, 3 TTR 287 (1967).

Factors in determining denial of speedy trial. — The four factors to be considered in determining whether defendant was denied a speedy trial are the length of the delay, defendant's assertion of a right to a speedy trial, the reason for the delay, and prejudice resulting from the delay. *Trust Territory v. Este* (App. Div., December, 1977).

In considering whether the length of delay is extraordinary, an additional consideration must be given in the Trust Territory. That consideration is the district in which the case is pending and the availability of a court and court personnel to hear the case. *Trust Territory v. Este* (App. Div., December, 1977).

In determining if defendant's right to a speedy trial has been violated, the circumstances of the case must be reviewed in light of the four factors which form the basis of any balancing test: length of the delay; defendant's assertion of his right; prejudice to the defendant; and the reason for the delay. *Trust Territory v. Waayan* (App. Div., December, 1977).

Demand for speedy trial. — Whether or not defendant asserts his right to a speedy trial is important in the Trust Territory. Since the High Court sits infrequently in Truk, it necessarily assigns priority to certain matters. If a defendant demands a speedy trial, this should have a direct effect on the lapse of time between arrest and trial. Without a demand for a speedy trial, the case is set behind other matters which may have been filed before. *Trust Territory v. Este* (App. Div., December, 1977).

Effect of substantial delay. — Where the delay from the date of the filing of the complaint to the date for trial is thirty-three months, this is a substantial delay which mandates a close review of the other balancing factors, viz., defendant's assertion of his right, prejudice to defendant, and the reason for the delay. *Trust Territory v. Waayan* (App. Div., December, 1977).

Determination of prejudice from delay. — In determining whether prejudice resulted from delay of trial, if there was no pre-trial

incarceration, the other main factor the court must consider is whether the defense has been impaired by the delay. *Trust Territory v. Este* (App. Div., December, 1977).

Impairment of defense by delay. — Where the record is barren of any showing as to whether defense has been impaired by delay in trial, except that one co-defendant died before trial and it is not shown how the absence of co-defendant's testimony impaired the defense or, indeed, that co-defendant would have even testified, it has not been shown that the defense has been impaired by delay in the trial. *Trust Territory v. Este* (App. Div., December, 1977).

The general assertion that memories fade over a period of time is not in and of itself sufficient to demonstrate that the defense is impaired by delay in the trial. *Trust Territory v. Este* (App. Div., December, 1977).

Effect of lack of permanent judge. — Where case was heard in the Truk District where no high court justice has been permanently assigned for many years and where this has a direct effect on the length of time a case can go to trial, it cannot be said that a length of delay of 17½ months from the arrest to trial was extraordinary. *Trust Territory v. Este* (App. Div., December, 1977).

Showing does not demonstrate scheme by prosecution to delay trial. — Where it is shown that delay of trial was a combination of the transfer of the case from the district court to the high court, amendments to the charges by the prosecutor, and the fact that a high court justice was not permanently assigned to Truk District there is no demonstration, in any way, that the delay was a scheme or plan by the prosecution to delay the trial to the detriment of defendant. *Trust Territory v. Este* (App. Div., December, 1977).

Delay held violative of defendant's rights. — Where the delay in a case rests not within the ambit of crowded court calendars, unavailability of witnesses, or similar delays generally considered beyond the control of the government, and where it could have been prevented by prompt action of all the representatives of the agencies which comprise the criminal justice system, defendant's right to speedy trial has been violated. *Trust Territory v. Waayan* (App. Div., December, 1977).

Weighing of factors causing delay. — Unintentional delays caused by courts or prosecutors are among the factors to be weighed less heavily than intentional delays calculated to hamper the defense, in determining whether constitutional right to speedy trial has been violated. *Trust Territory v. Waayan* (App. Div., December, 1977).

Failure to assert right to speedy trial. — The mere failure to assert one's right to a speedy trial does not necessarily imply waiver

of that right. *Trust Territory v. Waayan* (App. Div., December, 1977).

Waiver of right to speedy trial. — Where defendant's counsel was only appointed eight days prior to trial, defendant was not in a position to effectively assert or intelligently waive his right to a speedy trial. Therefore defendant is not considered to have waived his right to a speedy trial, and his failure to make the demand should not be weighed heavily against him. *Trust Territory v. Waayan* (App. Div., December, 1977).

Prejudice as factor in denial of speedy trial. — Prejudice, like the other balancing factors, is neither inherently necessary nor inherently sufficient for finding that the defendant's right to a speedy trial has been violated. *Trust Territory v. Waayan* (App. Div., December, 1977).

When right to speedy trial attaches. — It is well established that the right to a speedy trial attaches when the defendant is arrested or formerly charged with a crime. *Trust Territory v. Waayan* (App. Div., December, 1977).

While the mere lack of an available witness is not in and of itself sufficient prejudice to constitute a denial of defendant's right to speedy trial, the long period of denial of effective assistance of counsel together with the lack of the ability to preserve evidence is sufficient prejudice. *Trust Territory v. Waayan* (App. Div., December, 1977).

Reasonable time for counsel to prepare.

Where the acts giving rise to the charges arose over two and one-half years prior to the appointment of counsel and counsel was given only eight days to prepare his defense, the period allowed counsel for preparation is unreasonable thereby denying defendant of his right to counsel. *Trust Territory v. Waayan* (App. Div., December, 1977).

One of the most fundamental rights guaranteed to any individual charged with a crime is the right to have the assistance of counsel for his defense. This right goes far beyond the mere appointment of counsel and requires that counsel must be given a reasonable time to prepare for trial, investigate the facts and examine the applicable law. *Trust Territory v. Waayan* (App. Div., December, 1977).

Indigent's right to counsel. — Under the *Miranda* decision it is necessary to warn an accused person not only that he has a right to consult with an attorney but also that if he is indigent a lawyer will be appointed to represent him. *Trust Territory v. Poll*, 3 TTR 387 (1968).

An indigent defendant in a criminal case has a right to court-appointed counsel at all stages of the proceedings, including an appeal. In re application of *Matagolai*, 6 TTR 577 (1974).

Statutes allowing indigents free counsel at trial should not be read to impliedly bar free counsel for an appeal, and under the *Trust*

Territory Code bill of rights an indigent has the right to free counsel for an appeal. In re Application of *Matagolai*, 6 TTR 577 (1974).

Where convicted indigent knew he had a right to appeal, but did not know how to assert it, and his counsel refused to appeal unless indigent could show him new evidence justifying an appeal, indigent was denied his right to court appointed counsel on appeal; and where time for appeal passed and new counsel filed for habeas corpus, denial of the writ would be reversed insofar as the writ sought the right to appeal. In re Application of *Matagolai*, 6 TTR 577 (1974).

Duty of court to protect rights of accused who is represented by untrained counsel.

— When accused in criminal prosecution is represented by counsel known to trial court not to be trained lawyer, court has same duty to protect accused against inadvertently waiving or losing benefit of essential rights that it would have if accused were without counsel. *Haruo v. Trust Territory*, 1 TTR 565 (App. Div. 1952).

Government to prosecute and defend citizens; accused entitled to attorney. —

Trust Territory has assumed burden of prosecuting and defending *Trust Territory* citizens accused of serious crimes, and accused in criminal proceedings is entitled to competent attorney. *Mendiola v. Trust Territory*, 2 TTR 651 (App. Div. 1964).

Prosecutors to have reasonable notice of changing standards regarding right to counsel. —

Court would apply traditional standards regarding right to counsel in the case of all confessions or admissions obtained by the police from persons in the *Trust Territory* until prosecuting authorities had reasonable notice of opinion changing standards. *Trust Territory v. Poll*, 3 TTR 387 (1968).

Right to counsel construed. — The *Escobedo* decision established that as far as state courts in the United States are concerned the right to counsel extends to those in custody on suspicion and not yet charged with a specific crime and that statements obtained from them after their request to consult counsel had been disregarded or denied by the police cannot be admitted in evidence against them. *Trust Territory v. Poll*, 3 TTR 387 (1968).

In court identification of accused. —

Where the identification of the accused in court was not derived from any unfair or suggestive police procedure and it arose out of the circumstances surrounding the crime itself, the absence of the public defender or his representative did not improperly deprive the accused of counsel at a critical stage of the investigation leading to his trial. *Trust Territory v. Ngiraitpang*, 5 TTR 282 (1970).

