

Digest of Cases Reported

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TOPICS APPEARING IN THIS DIGEST

Trusteeship
Trust Territory

Y

Yap Custom
Yap Land Law

APPEAL AND ERROR

A

AFFRAY.

Public Place

One of the elements to be proved in a prosecution for a violation of section 424 of the Trust Territory Code relating to affray is that the offense occurred in a "public place". *Ngirboketereng v. Trust Territory*, 1 T.T.R. 216.

APPEAL AND ERROR.

Generally

Courts considering appeals in Trust Territory are not concerned with fine points of evidence. *Borja v. Trust Territory*, 1 T.T.R. 280.

Courts considering appeals in Trust Territory are concerned with substantial justice rather than with fine points of law and evidence. *Bisente v. Trust Territory*, 1 T.T.R. 327.

Where appeal is from dismissal of complaint for failure to state cause of action, court will accept all material allegations in amended complaint as true regardless of how badly it was drawn. *Alfonso v. Island Trading Company of Micronesia*, 1 T.T.R. 593.

Evidentiary Error

Appellate courts in Trust Territory are not expected to disturb judgment for error in admission or exclusion of evidence, or any other error, unless refusal to take such action appears inconsistent with substantial justice. (T.T.C., Sec. 337) *Borja v. Trust Territory*, 1 T.T.R. 280.

Ordinary effect in Trust Territory of lower court's receiving improper evidence is that on appeal, such evidence will not be considered. *Bisente v. Trust Territory*, 1 T.T.R. 327.

Scope of Review

Trial Division of the High Court has broad powers on appeal to set aside judgment and remand case with such directions for new trial as may be just, instead of merely reversing judgment. (T.T.C., Sec. 200) *Ngirmidol v. Trust Territory*, 1 T.T.R. 274.

Theory upon which case is tried should also be followed on appeal and trial assistants cannot advance new theories for first time on appeal. *Jatios v. Levi*, 1 T.T.R. 578.

Scope of Review, see, also, Criminal Law—Appeals

—Record

When it is clearly shown that official record is in error, it is duty of appellate court to consider facts. *Purako v. Efou*, 1 T.T.R. 236.

APPEAL AND ERROR

—Facts

Appellate court will not set aside findings of facts of trial court unless clearly erroneous. (T.T.C., Sec. 200) *Jatios v. Levi*, 1 T.T.R. 578.

—Witness Credibility

Where trial court has opportunity to hear witnesses and judge their credibility, judgment of trial court will be affirmed as to these issues. *Moon v. Trust Territory*, 1 T.T.R. 611.

ASSAULT.

Generally

Before there can be successful prosecution for crime of assault, it must appear there was attempt by force or violence to strike another or cause him bodily harm. (T.T.C., Sec. 378) *Nichig v. Trust Territory*, 1 T.T.R. 409.

To constitute criminal assault, there must be overt act or attempt, or unequivocal appearance of attempt, with force and violence, to do physical injury to person of another. (T.T.C., Sec. 378) *Nichig v. Trust Territory*, 1 T.T.R. 409.

Where complainant of alleged assault remains in hiding and is not menaced by defendant's knife, and there is no attempt to frighten or hit him with knife or other weapon, facts fail to make out case of assault. (T.T.C., Sec. 378) *Nichig v. Trust Territory*, 1 T.T.R. 409.

ASSAULT AND BATTERY.

Generally

Where amount of force used in battery is unlawful, degree of force which is used is immaterial. (T.T.C., Sec. 379) *Partridge v. Trust Territory*, 1 T.T.R. 265.

Self-Defense

Person being rightfully ejected by use of excessive force may defend himself against use of excessive force. *Partridge v. Trust Territory*, 1 T.T.R. 265.

If victim of alleged criminal assault is aggressor, finding that accused in criminal case acted in self-defense is justified. (T.T.C., Sec. 378) *Yaoch v. Trust Territory*, 1 T.T.R. 192.

