

ting into the position where his vehicle was struck. This involves what is known as the doctrine of last clear chance, explained in Sections 479 and 480 of the Restatement of the Law of Torts, Volume II, and is an exception to the general rule that, if an automobile accident is caused partly by the negligence of both parties, neither can recover from the other.

[4] The fact that one party may have suffered more damage than the other has no bearing on the question of liability.

JUDGMENT

The judgment of the District Court for the Palau District in its Civil Action No. 744 is affirmed without further costs.

NGIRAMECHELBANG NGESKESUK, Appellant

v.

DIRRAIWESEI MOLEUL, Appellee

Civil Action No. 198

Trial Division of the High Court

Palau District

April 6, 1961

Action by divorced woman against former husband, in which Palau District Court awarded two hundred dollars "food money" claimed by plaintiff to be due under Palau customary law. On appeal, the Trial Division of the High Court, Chief Justice E. P. Furber, held that where claim for "food money" was not brought up at traditional meeting between relatives of husband and wife for determination of such matters, claim is waived.

Reversed.

1. Palau Custom—Marriage

Concept of responsibilities surrounding marriage under Palauan system of society is very different from that usual in United States.

2. Palau Custom—Divorce—"Olmesumech" and Food Money

Palauan word *olmesumech*, although freely translated as "alimony" is basically different in kind from alimony in usual American sense of money paid directly from one spouse to other for his or her support.

3. **Palau Custom—Divorce—“Olmesumech” and Food Money**
Under Palau custom, *olmesumech* and food money are matters which should be determined by meeting of relatives of wife and relatives of husband.
4. **Palau Custom—Divorce—“Olmesumech” and Food Money**
Under Palau custom, if claim for food money is not brought up at traditional meeting of relatives of wife and relatives of husband, such claim is waived.
5. **Palau Custom—Divorce—“Olmesumech” and Food Money**
Under Palau custom, if *olmesumech* is approved by person authorized under custom to represent wife and person authorized to represent husband, and paid to person authorized to represent wife, without any claim for food money having been advanced, matters of both *olmesumech* and food money are ended so far as both sides are concerned.
6. **Palau Custom—Divorce—“Olmesumech” and Food Money**
Under Palau custom, *olmesumech* and food money, if any, do not go to divorced wife as matter of right.
7. **Palau Custom—Divorce—“Olmesumech” and Food Money**
Trust Territory courts should only consider matters of amounts due for *olmesumech* or food money under Palau custom after all reasonable efforts have been made to determine them through traditional channels, short of use or threat of violence.
8. **Palau Custom—Divorce—“Olmesumech” and Food Money**
Trust Territory courts should not entertain actions for *olmesumech* or food money due under Palau custom until traditional meeting is held and there is failure to reach agreement after honest and diligent effort to do so, or it is shown that husband's relatives are avoiding or preventing such meeting.
9. **Palau Custom—Divorce—“Olmesumech” and Food Money**
Court action for determination as to *olmesumech* or food money due under Palau custom should be entertained only at instigation of person authorized under custom to represent wife in such negotiations.
10. **Palau Custom—Children's Money**
Under Palau custom, matter of children's money is essentially separate matter from *olmesumech* and, if not decided upon at meeting where *olmesumech* is considered, may be taken up later.
11. **Palau Custom—Children's Money**
Under Palau custom, children's money is payable in Palauan money or property and not in American money.
12. **Palau Custom—Children's Money**
Under Palau custom, children's money is matter to be claimed by proper relative of divorced wife and not by wife herself.

<i>Assessor:</i>	JUDGE PABLO RINGANG
<i>Interpreter:</i>	HARUO I. REMELIHK
<i>Counsel for Appellant:</i>	GABRIEL KESOLEI
<i>Counsel for Appellee:</i>	ULENGCHONG

FURBER, *Chief Justice*

This is an appeal from a judgment ordering the appellant, who was the defendant in the District Court, to pay \$200.00 "as payment of the plaintiff's food", following a divorce under Palau custom. The appellee, who was the plaintiff in the District Court, is the divorced wife of the appellant.

This appeal involves the relation between "*olmesumech*"—a sort of parting money paid by a man's relatives to his divorced wife's relatives under Palau custom—and "food money", due under Palau custom from the husband's relatives to the wife's relatives if all payments due under the custom for food provided by the wife and her relatives to the husband and his relatives during the marriage, have not already been made.