Identification proceeding, lineup. — When the police arrange a lineup or other identification proceedings the suspect, whether

he be charged or not, is entitled to have the public defender or his representative, or other defense counsel present; the suspect must be so advised and if he requests counsel the proceedings may not be held until counsel is present. *Trust Territory v. Ngiraitpang*, 5 TTR 282 (1970).

Right of confrontation. — An accused has the right in all criminal prosecutions to be confronted with the witnesses against him. The essential purpose of this right of confrontation is to give the accused an opportunity for cross-examination and to let him know upon what evidence he is being tried. *Ngirmidol v. Trust Territory*, 1 TTR 273 (1955).

Waiver of right of confrontation. — While an accused in a criminal trial can waive the right to be confronted with the witnesses against him, either personally or through counsel, it cannot be taken away from him without his consent. *Ngirmidol v. Trust Territory*, 1 TTR 273 (1955).

While accused in criminal prosecution can waive right to be confronted with witnesses against him, it cannot properly be taken away from him without his consent. *Tkoel v. Trust Territory*, 2 TTR 513 (1964).

Denial of right of confrontation. — Where the accused in a criminal prosecution is denied the right to confront the witnesses against him, there has been a failure of substantial justice. *Borja v. Trust Territory*, 1 TTR 280 (1955).

Right to cross-examination and to know evidence. — Accused has the right in all criminal prosecutions to be confronted with witnesses against him, including right to cross-examination and to know upon what evidence he is being tried. *Tkoel v. Trust Territory*, 2 TTR 513 (1964).

Cross-examination not always a matter of right. — Accused cannot demand as matter of right to be allowed to cross-examine witness who has not been called to testify by either side. *Yamashiro v. Trust Territory*, 2 TTR 638 (App. Div. 1963).

Cross-examination in one case not substitute for cross-examination in pending trial. — The cross-examination of a witness by the same counsel in another case does not take the place of the right to cross-examination in a pending criminal trial since a matter that has no proper place in the trial of one accused may be of great importance in the trial of another. *Ngirmidol v. Trust Territory*, 1 TTR 273 (1955).

Right of compulsory process. — Common law rule, that it is duty of prosecution in felony cases to call and examine all persons who have knowledge of material facts, arose under system where accused had no right of compulsory process for obtaining witnesses in his favor. Accused is granted this right under bill of rights. *Yamashiro v. Trust Territory*, 2 TTR 638 (App. Div. 1963).

Accused not prejudiced by perjured testimony. — Accused in criminal prosecution is not prejudiced by testimony of witness who is liable for prosecution for perjury where trial court does not consider such testimony. *Ngirailengelan v. Trust Territory*, 2 TTR 646 (App. Div. 1963).

Protection against second prosecution for same offense. — Trust Territory bill of rights gives protection against second prosecution for any offense carrying criminal penalty. *Paul v. Trust Territory*, 2 TTR 603 (App. Div. 1959).

Splitting single crime prohibited. — Single continuing crime cannot be split up by time into two parts for separate prosecutions. *Paul v. Trust Territory*, 2 TTR 603 (App. Div. 1959).

Double jeopardy. — Under this section a person may not be twice punished or put in double jeopardy of two punishments for the same offense. *Moolang v. Figir*, 3 TTR 455 (1968).

Test for double jeopardy. — Where greater criminal offense includes lesser offense, test of double jeopardy is whether facts alleged in second prosecution, or any part of them constituting lesser included offense could, if given in evidence, have warranted conviction in first prosecution, unless first prosecution was procured by fraud, connivance or collusion of defendant, or some new fact, such as death of victim, has intervened after first prosecution. *Paul v. Trust Territory*, 2 TTR 603 (App. Div. 1959).

No right to jury trial. — Since there has been no specific action extending right of jury trial to Trust Territory, and Trust Territory Code provisions appear inconsistent with thought of jury trials, there is at present no right to trial by jury in the Trust Territory. *Sechelong v. Trust Territory*, 2 TTR 526 (1964).

Right to jury trial dependent on action of administering authority. — Any right to jury trial in the Trust Territory must depend on some specific action of administering authority. *Sechelong v. Trust Territory*, 2 TTR 526 (1964).

III. POLICE POWER.

Proper exercise of police power not subject to restraint. — If legislative enactment represents proper and reasonable exercise of police power it is not subject to restraint by provisions in fundamental law designed for general protection of individual life, liberty and property. *Trust Territory v. Benido*, 1 TTR 46 (1953).

Guarantees of life, liberty and property do not operate as limitation upon police power of state to pass and enforce such laws as will inure to health, morals and general welfare of people. *Trust Territory v. Benido*, 1 TTR 46 (1953).

Municipal regulations as exercise of police power. — Where municipal regulations

are reasonable exercise of police power, those accused of violating regulations are not deprived of due process of law. *Trust Territory v. Benido*, 1 TTR 46 (1953).

Regulation which disqualifies accused from holding future titles invalid. — A municipal regulation is invalid as an unreasonable exercise of the police power insofar as it purports to disqualify an accused from holding titles which may be legally conferred in the future. *Trust Territory v. Benido*, 1 TTR 46 (1953).

Municipal regulations for election of chiefs. — Municipal regulations which provide for election of traditional chief in order to prevent warfare between opposing factions were deemed not in violation of due process of law. *Trust Territory v. Benido*, 1 TTR 46 (1953).

Regulatory power of municipality. — Municipality has regulatory power to eliminate noise disturbance and movement over city streets during quiet hours of early morning, and may prohibit violations of peace and quiet on public streets which occur at times when they are most disturbing. *Ngirasmengesong v. Trust Territory*, 1 TTR 615 (App. Div. 1958).

Discretionary power of police officer not invalid. — Municipal ordinance regulating use of highways which vests discretionary power in officer to make exceptions which are "reasonably necessary" is not invalid as indefinite standard of police power. *Ngirasmengesong v. Trust Territory*, 1 TTR 615 (App. Div. 1958).

Construction of traffic ordinance. — Words "valid demonstrable reason" in ordinance limiting traffic hours must be construed to include any traffic which is reasonably incidental to normal and usual economic, social or religious activities generally accepted in community as wholesome or specifically authorized by law, and so long as proper construction of words in ordinance limiting traffic hours is followed, and persons engaged in such traffic are not put to unreasonable inconvenience in demonstrating reason for traffic, there can be no valid objection to actual operating of ordinance. *Ngirasmengesong v. Trust Territory*, 1 TTR 345 (1958).

Ordinance imposing tax in labor. — Municipal ordinance purporting to impose tax in labor, and making wilful failure to comply with such tax a crime, is in violation of due process clause and Trust Territory law and as administered is in violation of equal protection clause of this Code. *Mesechol v. Trust Territory*, 2 TTR 84 (1959).

Ordinance requiring tax in labor invalid exercise of police power. — Ordinance requiring tax in lieu of money is lacking in essential elements of valid tax and proper exercise of police power, under constitutional provisions similar to those

contained in Trust Territory bill of rights. *Mesechol v. Trust Territory*, 2 TTR 84 (1959).

Testing exercise of police power. — The guarantee of liberty in this Code does not interfere with the proper exercise of the police power, the power to make laws to secure public peace, good order, and comfort of the community. In testing the validity of regulations and acts in the exercise of the police power, the question is not whether a particular exercise of the power imposes restriction on rights secured to individuals, but whether restrictions so imposed are reasonable. *Ngirasmengesong v. Trust Territory*, 1 TTR 345 (1958).

Limitation on police power applies to executive. — General principle that police power must not be exercised so as to unreasonably limit rights granted to individuals, applies to executive officers as well as to those having legislative authority. The mere possibility of abuse is not sound objection to validity of law, and it is not for the courts to presume law will be unlawfully administered. *Ngirasmengesong v. Trust Territory*, 1 TTR 345 (1958).

Fundamental rights subject to police power. — Rights arising under United Nations charter, trusteeship agreement and Trust Territory bill of rights are all subject to proper exercise of police power, including enactment of curfew and antinoise laws. *Ngirasmengesong v. Trust Territory*, 1 TTR 615 (App. Div. 1958).

Physical tests imposed on suspects valid. — The Trust Territory has the right to compel individuals suspected of crimes to submit to physical tests, such as voice identification samples, under some circumstances. In re *Lizama*, 5 TTR 645 (1972).