Where person accused of assault and battery contends he was acting in self-defense, and evidence shows he threw victim to ground and thereafter picked up rock and struck victim's head, he is held to have used force in excess of that which he is privileged to use in self-defense. (T.T.C., Sec. 379) *Yaoch v. Trust Territory*, 1 T.T.R. 192.

Ejection of Trespasser

Force may be used to eject trespasser if it does not exceed that which is correctly or reasonably believed to be necessary to terminate intrusion. *Partridge v. Trust Territory*, 1 T.T.R. 265.

CIVIL PROCEDURE

Use of greater force than is necessary to eject trespasser will make individual liable for assault for so much of force as is excessive. (T.T.C., Sec. 378) Partridge v. Trust Territory, 1 T.T.R. 265.

Where person in public place or semi-public place becomes trespasser and upon request to leave fails to depart within reasonable time, proprietor may use such force as is reasonably necessary to eject him, but if more force is used than is necessary, acts constitute assault and battery. (T.T.C., Sec. 379) Partridge v. Trust Territory, 1 T.T.R. 265.

B

BURGLARY.

Generally

Crime of burglary includes act of entering dwelling house by force with intent to steal or commit a felony or petit larceny. (T.T.C., Sec. 391) Nichig v. Trust Territory, 1 T.T.R. 572.

Act of accused in taking woman's underclothing from line after he enters house cannot technically constitute part of burglary, which is completed upon his unlawful entry with necessary force and intent. (T.T.C., Sec. 391) Olber v. Trust Territory, 1 T.T.R. 559.

Felonious Intent

Proof of larceny or other felony is often necessary part of proof of intent involved in burglary. (T.T.C., Sec. 391) Olber v. Trust Territory, 1 T.T.R. 559.

Lesser Included Offense

In criminal prosecution for burglary, although element of trespass as to underclothing taken from house is not technically included in burglary charge, finding of guilty of trespass so far as taking of piece of underclothing is concerned does not result in any injustice to accused. (T.T.C., Sec. 401) Olber v. Trust Territory, 1 T.T.R. 559.

C

CIVIL PROCEDURE.

Generally

Trials should be conducted with enough formality and order so that there can be no reasonable doubt as to what case or cases are being tried. Ngirmidol v. Trust Territory, 1 T.T.R. 274.

After trial judge has once indicated that taking of testimony is finished, he should not take further testimony without making clear to both sides he is re-opening case and giving them same opportunity to be heard concerning additional testimony that they would have had if it had been introduced at original trial. Ngirmidol v. Trust Territory, 1 T.T.R. 274.

CONFESSIONS

CONFESSIONS.

Admissibility

In criminal prosecution, confession is presumed to be voluntary unless it is objected to, or there is something in confession which indicates it is inadmissible. *Haruo v. Trust Territory*, 1 T.T.R. 565.

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 criminal prosecution, accused is prejudiced thereby and finding of guilt and sentence will be set aside. *Haruo v. Trust Territory*, 1 T.T.R. 565.

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 T.T.R. 601.

—Trial Procedure

In criminal prosecution, once it becomes clear to court that accused's basic defense is that alleged confession is involuntary and untrue, it is duty of court to reopen question of whether confession is in fact voluntary, make 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 T.T.R. 565.

—Illegal Custody

If person is deliberately held in custody for four days and thereby induced to make confession of crime on fourth day and is not charged with any criminal offense until fifth day, confession is clearly involuntary and inadmissible. (Interim Regulation No. 2-51, Secs. 21, 55) *Haruo v. Trust Territory*, 1 T.T.R. 565.

—Subsequent Tainted Admissions

In criminal proceedings, where confession is held inadmissible as involuntarily obtained, but accused later makes admissions to police officers during subsequent re-enactment of crime, subsequent admissions are inadmissible if influenced by original taint and not free from original influence which led accused to confess. *Rungun v. Trust Territory*, 1 T.T.R. 601.

Corroborating Evidence

It is sufficient for criminal conviction in Trust Territory courts if there is substantial undisputed circumstantial evidence that accused committed crime, which corroborates confession of accused. *Bisente v. Trust Territory*, 1 T.T.R. 327.