Counsel for the appellant claims that, following the divorce in question, the appellant's relatives and the appellee's relatives agreed upon *olmesumech* and that the payment of this *olmesumech*, which the appellee's uncle had agreed to without raising any question of food money, terminated all liability of the appellant's "side"—that is, his relatives—for any such payment. Counsel also pointed out that the judgment appeared on its face to be inconsistent with the findings of fact which indicated nothing remained due for food.

Counsel for the appellee admitted that *olmesumech* had been agreed upon and paid to the satisfaction of the appellee's uncle, but stated that the appellee was not satisfied with it, that she had seven children living with her, that food money had not been paid and was a separate

matter from *olmesumech*. He further stated that at the trial he had requested that "children's money" be considered, although it had not been requested in the complaint, and it is not clear whether the court did consider it, but that, even though the judgment referred to the \$200.00 in question as payment for food, he felt this money might also fairly be considered to include the children's money due under Palau custom.

Counsel for the appellant claimed that the question of children's money had not been covered in the evidence and was an entirely separate matter.

OPINION

This is a case in which a divorced wife appears to be trying to override a decision reached at the traditional meeting between the relatives of the husband and wife following a divorce under Palau custom.

[1] As indicated in the opinion of this court, in the case of *Duyang Orak v. Hambret Ngiraukloi*, 1 T.T.R. 454, the whole concept of the responsibilities surrounding marriage under the Palauan system of society is very different from that usual in the United States. See Chapter V on "Birth, Marriage, and Death" in "Palauan Society" by H. G. Barnett, published as one of the University of Oregon Publications in 1949. This has caused a number of uncertainties as to how and when the Trust Territory courts should undertake to enforce payments due under Palau custom in connection with the dissolution of marriages either by death or divorce. It is recognized that there have been cases in the past in which *olmesumech*, with or without food money, has been awarded in a court action brought by a divorced wife.

[2-6] As a result of this case, and various others recently coming to the attention of the High Court, however, a further analysis of this whole situation has been made

and it clearly appears that *olmesumech*, although often freely translated as "alimony", is basically different in kind from alimony in the usual American sense of money paid directly by one spouse to the other for his or her support. The *olmesumech* and the food money, if any is to be considered separately from the *olmesumech* are matters which according to Palau custom should be determined by a meeting of the relatives of the wife and the relatives of the husband. If the claim for food money is not brought up at this meeting, it must be considered that any such claim is waived. If the *olmesumech* is approved by the person authorized under the custom to represent the wife and by the person so authorized to represent the husband, and is paid to the person so authorized to represent the wife, without any claim for food money having been advanced, that ends the matter of claims for both *olmesumech* and food money so far as both sides are concerned. The representatives referred to are usually the maternal uncle or the father of each spouse, if living, and none of the *olmesumech* or the food money, if any, goes to the divorced wife as a matter of right.

[7-9] For the courts to endeavor to determine amounts due for *olmesumech* or food money without such a meeting, or contrary to a determination at such a meeting, at the request of the divorced wife, is highly disruptive of family discipline and interferes with the rights of the senior members of the families involved. It is believed that, in the future, Trust Territory courts should only consider such matters after all reasonable efforts have been made to exhaust the possibility of determining them through traditional channels, short of the use or threat of violence. This means that the courts should not entertain actions for either *olmesumech* or food money until the traditional type of meeting referred to above has been held and there has been a failure to reach an agree-

ment after honest and diligent effort to do so, or it is shown that the husband's relatives are improperly avoiding or preventing such a meeting. Even then the action should be entertained only at the instigation of the person authorized under the custom to represent the wife in such negotiations. For an application of these same principles to a divorce of Palauans, granted by a court under the Trust Territory Code, see opinion of this court in *Itelbang v. Gabrina*, 2 T.T.R. 194.

[10-12] The judgment appealed from does not purport to involve children's money, and the court can see no proper basis for considering that at this time as requested by counsel for the appellee. While children's money is often decided upon at the same meeting as the *olmesum-ech*, it appears that it is essentially a separate matter, which, if not so decided upon, may be taken up later. It further appears that children's money is payable under the custom in the Palau money or property and not in American money, and is again a matter to be claimed by the proper relative of the divorced wife and not by the wife herself.

JUDGMENT

1. The judgment of the District Court for the Palau District, in its Civil Action No. 715, is set aside and judgment entered for the defendant without costs.

2. This judgment, however, does not determine anything about the question of children's money which may or may not be due from the relatives of the defendant to the relatives of the plaintiff, nor does it preclude the latter from pressing for such money through traditional Palauan channels and, if that fails, bringing the matter to the court, but any action for such children's money shall be brought by the person authorized under Palau custom to receive any such money.