Physical tests not violative of self-incrimination. — Physical tests of individuals suspected of crimes are not violative of the privilege against self-incrimination, because evidence so derived is not of a testimonial or communicative nature. In re *Lizama*, 5 TTR 645 (1972).

IV. PROPERTY.

Taking for public use. — Property may not be taken for public use without just compensation. *Santos v. Trust Territory*, 1 TTR 463 (1958).

Requirement of compensation. — An individual's property cannot be taken from him for a traditional clan use without just compensation either under the custom or appropriately under the bill of rights portion of the Code. *Mariur v. Ngoriakl*, 5 TTR 232 (1970).

Replacement of land. — An individual whose land is taken, without just compensation, for clan use is entitled to replacement of his land. *Mariur v. Ngoriakl*, 5 TTR 232 (1970).

Determination of compensation. — In determining what constitutes “just compensation” in an eminent domain action the court is required to establish a fair value for the land. *Trust Territory v. Etscheit*, 5 TTR 586 (1971).

Land transfers to Japanese government. — Land transfers from non-Japanese private owners to Japanese government, corporations, or nationals since March 27, 1935, are considered valid unless sale was not made of free will and just compensation not received. *Santos v. Trust Territory*, 1 TTR 463 (1958).

Provision for return to former owner. — Where taking of property by Japanese government was not by free will of owner and just compensation not received and where taking is construed to have occurred since March 27, 1935, title to property ought to be returned to former owner. *Santos v. Trust Territory*, 1 TTR 463 (1958).

Uncompensated taking. — Taking of private property for public use without adequate compensation violates Trust Territory bill of rights. *Rusasech v. Trust Territory*, 1 TTR 472 (1958).

Provision for return of title to land. — Where taking of party’s land occurred since March 27, 1935 and was not by free will and was without just compensation or payment, title will be returned to him. *Esebei v. Trust Territory*, 1 TTR 495 (1958).

Taking by power prior to present government. — Under present Trust Territory law, taking of private property without just compensation warrants legal action and ensures recovery of fair compensation. However, where taking of private property occurred during occupation of prior power, basis for making claim against present Trust Territory government for dereliction of former government has no legal footing in legal or equitable principles. *Oiterong v. Trust Territory*, 1 TTR 516 (1958).

Requirement of compensation. — Private property may not be taken for public use without consent or payment of just compensation. *Esebei v. Trust Territory*, 1 TTR 495 (1958).

Review of land transfers to Japanese government. — Land transfers from non-Japanese private owners to Japanese government, corporations, or nationals since March 27, 1935, are subject to review and are considered valid unless former owner establishes sale was not made of free will and just compensation not received. *Rusasech v. Trust Territory*, 1 TTR 472 (1958); *Ngiraiobochel v. Trust Territory*, 1 TTR 485 (1958); *Esebei v. Trust Territory*, 1 TTR 495 (1958); *Sechesuch v. Trust Territory*, 2 TTR 458 (1963).

Coercive taking by Japanese government. — Where land was taken by

Japanese Government by coercion and without payment of compensation, action was no better than forfeiture of property, which comes under interdict of Trust Territory bill of rights as taking of property for public use without just compensation. *Tamael v. Trust Territory*, 1 TTR 520 (1958).

Taking by Japanese government; burden of proof on owner. — Whether taking of private property in Palau Islands by the Japanese government was a negotiated sale under the threat of taking or an informal taking under Japanese administration’s power of eminent domain, the former owner has the burden of proving that he did not receive just compensation, and has an obligation to use reasonable effort to reduce his damage or loss. *Ngirkelau v. Trust Territory*, 2 TTR 72 (1959).

Administrative policy letter not a law; no basis for specific performance order. — Administrative policy letter announcing Trust Territory government’s willingness to return land taken by Japanese government in cases where fair compensation was not received by former owner does not purport to be enactment of law, and does not constitute basis for order in nature of specific performance. *Kengsiro v. Trust Territory*, 2 TTR 76 (1959).

Trust Territory policy concerning Japanese takings. — Court is bound by Trust Territory policy that where land was taken by Japanese government after March 27, 1935, taking is valid unless former owner establishes sale was not made of free will and just compensation not received. *Catholic Mission v. Trust Territory*, 2 TTR 251 (1961).

Land transfers to Japanese corporations; burden of proof. — Land transfers to Japanese corporations since March 27, 1935, are subject to review and are considered valid unless former owner establishes sale was not made of free will and just compensation not received. *Sechelong v. Trust Territory*, 2 TTR 526 (1964).

Construction of provision for compensation. — Provision in Trust Territory law that private property shall not be taken for public use without just compensation does not require that compensation be paid before possession is taken, but merely that reasonable, certain and adequate provision is made before owner’s occupancy is disturbed. *In re Ngiralois*, 3 TTR 303 (1967).

Review of land transfers to Japanese government. — Land transfers from non-Japanese private owners to Japanese government, corporations or nations since March 27, 1935, are subject to review, but such transfers will be considered valid unless the former owners, or heirs, establish that the sale was not made of free will and the just compensation was not received. In such cases title will be returned to the former owner upon

his paying into the Trust Territory government the amount received by him. *Rivera v. Trust Territory*, 4 TTR 140 (1968).

Jurisdiction concerning takings. — Taking of private property which creates cause of action under law of Trust Territory is not sufficient to confer jurisdiction on court to redress wrongs in commission of which that government had no part. *Rusasech v. Trust Territory*, 1 TTR 472 (1958).

Administration policy statement binding on courts. — Trust Territory administration policy statement regarding return of lands taken by Japanese government from native owners is binding on courts until rescinded or modified. *Rusasech v. Trust Territory*, 1 TTR 472 (1958).

Construction of cut-off date for determining taking by Japanese. — Where taking of private property by Japanese government occurred prior to cut-off date set by legislature, but taking was protested and protest was pending and undisposed of in courts up to end of Japanese occupation, taking is considered to have been in suspense during entire period of controversy, and not a taking prior to cut-off date. *Rusasech v. Trust Territory*, 1 TTR 472 (1958).

Where taking of land was instituted prior to March 27, 1935, but taking was not unchallenged and was under rigorous attack while such claims were being processed, and taking was in suspense at date of declaration of war, it was not a taking prior to March 27, 1935. *Esebei v. Trust Territory*, 1 TTR 495 (1958).

Bill of rights provision not applicable to Japanese takings. — Where taking of property by Japanese government occurred in 1931, Trust Territory bill of rights provision regarding payment of compensation where property is taken for public use is not applicable, since bill of rights provision is prospective only. *Alig v. Trust Territory*, 3 TTR 603 (App. Div. 1967).

Government policy applies to taking as well as sale. — Clear intent of Trust Territory policy regarding relief from transfer of lands to Japanese government from non-Japanese owner applies to a taking just as much as to purported sale. *Sechesuch v. Trust Territory*, 2 TTR 458 (1963).

Fraud on part of Japanese administration corrected. — The Japanese government acted fraudulently when it cooperated with a corporation to bring about forced sales of land from private owners and then demanded that the money received therefrom be exchanged for bonds and notes where the value of the bonds and notes to the owners was far less than the money they were forced to surrender for them. This forced exchange in connection with the sale of such lands constituted a substantial failure of consideration so that the owners were deprived

of their lands without their free will, and without receiving just compensation. Since this alleged sale to the Japanese government occurred in 1940 it took place so late in the Japanese administration that the present administration has the obligation to correct such wrong according to the deputy high commissioner's letter on December 29, 1947. *Moorou v. Trust Territory*, 2 TTR 124 (1960).

Protection of equitable interest in land. — Under rules of international law, property rights within ceded or conquered territory are entitled to protection, whether party had full and absolute ownership of land or merely equitable interest which required further act to vest in him perfect title. *Urrimech v. Trust Territory*, 1 TTR 534 (1958).

Rights under German land title documents protected. — The rights held by unpropertied males and unmarried females under German land title documents are equitable interests in land and as such are protected by the provisions of this section of Trust Territory bill of rights. Insofar as a district order purports to deprive such persons of these property rights, it is in conflict with this section and is void. *Opispo v. Mesileng*, 4 TTR 80 (1968).

Government employee has property interest in continued employment. — Employee employed pursuant to contract with government had an interest in continued employment which was protected by due process of law, and could not be dismissed from employment, whether or not for valid reasons, by action which was arbitrary, discriminatory and a denial of fundamental property interests protected by this Code. *Christensen v. Micronesian Occupational Center*, 6 TTR 346 (1973).