Criminal conviction in Trust Territory courts may be based upon confession of accused corroborated by other substantial evidence if court is satisfied beyond reasonable doubt upon all the evidence, including confession, that accused committed the crime. *Bisente v. Trust Territory*, 1 T.T.R. 327.

CONTEMPT

It is sufficient if, in criminal prosecution, accused's confession is corroborated by other substantial evidence and court is satisfied beyond reasonable doubt upon all the evidence, including confession, that accused committed crime charged. *Marbou v. Trust Territory*, 1 T.T.R. 269.

CONSTITUTIONAL LAW.

Custom—Applicability

Trust Territory Bill of Rights is limited by existing customary law, except as otherwise determined by High Commissioner. (T.T.C., Sec. 4) *Ichiro v. Bismark*, 1 T.T.R. 57.

Due Process

Words of due process clause, when used in Trust Territory Bill of Rights, are presumed to have same meaning as in United States, in those situations to which they are applicable. (T.T.C., Sec. 4) *Ichiro v. Bismark*, 1 T.T.R. 57.

Words "due process of law," when used by Americans in Trust Territory Bill of Rights, must be presumed to mean the same thing they do in United States in those situations to which they are applicable. *Purako v. Efo*, 1 T.T.R. 236.

Due process of law has acquired widely known meaning in United States as guaranteeing part of ancient English liberties confirmed in Magna Charta in 1215. *Purako v. Efo*, 1 T.T.R. 236.

One acting under due process of law guarantee is presumed to intend that discretionary powers granted by him to deprive individual of his liberty will be exercised in accordance with such guarantee, unless contrary intention is indicated. (T.T.C., Sec. 4) *Ichiro v. Bismark*, 1 T.T.R. 57.

No person may be deprived of life, liberty, or property without due process of law. (T.T.C, Sec. 4) *Ichiro v. Bismark*, 1 T.T.R. 57.

Opportunity to be heard is essential element of due process of law. (T.T.C., Sec. 4) *Ichiro v. Bismark*, 1 T.T.R. 57.

Public Trial and Confrontation of Witnesses

Trust Territory courts are expected to accord accused in criminal prosecution all rights guaranteed him by Trust Territory Code, including right to be confronted with witnesses against him. (T.T.C., Sec. 4) *Borja v. Trust Territory*, 1 T.T.R. 280.

Witnesses, see, also, Courts—Witnesses; Criminal Law—Rights of Accused

CONTEMPT.

Civil—Failure to Pay Fine

Court may sentence defendant to imprisonment for failure to pay fine and such direction may be given or modified at any time until fine is paid in full or imprisonment served which has been ordered in default of payment, provided accused is given opportunity to be heard

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before any such direction or order is given or modified, except when direction or order is given at time sentence is imposed. (T.T.C., Sec. 169) *Raismet v. Trust Territory*, 1 T.T.R. 631.

Criminal—Failure to Obey Witness Summons

Failure by any person without adequate excuse to obey witness summons may be deemed contempt of court. (Rules of Crim. Proc., Rule 19f; Rules of Civ. Proc., Rule 23) *Moap v. Kapuich*, 1 T.T.R. 449.

CONTRACTS.

Rescission

Under American common law, conveyance of land in consideration of agreement to support may be cancelled if transferee substantially fails to perform his agreement. *Lusama v. Eunpeseun*, 1 T.T.R. 249.

Void Contracts—Restitution

Where money, labor and materials have been advanced in good faith on agreement which does not constitute binding contract, cash advanced by one party and not used for purposes contemplated shall be returned, less fair allowance for anything other party has reasonably contributed. *Ualag v. Itpik*, 1 T.T.R. 288.

COURTS.

High Court

Appellate Division of the High Court has jurisdiction over questions arising under Trust Territory Bill of Rights. (T.T.C., Sec. 124(b)) *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 615.