Citizenship is a property right subject to due process protection. — The right of citizenship itself is a property right vested in the individual. Citizenship is the very source of rights such as the individual's right to vote, own land or possess a passport. Where statute attempts to deny to a person an important incident of citizenship, reducing that person to a "second class citizen" in any area, it deprives him of his property without due process of law. *Whipps v. Morris* (Tr. Div., November, 1975).

Foreclosure of mortgage by economic development loan board. — Where defendant applied to economic development loan board for a loan and gave board a mortgage on defendant's land as security for the loan, and where, upon default, board instituted legal proceedings for the balance due and to foreclose on the property under the terms of the mortgage, there is no deprivation of property without due process of law nor is there a taking of private property for public use without just compensation. *Trust Territory v. Lopez* (App. Div., December, 1976).

§ 5. Bills of attainder, etc. — No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall be enacted. (Code 1966, § 5; Code 1970, tit. 1, § 5.)

§ 6. Excessive bail; excessive fines; cruel and unusual punishments. — Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. (Code 1966, § 6; Code 1970, tit. 1, § 6.)

Cross references. — Punishments — Judgment and sentencing, 11 TTC ch. 30.
Bail, 12 TTC ch. 6.

Fine and sentence for involuntary manslaughter. — Two hundred and fifty dollar fine and suspended two-year sentence for

involuntary manslaughter, well below the maximum allowable sentence, were within court's discretion, and the fine was not excessive, or the sentence cruel and unusual punishment. *Rasa v. Trust Territory*, 6 TTR 535 (1973).

§ 7. Discrimination on account of race, sex, language or religion; equal protection. — No law shall be enacted in the Trust Territory which discriminates against any person on account of race, sex, language or religion, nor shall the equal protection of the laws be denied. (Code 1966, § 7; Code 1970, tit. 1, § 7.)

Constitutionality. — The purpose of section as amended is to eliminate the use of a Trust Territory citizen as a "front" for a non-citizen doing business in the Trust Territory. Such use of a citizen might well be the subject of congressional action but the action taken by congress here is too broad in scope to be valid. *Whipps v. Morris* (Tr. Div., November, 1975).

Where congress could have settled on a less onerous method for eliminating the use of a Trust Territory citizen as a "front" for a non-citizen in doing business in the Trust Territory, a method which would not have the effect of penalizing all Trust Territory citizens who marry non-citizens, statute clearly denies the equal protection of the law. *Whipps v. Morris* (Tr. Div., November, 1975).

Due process and equal protection interpreted like U.S. provisions. — The interpretation and meaning of the due process and equal protection clauses of the United States Constitution are the same as the interpretation and meaning of the Trust Territory Code bill of rights due process and equal protection clauses. *Di Stefano v. Di Stefano*, 6 TTR 312 (1973).

Reasonable classification permissible. — Questions of discrimination and equal protection of laws arise from classification of subjects of legislation and while improper or unfair classification violates the protection afforded by this section reasonable classification may be made by the legislature. *Karuo v. Chochoy*, 5 TTR 304 (1971).

Obligation of officials to act reasonably and fairly. — Due process and equal protection of laws clauses in Bill of Rights impose obligation on all officials to act reasonably and

fairly in accordance with established principles of justice, and not make arbitrary choices or interfere with freedom of action of individuals any more than is reasonably necessary, and obligation applies to municipalities as well as to others. *Mesechol v. Trust Territory*, 2 TTR 84 (1959).

Ordinance imposing tax in labor violative of equal protection. — Municipal ordinance purporting to impose tax in labor, and making wilful failure to comply with such tax a crime, is in violation of the due process clause and Trust Territory law and as administered is in violation of equal protection clause of Trust Territory Code. *Mesechol v. Trust Territory*, 2 TTR 84 (1959).

Residency requirement for divorce violative of equal protection. — The two year residency requirement for granting a divorce in the Trust Territory denies a party of equal protection of the laws and is thus invalid. *Yang v. Yang*, 5 TTR 427 (1971).

Denial of jury trial. — Denial by court of request for trial by jury does not constitute a violation of rights to due process and equal protection. Right to trial by jury is conspicuous in its absence from section enumerating certain inalienable rights. *Sonoda v. Trust Territory* (App. Div., November, 1976).

Appeal to trial division of high court. — Where original conviction is in district court, and the decision is reviewed and affirmed by the trial division of the high court, appellants are not denied equal protection under the law because they are then denied a review by a three-judge panel even though there is no doubt that if the charge had originally been heard in the trial division of the high court the appeal

would be to the appellate division of the high court. *Trust Territory v. Elias* (App. Div., January, 1975).

Power of district attorney to file charge in district court. — The fact that the district attorney can arbitrarily file a grand larceny charge in the district court, thereby limiting any appellate review to a single judge sitting in the trial division of the high court rather than a three-judge panel in the appellate division is not violative of equal protection. *Trust Territory v. Elias* (App. Div., January, 1975).

Improper administration of law. — Equal protection of laws may be denied by improper administration of law that seems fair on its face. *Mesechol v. Trust Territory*, 2 TTR 84 (1959).

Validity of classifications. — The validity of a classification which touches on a fundamental right must be judged by a strict standard and by whether it promotes a

compelling government interest. *Whipps v. Morris* (Tr. Div., November, 1975).

In order to comport with the equal protection guarantee, classifications must be rationally related to the purpose they are designed to serve, and they must not paint with too broad a brush. That is, they must rest upon material differences between the persons included and those excluded and must be based upon substantial distinctions. *Whipps v. Morris* (Tr. Div., November, 1975).

Same — Authority of Congress — Standard. — Congress has the authority to make classifications, but that authority is not absolute. Classification must be reasonable if it is to comport with the guarantee of equal protection of the law. Arbitrary or capricious classifications conflict with the equal protection guarantee. *Whipps v. Morris* (Tr. Div., November, 1975).

§ 8. Freedom of migration and movement. — Subject only to the requirements of public order and security, the inhabitants of the Trust Territory shall be accorded freedom of migration and movement within the Trust Territory. (Code 1966, § 8; Code 1970, tit. 1, § 8.)

§ 9. Education. — Free elementary education shall be provided throughout the Trust Territory. (Code 1966, § 9; Code 1970, tit. 1, § 9.)

Cross reference. — General provisions relating to education, 41 TTC.

§ 10. Imprisonment for failure to discharge contractual obligation. — No person shall be imprisoned solely for failure to discharge a contractual obligation. (Code 1966, § 10; Code 1970, tit. 1, § 10.)

Attempt to obtain money by false pretenses; relation to contractual obligation. — Where defendant is found guilty of attempting to obtain payments under construction contract by false pretenses, he is not thereby sentenced for failure to discharge

contractual obligation, which is prohibited under Trust Territory law, since attempt to obtain money by false pretenses is entirely apart from question of whether defendant has discharged his contractual obligation. *Elechus v. Trust Territory*, 3 TTR 297 (1967).

§ 11. Writ of habeas corpus. — The privilege of the writ of habeas corpus shall not be suspended unless, when in cases of rebellion or invasion or imminent danger thereof, the public safety shall require it. (Code 1966, § 11; Code 1970, tit. 1, § 11.)

Cross reference. — General provisions relating to habeas corpus, 9 TTC ch. 3.

Denial of preliminary examination not basis for habeas corpus. — There was no right to preliminary examination of arrested person brought before court competent to try him for offense charged, and habeas corpus was

properly denied where denial of preliminary examination was alleged as the ground for seeking it; thus court properly denied motion to dismiss based on alleged denial of right of habeas corpus. *Borja v. Trust Territory*, 6 TTR 584 (1974).

§ 12. Quartering of soldiers. — No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law. (Code 1966, § 12; Code 1970, tit. 1, § 12.)

§ 13. Trade and property rights. — Subject to applicable laws of the Trust Territory, the High Commissioner may restrict or forbid the acquisition of interests in real property and in business enterprises by persons who are not citizens of the Trust Territory. (Code 1966, § 13; Code 1970, tit. 1, § 13.)

Cross references. — Foreign investor's business permits, 33 TTC ch. 1.

Restrictions upon land ownership, see 57 TTC § 201.

Land planning act, 51 TTC ch. 1.