Community Courts

Jurisdiction of Community Courts in criminal cases is limited to those in which maximum punishment which may be imposed does not exceed one hundred dollars or imprisonment for six months, or both. (T.T.C., Sec. 149) *Purako v. Efou*, 1 T.T.R. 236.

Community Court has no jurisdiction to try any person for bigamy, and conviction of this offense in Community Court is void. (T.T.C., Sec. 406) *Purako v. Efou*, 1 T.T.R. 236.

Justiciable Controversy

Where there is no breach of contract alleged, business policies of corporation are not subject to judicial cognizance nor does objection to them present a justiciable controversy. *Alfonso v. Island Trading Company of Micronesia*, 1 T.T.R. 593.

Parties

Where parties defendant have asked for no determination of rights as between themselves, no such determination will be made. *Wasisang v. Trust Territory*, 1 T.T.R. 14; *Toter v. Iouanes*, 1 T.T.R. 160.

Where court determines plaintiff has no interest in land, court will not determine rights among defendants unless defendants request that it do so. *Tosiko v. Upuili*, 1 T.T.R. 436.

COURTS

Where government has interest in land but is not party to action, no determination of government's rights will be made. *Weirland v. Weirland*, 1 T.T.R. 201.

Where neither Trust Territory nor Alien Property Custodian is party to action, no determination is made as to their rights in land. *Francisca v. Ladore*, 1 T.T.R. 303.

Where government is not a party to suit, judgment does not give any rights as against it on account of airfield on land in question. *Lalik v. Lazarus S.*, 1 T.T.R. 143.

Where Trust Territory Government or Alien Property Custodian are not party to action for determination of ownership of land in Truk, no determination is made as to rights of government. *Tosiko v. Upuili*, 1 T.T.R. 436.

Witnesses

Testifying in court is public duty and essential to our system of justice in order that true facts may be brought to attention of court by any party, no matter how unpopular he may be. *Moap v. Kapuich*, 1 T.T.R. 449.

Every ordinary witness, subject to be summoned in Trust Territory to appear and testify, has public duty to testify truthfully as to things within his personal knowledge subject to limitation against self-incrimination. *Moap v. Kapuich*, 1 T.T.R. 449.

Witnesses, see, also, Constitutional Law—Public Trial and Confrontation of Witnesses; Criminal Law—Rights of Accused—Confrontation of Witnesses.

—Expert Witness

Expert witness testifying as to professional opinion is in position different from ordinary witness. *Moap v. Kapuich*, 1 T.T.R. 449.

—Fees and Expenses

Obligation to testify without further compensation than written law provides is requirement in countries which follow English and American system of common law. *Moap v. Kapuich*, 1 T.T.R. 449.

In certain cases, witness in Trust Territory may have to testify without any fee. (T.T.C., Secs. 261, 262) *Moap v. Kapuich*, 1 T.T.R. 449.

Voluntary payment to witness of more than law provides is improper unless amount paid is clearly no more than enough to reimburse witness for expense or loss to which he has been put by his attendance as witness. *Moap v. Kapuich*, 1 T.T.R. 449.

Witness is entitled to no compensation for his time and travel other than that specified in Trust Territory Code. (T.T.C., Secs. 259, 260) *Moap v. Kapuich*, 1 T.T.R. 449.

Witness' right to fees for travel is limited by words "unless suitable transportation is provided without expense to him" in applicable Trust Territory law. (T.T.C., Sec. 259) *Moap v. Kapuich*, 1 T.T.R. 449.

COURTS

Parties and witnesses should cooperate in making the best of what transportation to site of trial is available at moderate cost and commonly used between points involved. *Moap v. Kapuich*, 1 T.T.R. 449.

Parties' counsel should arrange for transportation that is as convenient for witness as reasonably can be, but witnesses should not refuse transportation because it will not permit them to do personal business or because trip is not by most direct or convenient route possible. *Moap v. Kapuich*, 1 T.T.R. 449.

Witness may not claim reimbursement for travel to "celebration" of victory of person for whom he testifies. *Moap v. Kapuich*, 1 T.T.R. 449.