Lease of private property to foreign corporation; approval of High Commissioner required. — Private real

property may not be leased to foreign corporation desiring to operate a school thereon without prior approval of the lease by the High Commissioner, and if his approval is not endorsed on the lease, the lease is prima facie invalid. *Mdrainglai v. Emesiochel*, 6 TTR 440 (1974).

§ 14. Local customs. — Due recognition shall be given to local customs in providing a system of law, and nothing in this chapter shall be construed to limit or invalidate any part of the existing customary law, except as otherwise provided by law. (Code 1966, § 14; Code 1970, tit. 1, § 14.)

Cross references. — Other provisions on local customs and customary law, 1 TTC 102.

Crimes in violation of native customs, 11 TTC 8.

Recognition of custom in awarding sentences, 11 TTC 1451.

Recognition of local customs, 39 TTC 4.

Custom not to nullify plain meaning of statute. — Since no custom, however long and generally it has been followed, can nullify the plain purpose and meaning of a statute, the desire of the victim of a crime not to have the perpetrator punished because the victim has

forgiven him under a custom will not be allowed to affect the enforcement of any applicable criminal statute. *Trust Territory v. Lino*, 6 TTR 7 (1972).

Family member with knowledge of crime, public policy overrides custom. — Public policy forbids enforcement of custom which closes mouth of family member knowing of commission of felony by another family member under pain of forfeiture of property in event of violation. *Yangilemau v. Mahoburimalei*, 1 TTR 429 (1958).

CHAPTER 2.

FUTURE LEGISLATION.

Sec.	Sec.
51. Legislation to be fully promulgated.	55. Filing with clerk of courts; public inspection.
52. Publication, distribution and sale of laws.	56. Authority of district administrators to employ translator-interpreters.
53. Posting; distribution to public officials.	
54. Translation and posting at local government offices.	

§ 51. Legislation to be fully promulgated. — Each new law or amendment to this Code enacted by the Congress of Micronesia shall be fully promulgated. (Code 1966, § 28; Code 1970, tit. 1, § 51.)

Administrative procedures manual not to modify executive orders or constitute new law. — Construing the prior language of this section, to the effect that "New laws and regulations or amendments to these regulations may be promulgated by the High Commissioner by executive order," the court held that the administrative procedures manual was not intended to modify the executive orders or to itself constitute new law affecting the general public. *Kentiy v. Trust Territory*, 1 TTR 188 (1954).

§ 52. Publication, distribution and sale of laws. — Within thirty days after they become law the High Commissioner shall cause resolutions and laws enacted by the Congress of Micronesia to be published and shall make provision for their distribution to public officials and sale to the public. (Code 1966, § 28; Code 1970, tit. 1, § 52.)

§ 53. Posting; distribution to public officials. — Immediately upon publication of laws enacted by the Congress of Micronesia, the Attorney General shall cause each law to be posted at government offices of the Trust Territory and distributed to public officials. (Code 1966, § 28; Code 1970, tit. 1, § 53.)

§ 54. Translation and posting at local government offices. — Each district administrator shall cause each law enacted by the Congress of Micronesia to be translated in whole or in summary from English to the local languages of his district and to be distributed to Micronesian officials and posted at the local government offices in that district within sixty days after receipt of a copy of such law. (Code 1966, § 28; Code 1970, tit. 1, § 54.)

§ 55. Filing with clerk of courts; public inspection. — Copies of each law enacted by the Congress of Micronesia and the translation in whole or in summary into the local languages of the district shall be filed with the clerk of courts of the district and shall be kept open to public inspection at all times when the clerk's office is open for business. (Code 1966, § 28; Code 1970, tit. 1, § 55.)

§ 56. Authority of district administrators to employ translator-interpreters. — To implement the provisions of this chapter the district administrators are authorized to employ one or more full-time translator-interpreters. (Code 1966, § 28; Code 1970, tit. 1, § 56.)

CHAPTER 3.

APPLICATION OF OTHER LAWS AND REGULATIONS.

Sec.	Sec.
101. Additional laws applicable to Trust Territory.	106. Existing interim regulations; orders, etc.
102. Local customs; customary law.	107. [Repealed.]
103. Applicability of common law.	108. Emergency district orders — Authority to promulgate.
104. Repeal of Spanish, German, and Japanese laws.	109. Same — Posting, translating, and filing.
105. Land law not affected.	

§ 101. **Additional laws applicable to Trust Territory.** — The following are declared to be in full force and to have the effect of law in the Trust Territory:

- (1) The trusteeship agreement;
- (2) Such laws of the United States as shall, by their own force, be in effect in the Trust Territory, including the executive orders of the President and orders of the Secretary of the Interior;
- (3) Laws of the Trust Territory and amendments thereto;
- (4) District orders heretofore promulgated by the district administrators of the Trust Territory and emergency district orders promulgated by the district administrators in accordance with section 108 of this chapter;
- (5) The acts of legislative bodies convened under charter from the High Commissioner when these acts are approved by the High Commissioner or otherwise become law as may be provided by charter or the laws and regulations of the Trust Territory; and,
- (6) Duly enacted municipal ordinances. (Code 1966, § 20, Code 1970, tit. 1, § 101.)

Written law prevails over custom. — When there is conflict between customary law and municipal ordinances, written law prevails. *Ngirasmengesong v. Trust Territory*, 1 TTR 615 (App. Div. 1958).

U. S. common law applicable in Trust Territory in absence of statute. — The common law, rather than the statutory law, in the United States is applicable in the Trust Territory in the absence of applicable statute in this Code. *George v. Walder*, 5 TTR 9 (1970).

U. S. provisions concerning jury trial not applicable. — The United States Constitutional provisions on subject of jury trial do not of themselves apply to Trust Territory, which has not been incorporated into the United States. *Sechelong v. Trust Territory*, 2 TTR 526 (1964).

Section not to effect repeal of district orders of civil administrators. — This section, which provides that Trust Territory laws include district orders promulgated by district administrators with the approval of the High Commissioner, does not affect the repeal of district orders issued by civil administrators either with approval of the High Commissioner after that was required or without his approval prior to the time such requirement was made.

Kenty v. Trust Territory, 1 TTR 188 (1954).

District orders in force on July 1, 1951, not repealed. — District orders in force and effect on July 1, 1951, including those issued before requirement that they be approved by high commissioner, regardless of whether they were issued before or after that date, have not been repealed. *Kalifin v. Trust Territory*, 1 TTR 242 (1955).

Franchise not supported as district order. — Franchise cannot be supported as district order under the Trust Territory law where such order must be approved personally by High Commissioner and there is no showing of his intent to legislate as to it. *Trust Territory v. Saipan Bus Co.*, 3 TTR 76 (1965).

Obligation to note and give effect to U.S. treaties. — This section imposes the same obligation upon the high court to "note and give effect" to United States treaties, including the trusteeship agreement, as is imposed upon state and federal courts in the United States. *Calvo v. Trust Territory*, 4 TTR 506 (App. Div. 1969).

Prerequisites to reliance on trusteeship agreement by high court. — Before the high court can rely on the wording of the trusteeship agreement to determine a case, it must first

parade through a number of statutes, executive or secretarial orders and the common law which are much more definitive and which almost surely will give the inhabitants more specific rights than the trusteeship agreement. *Trust Territory v. Lopez* (App. Div., December, 1976).

Trusteeship agreement not self-executing. — As the Code has always included the trusteeship agreement as part of the law of the Trust Territory and as the high

court has original jurisdiction to try all cases, the trusteeship agreement is not self-executing. *Trust Territory v. Lopez* (App. Div., December, 1976).

Trusteeship agreement not enforceable through courts. — The trusteeship agreement does not create a trust capable of enforcement through the courts. *Trust Territory v. Lopez* (App. Div., December, 1976).

§ 102. Local customs; customary law. — The customs of the inhabitants of the Trust Territory not in conflict with the laws of the Trust Territory shall be preserved. The recognized customary law of the various parts of the Trust Territory shall have the full force and effect of law so far as such customary law is not in conflict with the laws mentioned in section 101 of this chapter. (Code 1966, § 21; Code 1970, tit. 1, § 102.)

Cross reference. — Local customs, 1 TTC 14.

Custom defined. — “Custom” is such usage as by common consent and uniform practice has become law of the place, or of the subject matter, to which it relates; it is a law established by long usage. *Lalou v. Aliang*, 1 TTR 94 (1954).

Changes in customs. — Customs may change gradually, and changes may be started by some of the people affected agreeing to some new way of doing things. New ways of doing things do not become established and legally binding or accepted customs until they have existed long enough to have become generally known and have been peaceably and fairly uniformly acquiesced in by those whose rights would be naturally affected. *Lalou v. Aliang*, 1 TTR 94 (1954).

Judicial notice of custom. — If local custom is firmly established and widely known, court will take judicial notice of it. *Basilius v. Rengiil*, 2 TTR 430 (1963); *Mutong v. Mutong*, 2 TTR 588 (1964).

If a local custom is firmly established and widely known the high court will take judicial notice of it. *Lajutok v. Kabua*, 3 TTR 630 (App. Div. 1968).

Custom may be mixed question of law and fact. — Where there is dispute as to existence or effect of local custom, and court is not satisfied as to its existence or applicability, custom becomes mixed question of law and fact. *Basilius v. Rengiil*, 2 TTR 420 (1963).

Where there is a dispute as to existence or effect of local custom, custom becomes mixed question of law and fact and party relying upon it must prove it to satisfaction of the court. *Kenyul v. Tamangin*, 2 TTR 648 (App. Div. 1964); *Bulele v. Loeak*, 4 TTR 5 (1968).

Customary law may be altered by Code. — The customary law of various parts of the Trust Territory is in effect only so far as it has

not been changed by laws promulgated in the Code. *Lazarus v. Tomijwa*, 1 TTR 123 (1954).

Statutory provision prevails. — Custom in conflict with existing statutory provision is void. *Ngiruhelbad v. Merii*, 2 TTR 631 (App. Div. 1961).

Written municipal law prevails. — When there is conflict between customary law and municipal ordinances, written law prevails. *Ngirasmengesong v. Trust Territory*, 1 TTR 615 (App. Div. 1958).

Courts assume reasonableness of regulations promulgated by state and local authorities. — Courts assume that state and municipal authorities have full knowledge of local conditions and their determination as to necessity and reasonableness of regulation to promote public order, health, morals, safety, and general welfare will, upon its face, be regarded by courts as valid. *Ngirasmengesong v. Trust Territory*, 1 TTR 615 (App. Div. 1958).

Where trial court may rely on local custom. — Trial court in Trust Territory may properly base its decision on local custom where customary law is not in conflict with laws of Trust Territory or laws of United States in effect in Trust Territory. *Ngiramulei v. Rideb*, 2 TTR 370 (1962).

Government to advance solution to problem when custom fails. — When local custom fails to provide acceptable solution for a problem involving all residents of a governmental subdivision, it is the right of one or more of the three branches of government to advance a solution. *Trust Territory v. Benido*, 1 TTR 46 (1953).

Code supersedes custom concerning killing of head of family. — Since the adoption of the Code in 1952, traditional Yapese custom has been superseded by the written law with respect to retaliation by a family member for the killing of the head of the family; the written law now provides

punishment. *Figir v. Trust Territory*, 4 TTR 368 (1969).

Custom abrogated by statutory punishment for murder. — Whether old custom permitted a murder victim's family to retaliate by murder, by arson or by larceny, is now immaterial because custom has been abrogated by the statutory punishment for murder, thus the old custom is no longer the law, only the statutes are applicable in such situation. *Figir v. Trust Territory*, 4 TTR 368 (1969).

Custom of forgiveness by victim does not affect enforcement of criminal statute. — Since no custom, however long and generally it has been followed, can nullify the plain purpose and meaning of a statute, the desire of the victim of a crime not to have the perpetrator punished because the victim has forgiven him

under a custom will not be allowed to affect the enforcement of any applicable criminal statute. *Trust Territory v. Lino*, 6 TTR 7 (1972).

Written law concerning arson supersedes custom. — As arson is a crime within the written law, it necessarily supersedes and replaces any applicable custom pursuant to this section of the Code. *Figir v. Trust Territory*, 4 TTR 368 (1969).

German law of inheritance supersedes custom. — Where land in question was held under the standard form German land deed the German law of inheritance which allowed inheritance by an adopted child from his natural father applied and not the local custom prohibiting inheritance by a natural son who had inherited from his adoptive parents. *Shoniber v. Shoniber*, 5 TTR 532 (1971).

§ 103. Applicability of common law. — The rules of the common law, as expressed in the restatements of the law approved by the American Law Institute and, to the extent not so expressed, as generally understood and applied in the United States, shall be the rules of decision in the courts of the Trust Territory in applicable cases, in the absence of written law applicable under section 101 of this chapter or local customary law applicable under section 102 of this chapter to the contrary and except as otherwise provided in section 105 of this chapter; provided, that no person shall be subject to criminal prosecution except under the written law of the Trust Territory or recognized local customary law not inconsistent therewith. (Code 1966, § 22; Code 1970, tit. 1, § 103.)

Common law applicable except as abrogated by statute. — Common law of England and statutes of Parliament in aid thereof and in force July 3, 1776, as interpreted by American decision, constitute law of Trust Territory except as otherwise provided in this Code or by laws of Trust Territory in effect on date of adoption by Code or subsequently. *Ngiraibiochel v. Trust Territory*, 1 TTR 485 (1958).

U.S. common law applicable. — The common law, rather than the statutory law, in the United States is applicable in the Trust Territory in the absence of applicable statute in the Code. *George v. Walder*, 5 TTR 9 (1970).

U.S. common law incorporated into Trust Territory substantive law. — This section incorporates the rules of the common law of the United States into the substantive law of the Trust Territory. *Lakemba v. Milne*, 4 TTR 44 (1968).

U.S. maritime law adopted. — The Trust Territory adoption of the rules of common law and the specific provision for jurisdiction in admiralty and maritime matters was intended to include adoption of the substantive and general rules of the law maritime as customarily applied in suits at common law in the United States. *Lakemba v. Milne*, 4 TTR 44 (1968).

Where there is no state law on question, courts look to common law. — Where there is no state law in the Trust Territory to determine if acts alleged would constitute negligence, the Trust Territory courts must look to the common law. *Ikosia v. Trust Territory* (Tr. Div., December, 1975).

Restatement adopted. — The restatement of law was adopted into the substantive law of the Trust Territory by the Trust Territory Code. *Lakemba v. Milne*, 4 TTR 44 (1968).

Uniform negotiable instruments act not applicable. — Uniform negotiable instruments act is not applicable in the Trust Territory. *Likauche v. Trust Territory*, 2 TTR 375 (1963).

U.S. common law concerning land transfers. — In the United States the common law relating to land transfers has largely been codified by statute and is therefore not applicable to land transfers in the Trust Territory. *George v. Walder*, 5 TTR 9 (1970).

U.S. common law. — Rules of common law as expressed in restatements of law and generally understood and applied in the United States are rules of decision in courts of the Trust Territory in cases to which they apply, in absence of written or customary law. *Ychitaro v. Lotius*, 3 TTR 3 (1965).

Common law applicable concerning appointment of guardians. — Where no provision was found in the Code for appointment of guardians the common law must be considered to be applicable in accordance with this section of the Code, unless local customary law is applicable. *Kumer v. Peter*, 4 TTR 102 (1968).

Local customary law prevails over common law. — Principles of common law do not govern case in the Trust Territory where local customary law to the contrary is applicable. *Ngiramulei v. Rideb*, 2 TTR 370 (1962).

Negligence liability. — Liability for negligence in situations not clearly covered by local custom in part of Trust Territory concerned must be governed by common law principles so far as not governed by any written law. *Ychitaro v. Lotius*, 3 TTR 3 (1965).

Entitlement of *dri jermal* to share of money paid *alab*. — In the absence of any custom or traditional law applicable to question of first impression whether *dri jermal* was entitled to share in money paid *alab* for loss of *alab's* business located on land leased by government, court would look to any analagous traditional practices or, in the alternative, apply American common law under authority of statute. *Lijablur v. Kendall*, 6 TTR 153 (1973).

§ 104. Repeal of Spanish, German, and Japanese laws. — All laws, regulations, orders and ordinances heretofore enacted, issued, made or promulgated by Spanish, German, or Japanese authority which are still in force in the Trust Territory are hereby repealed except as provided in section 105 of this chapter; provided, however, that nothing in this Code shall change the effect of local custom which may have been included within the scope of laws, regulations, orders, or ordinances enacted, issued, made or promulgated as aforesaid. (Code 1966, § 23; Code 1970, tit. 1, § 104.)