Judicial Notice

Court will take judicial notice that particularly difficult law enforcement situation exists in community owing to its nature and hesitation of local leaders to impose traditional restraints there. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 345.

Quo Warranto

Although there is no express provision for use of writ of *quo warranto* in Trust Territory, use of writ is available under prevailing law. *Trust Territory v. Benido*, 1 T.T.R. 46.

CRIMINAL LAW.

Corpus Delicti

It is not necessary for prosecution in criminal case to prove corpus delicti (or "body of crime") beyond reasonable doubt independent of accused's confession made outside of court. *Marbou v. Trust Territory*, 1 T.T.R. 269.

It is not necessary in Trust Territory courts for prosecution in criminal case to prove corpus delicti beyond reasonable doubt independent of accused's confession outside of court. *Bisente v. Trust Territory*, 1 T.T.R. 327.

Custom

Indigenous customs prevailing in area where alleged crime has occurred must be given careful consideration both in determining accused's motives and effect his acts should be expected to have on others. *Olber v. Trust Territory*, 1 T.T.R. 559.

Right to fair trial requires reversal where violation of local custom is stated as charge in criminal prosecution but government fails to state which custom was violated. *Fred v. Trust Territory*, 1 T.T.R. 600.

Intent

Court in criminal case is not required to believe accused's statement of his intent but is entitled to draw fair inference as to intent from all the testimony. *Marbou v. Trust Territory*, 1 T.T.R. 269.

Where inference most favorable to accused in criminal case is that he did not expect to be prosecuted and that others who had taken property

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under similar circumstances had not been prosecuted, inference is not sufficient to put accused in position of one who takes property in good faith with consent of employee of owner, honestly and reasonably believing employee is authorized to give such consent. *Marbou v. Trust Territory*, 1 T.T.R. 269.

Self-Defense

One may not use any means of self-defense which is likely to cause injury or harm in excess of that necessary to protect himself from injury. *Yaoch v. Trust Territory*, 1 T.T.R. 192.

When one is acting in self-defense he may only exert such force as he has reasonable grounds to believe is necessary to protect himself from injury. *Yaoch v. Trust Territory*, 1 T.T.R. 192.

In determining whether particular means used in self-defense is or is not excessive, amount of force exerted, means or instrument by which it is applied, manner or method of applying it, and circumstances under which it is applied are factors to be considered. *Yaoch v. Trust Territory*, 1 T.T.R. 192.

Principal and Accessory—Accessory After the Fact

Whoever, knowing crime to have been committed, unlawfully receives, comforts, harbors, aids or advises or assists person he knows committed crime is accessory after the fact. (T.T.C., Sec. 430) *Yangilemau v. Mahoburimalei*, 1 T.T.R. 429.

Under Trust Territory law defining accessory after the fact, words "comfort", "harbor", "aid", and "assist" might apply to otherwise innocent person living in same household and communing daily with couple allegedly guilty of incestuous relationship. (T.T.C., Sec. 430) *Yangilemau v. Mahoburimalei*, 1 T.T.R. 429.

One does not become accessory after the fact who, knowing crime has been committed, merely fails to give information thereof. (T.T.C., Sec. 430) *Yangilemau v. Mahoburimalei*, 1 T.T.R. 429.

Where family members are in position of aiding couple in continuance of incestuous relationship, they are exposed to possibility of prosecution for crime of accessory after the fact. (T.T.C., Sec. 430) *Yangilemau v. Mahoburimalei*, 1 T.T.R. 429.

Complaint

Criminal complaint signed by member of Constabulary, not made on information and belief but upon personal knowledge of affiant, is proper under Rules and Regulations of Constabulary. *Uaayan v. Trust Territory*, 1 T.T.R. 418.

Right to fair and impartial trial requires reversal where accused is found guilty of violation of offense for which he has not been charged and concerning which no evidence is introduced. *Fred v. Trust Territory*, 1 T.T.R. 600.

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Person charged with violation of law in connection with one incident cannot be convicted on that charge by showing violation in connection with entirely different incident, without any charge covering latter incident being preferred. *Flores v. Trust Territory*, 1 T.T.R. 377.