Spanish, German and Japanese laws no longer in effect. — Spanish, German and Japanese laws are no longer in effect in Trust Territory except with respect to certain land

Suit arising out of automobile accident. — Where suit arising out of automobile accident is not covered by local custom, it is governed by rules of common law expressed in restatements of American Law Institute to extent these rules are so expressed. *Etpison v. Indalecio*, 2 TTR 186 (1961).

Ownership of parts attached to automobile. — Since question of parts attached to automobile is foreign to local custom, matter is governed by rules of common law. *Oderiong v. Adelbai*, 3 TTR 21 (1965).

Liability of public school teacher. — Where defendant in negligence action is public school teacher, question of liability should be governed by American common law rules since matter of schools and responsibility of teachers is foreign to Truk custom and there is no express provision as to teacher's liability in written enactment. *Ychitaro v. Lotius*, 3 TTR 3 (1965).

Writ of quo warranto. — Although there is no express provision for use of the writ of quo warranto in the Trust Territory, in the absence of constitutional and statutory provisions to the contrary, the use of such writ is available under prevailing law. *Trust Territory v. Benido*, 1 TTR 46 (1953).

laws and excepting also status of local customary law included within any repealed enactments. *Ngiraibiochel v. Trust Territory*, 1 TTR 485 (1958).

§ 105. Land law not affected. — The law concerning ownership, use, inheritance, and transfer of land in effect in any part of the Trust Territory on December 1, 1941, shall remain in full force and effect to the extent that it has been or may hereafter be changed by express written enactment made under authority of the Trust Territory. (Code 1966, § 24; Code 1970, tit. 1, § 105.)

Landrights decisions of former governments. — Decisions of former governments prior to March 27, 1935, relating to land ownership and rights are binding. *Ngiraibiochel v. Trust Territory*, 1 TTR 485 (1958).

Land law of German administration. — Land law established by German

administration in 1912 for Ponape Island is still in force except so far as modified by law by either present or past administrations. *Kehler v. Kehler*, 1 TTR 613 (App. Div. 1958).

Private ownership under German land title. — As far as private ownership of land on Ponape Island under German land title is concerned, land law stated in document is still

in effect except for changes made under subsequent administrations. *Petiele v. Max*, 1 TTR 26 (1952).

Land law in German title document still in effect. — Land law on Ponape Island as stated in German title document is still in effect outside of any changes that may have been made by German authorities during their regime, or American authorities since American occupation. *Kilara v. Alexander*, 1 TTR 3 (1951).

German law of inheritance applicable. — Where land in question was held under the standard form German land deed the German law of inheritance which allowed inheritance from his natural father by an adopted child applied and not the local custom prohibiting inheritance by a natural son who had inherited from his adoptive parents. *Shoniber v. Shoniber*, 5 TTR 532 (1971).

Land law in effect on December 1, 1941 upheld until changed. — Court is bound to uphold land law in effect in Trust Territory on December 1, 1941, until it is changed by express written enactment made under authority of Trust Territory. *Levi v. Kuntak*, 1 TTR 36 (1953).

Law concerning ownership, use inheritance and transfer of land in effect in Trust Territory on December 1, 1941, remain in effect except as changed by written enactment under authority of Trust Territory government. *Ngiraibiochel v. Trust Territory*, 1 TTR 485 (1958).

Japanese land law binding. — Section 24 of the Code established the land law as that which was in effect as of December 1, 1941, until changed by statute and Japanese land law which recognized and approved, prior to December 1, 1941, transfer in question was binding. *Mariur v. Ngoriakl*, 5 TTR 232 (1970).

Land law in effect in the Trust Territory on December 1, 1941, remains in effect except as changed by express written enactment. *Orijon v. Etjon*, 1 TTR 101 (1954); *Ngiruhelbad v. Merii*, 2 TTR 631 (App. Div. 1961).

Law concerning ownership, use, inheritance and transfer of land in effect on December 1, 1941, remains in full force and effect except insofar as it is changed by express written enactment. *Kanser v. Pitor*, 2 TTR 481 (1963).

Land law custom, as it existed in 1941, remains operative and in effect in Trust Territory except when changed by express written enactment. *Rudimch v. Chin*, 3 TTR 323 (1967).

Prevails over previous local custom. — Land law in effect in the Trust Territory on December 1, 1941, remains in full force and effect except as changed by express written enactment, even when such land law varies from previous local custom. *Lazarus v. Tomijwa*, 1 TTR 123 (1954).

Japanese proclamation concerning boundaries. — If Japanese proclamation concerning boundaries of private ownership of land along sea was in effect December 1, 1941, it furnishes rule for determining ownership of lands below high water. *Ngiraibiochel v. Trust Territory*, 1 TTR 485 (1958).

If the Japanese proclamation concerning boundaries of private ownership of land along the sea was in effect December 1, 1941, it furnishes rule for determining ownership of land below high water. If not, ownership of such land must be determined by the common law rule. An examination of the applicable authorities, however, discloses no substantial difference between the Japanese proclamation and the rule at common law that the land along the sea below the high water mark belongs to the state, and was held in trust for the benefit of all the people. *Ngiraibiochel v. Trust Territory*, 1 TTR 485 (1958).

Japanese law regarding mortgage foreclosure. — Japanese law regarding foreclosure of mortgages of land in Palau District remains in full force and effect except as changed by express written enactment of Trust Territory. *Iyar v. Sungiyama*, 2 TTR 154 (1960).

Court action required for mortgages of land. — Unless and until some other method or methods of foreclosure are provided by express written enactment, mortgages of land in Palau District may be foreclosed only through court action. *Iyar v. Sungiyama*, 2 TTR 154 (1960).

Marshallese land law applicable. — Marshallese system of land law, including both the power and obligation of iroij lablab and limitations upon it, has been carried over under the American administration, first under general principles of international law and later by this section of the Code. *Limine v. Lainej*, 1 TTR 107 (1954).

Special arrangement for land made before December 1, 1941 is continued. — Special arrangement for lands of the former iroij lablab on "Jebrik's side" of Majuro Atoll, as it stood on December 1, 1941, is continued, with the Trust Territory government taking the place of the Japanese administration, regardless of how much the law varies from Marshallese custom. *Lazarus v. Tomijwa*, 1 TTR 123 (1954).

Power of iroij lablab to change alab rights. — There is no indication that iroij lablab had rights under the law in effect in 1941 to change alab rights in land at will. *Limine v. Lainej*, 1 TTR 595 (App. Div. 1956).

Effect of principles of American law. — Land claims barred under usual principles of American law are barred under Trust Territory Code. *Kanser v. Pitor*, 2 TTR 481 (1963).

No right to filled-in land created. — No right to filled-in land is created under the Code,

and only certain rights already in existence were preserved by the Code. *Protestant Mission v. Trust Territory*, 3 TTR 26 (1965).

§ 106. Existing interim regulations; orders, etc. — The provisions of this Code, to the extent that they are substantially the same as prior interim regulations of the Trust Territory, are to be construed as a continuation thereof, and not as new enactments. All interim regulations and amendments thereto, heretofore enacted or made, which are contained in this Code are to be deemed to have taken effect and come into force on the date of original publication thereof or on the date expressly provided in such interim regulation or amendments thereto. All proclamations, regulations, orders and directives of the United States military government, all civil administration orders (except existing district orders), and all interim regulations, amendments and supplements thereto, which are not contained in this Code are hereby expressly repealed. (Code 1966, § 26; Code 1970, tit. 1, § 106.)

Military government orders repealed; not district orders. — Trust Territory law which repeals regulations, orders and directives of United States military government does not repeal existing district orders. *Kentiy v. Trust Territory*, 1 TTR 188 (1954).

District orders not repealed. — District orders in force and effect on July 1, 1951, including those issued before requirement that they be approved by high commissioner, regardless of whether they were issued before or after that date, have not been repealed. *Kalifin v. Trust Territory*, 1 TTR 242 (1955).

§ 107. Repealed by P.L. 5-86, § 16.

Cross reference. — For present provisions relating to administrative regulations, see title 17.

§ 108. Emergency district orders; Authority to promulgate. — (1) In emergencies creating danger to life, health, or property, district administrators may, without the approval of the High Commissioner, promulgate temporary emergency district orders which shall have the force and effect of law until repealed by the district administrator concerned, or until amended or repealed by the High Commissioner, or until expressly superseded by legislation.

(2) Each emergency district order shall be clearly designated as such and contain a statement that it is promulgated under this section and is subject to the limitations imposed herein.

(3) A district administrator issuing an emergency district order shall immediately report its issuance and the subject matter involved to the High Commissioner for transmission to the next session of the Congress of Micronesia. (Code 1966, § 29; Code 1970, tit. 1, § 108.)

§ 109. Same; Posting, translating, and filing. — On promulgating an emergency district order, each district administrator shall cause it to be posted and translated, and shall file a copy with its translation in whole or in summary with the clerk of courts of the district in the manner required for laws of Trust Territory by chapter 2 of this title. (Code 1966, § 30; Code 1970, tit. 1, § 109.)

CHAPTER 4.

RULES OF CONSTRUCTION.

Sec.

151. Area covered by Code.
 152. Words denoting number, etc.
 153. Words and phrases generally.
 154. English language text to prevail.

Sec.

155. Classification and arrangement of titles,
 etc.
 156. Construction of Code.
 157. Severability of provisions.

§ 151. Area covered by Code. — The provisions of this Code and any and all amendments thereto shall be in full force and effect, unless otherwise provided, in all of the Trust Territory, which consists of the islands formerly held by Japan under mandate in accordance with Article 22 of the Covenant of the League of Nations and placed under the trusteeship system of the United Nations, with the United States as administering authority, by agreement of the United States and the Security Council of the United Nations. Said islands are the Mariana Islands other than Guam, and the Marshall and Caroline Islands. (Code 1966, § 35; Code 1970, tit. 1, § 151.)

Cross reference. — Federated States of Micronesia, defined, Part III, P.L. No. IC-8.

Significance of name Trust Territory. — Although the Trust Territory is definite geographical area, it is merely name under which the United States carries out its obligations as administering authority under

the trusteeship agreement. *Alig v. Trust Territory*, 3 TTR 64 (1965).

Trust Territory laws apply at Kwajalein test site. — Since Kwajalein test site is part of the Trust Territory, Trust Territory laws apply there. *Meyer v. Epson*, 3 TTR 54 (1965).

§ 152. Words denoting number, etc. — As used in this Code or in any act of the Congress of Micronesia, unless it is otherwise provided or the context requires a different construction, application or meaning:

- (1) Words importing the singular include and apply to several persons, parties or things;
- (2) Words importing the plural include the singular;
- (3) Words importing the masculine gender include the feminine; and
- (4) Words used in the present tense include the future. (P.L. No. 4C-28, § 1.)

§ 153. Words and phrases generally. — Words and phrases, as used in this Code or in any act of the Congress or in any regulation issued pursuant thereto, shall be read with their context and shall be construed according to the common and approved usage of the English language. Technical words and phrases and such other words and phrases as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to their peculiar and appropriate meaning. (P.L. No. 4C-28, § 1.)

§ 154. English language text to prevail. — Whenever any provision of this Code or any law, ordinance, regulation, document or instrument adopted pursuant thereto shall have been translated in whole or in summary from English to a local language, should there be a possible difference of interpretation between the English text and the local translation the English language text shall prevail and govern in the decision of all cases, except as provided in section 105 of title 4 of this Code. (P.L. No. 4C-28, § 1.)

§ 155. Classification and arrangement of titles, etc. — The classification of the titles, chapters, subchapters, and sections of this Code, and the headings thereto, are made for the purpose of convenient reference and orderly

arrangement, and no implication, inference or presumption of a legislative construction shall be drawn therefrom. (P.L. No. 4C-28, § 1.)

§ 156. Construction of Code. — The provisions of this Code shall be construed according to the fair construction of their terms, with a view to effect its object and to promote justice. (P.L. No. 4C-28, § 1.)

§ 157. Severability of provisions. — If any provision of this Code or amendments or additions hereto, or the application thereof to any person, thing or circumstances, is held invalid, the invalidity does not affect the provisions or application of this Code or the amendments or additions that can be given effect without the invalid provisions or application, and to this end the provisions of this Code and the amendments or additions thereto are severable. (P.L. No. 4C-28, § 1.)

CHAPTER 5.

FLAG AND FLAG DISPLAY.

Sec.

- 201. Flag of Micronesia.
- 202. Display of Micronesian and U.S. flags.
- 203. Desecration of the flag of Micronesia.

§ 201. Flag of Micronesia. — There shall be and there is hereby adopted an official territorial flag of Micronesia, which shall consist of a circle of six white stars centered on a field of blue. The width of the flag of Micronesia shall bear a ratio to its length of 1 to 1.9, and the width of the flag to the width of a star the ratio of 5 to 1. The flag may be reproduced for unofficial purposes with different dimensions. (Code 1966, § 15; Code 1970, tit. 1, § 201.)

Cross reference. — Flag of Federated States of Micronesia, Part III, Title 1.

§ 202. Display of Micronesian and U.S. flags.— (1) The flag of Micronesia shall be displayed in the open only from sunrise until sunset and only on buildings, flagstuffs or halyards.

(2) The flag of Micronesia shall be hoisted briskly and lowered ceremoniously.

(3) When the flag of Micronesia is flown or displayed together with the flag of the United States on separate masts or staffs, it shall be flown or displayed at approximately the same level with that of the United States flag; provided that the flag of Micronesia shall occupy a position left of the flag of the United States, when looking out from the building or platform. When the flag of Micronesia is flown or displayed with the flag of the United States on a single staff of halyard, the flag of Micronesia shall be flown or displayed below the United States flag. When the flag of Micronesia is flown or displayed together with the flags of the United States and the United Nations on separate masts or staffs, the three flags shall be flown or displayed at approximately the same level in the following manner of positions: the flag of the United States shall occupy the right-hand position, the flag of Micronesia shall occupy the center position, and the flag of the United Nations shall occupy the left-hand position, when looking out from the building or platform. When the flag of the United States is flown or displayed above or higher than the flags of Micronesia and the United Nations, the flag of Micronesia shall occupy the right-hand position in relation to the flag of the United States, when looking out from the building or platform. The flag of the United States may be flown or displayed above or higher than the flag of Micronesia, but on no account may the flag of Micronesia be flown or displayed above the United States flag; nor may the flag of the United Nations be flown or displayed above or higher than the flag of Micronesia, or vice versa.

(4) When the flag of Micronesia is flown alone at such time as by official order the flag of the United States is being flown at half-mast, the flag of Micronesia shall also be flown at half-mast.

(5) The High Commissioner may establish rules and procedures for the half-mast display of the flag of Micronesia upon the death of a government or traditional leader or distinguished citizen of the Trust Territory. (Code 1966, § 16; Code 1970, tit. 1, § 202.)

Flag of Trust Territory. — Prior to Trust Territory. *Lakemba v. Milne*, 4 TTR 44
adoption of this Code section 15 in 1965, the (1968).
flag of the United States was also the flag of the

§ 203. Desecration of the flag of Micronesia. — (1) A person who knowingly casts contempt upon any flag of Micronesia by publicly mutilating, defacing, defiling, burning, or tramping upon it shall be fined not more than one hundred dollars, or imprisoned for not more than six months, or both.

(2) The term “flag of Micronesia” as used in this section shall include an official territorial flag of Micronesia, as described in section 201 of this chapter, or any reproduction thereof for unofficial purposes with different dimensions. (P.L. No. 7-135, § 1.)

CHAPTER 6.

HOLIDAYS.

Sec.

251. Micronesia Day.

§ 251. **Micronesia Day.** — (1) The twelfth day of July is hereby designated as Micronesia Day in order to commemorate the inauguration of the Congress of Micronesia. Micronesia Day is to be observed as a national holiday by Micronesian citizens and noncitizens alike throughout the Trust Territory.

(2) The High Commissioner shall announce annually the observation of said day with an appropriate proclamation. (Code 1966, §§ 17, 18; Code 1970, tit. 1, § 251.)

1 TTC § 351

CAPITAL

1 TTC § 351

CHAPTER 7.

CAPITAL.

Sec.

351. Designation of capital.

§ 351. Designation of capital. — Ponape Island, Ponape District, is hereby designated as the permanent capital of the government of Micronesia. (P.L. No. 6-133, § 1.)