Court in criminal prosecution may direct new or additional charges be prepared against accused if evidence introduced by prosecution tends to support them, but accused should then be given opportunity to plead and defend against new or additional charges. (Rules of Crim. Proc., Rule 13(h)(2)) *Flores v. Trust Territory*, 1 T.T.R. 377.

Drafting of complaint subsequent to trial, charging person with commission of specific offense not mentioned at trial and not included within offense charged at trial and against which that person has had no opportunity to defend himself, has no legal effect. *Purako v. Efou*, 1 T.T.R. 236.

—Warrant of Arrest

If criminal complaint states essential facts constituting criminal offense, official is authorized to issue warrant of arrest. (T.T.C., Sec. 448) *Uaayan v. Trust Territory*, 1 T.T.R. 418.

Anyone who desires issuance of warrant of arrest for criminal offense may personally appear and make complaint before some official authorized to issue warrant. (T.T.C., Sec. 448) *Uaayan v. Trust Territory*, 1 T.T.R. 418.

—Defect

After plea of guilty is entered in criminal proceedings, it is doubtful whether objection as to signing of complaint is still available to defendant, since by pleading guilty defendant waives all defenses other than that indictment charges no offense. *Uaayan v. Trust Territory*, 1 T.T.R. 418.

Where criminal complaint charges in appropriate language offenses to which defendant has pleaded guilty, objection made in motion to dismiss in regard to signing of complaint has been waived, even if objection had merit. *Uaayan v. Trust Territory*, 1 T.T.R. 418.

Pre-Trial Procedure

Person arrested for examination may lawfully be held only forty-eight hours without being charged with criminal offense. (Interim Regulation No. 2-51, Sec. 21) *Haruo v. Trust Territory*, 1 T.T.R. 565.

Rights of Accused

Defendant in criminal proceedings may testify at any time when testimony for defense is being received. (T.T.C., Sec. 187(e)) *Rungun v. Trust Territory*, 1 T.T.R. 601.

—Confrontation of Witnesses

Accused has right in all criminal prosecutions to be confronted with witnesses against him. (T.T.C., Sec. 4) *Ngirmidol v. Trust Territory*, 1 T.T.R. 274.

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Essential purpose of defendant's right to be confronted with witnesses against him in criminal trial is to give accused opportunity for cross-examination and to let him know upon what evidence he is being tried. (T.T.C., Sec. 4) *Ngirmidol v. Trust Territory*, 1 T.T.R. 274.

Where accused in criminal prosecution is denied right to be confronted with witnesses against him, there has been substantial injustice. (T.T.C., Sec. 4) *Borja v. Trust Territory*, 1 T.T.R. 280.

While accused in criminal trial can waive right to be confronted with witnesses against him, either personally or through counsel, it cannot be taken away from him without his consent (T.T.C., Sec. 4) *Ngirmidol v. Trust Territory*, 1 T.T.R. 274.

Cross-examination of witness by same counsel in another case does not take place of right to cross-examination in pending criminal trial since matter that has no proper place in trial of one accused may be of great importance in trial of another. (T.T.C., Sec. 4) *Ngirmidol v. Trust Territory*, 1 T.T.R. 274.

Witnesses, see, also, Courts—Witnesses; Constitutional Law—Public Trial and Confrontation of Witnesses.

Trial Procedure—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 T.T.R. 565.

Where accused in criminal prosecution is represented by counsel known to trial court not to be trained lawyer, and if objection which will affect determination of case is brought to attention of court in good faith at any time before finding and whether in proper form or not, court has duty to make every reasonable effort to put accused in same position he would have been had objection been raised at proper time and in proper manner. *Haruo v. Trust Territory*, 1 T.T.R. 565.

Burden of Proof—Prima Facie Case

Once government has established prima facie case in criminal prosecution, burden is on accused to answer or rebut it, but overall burden is on government to establish accused guilty beyond reasonable doubt on all the evidence. *Flores v. Trust Territory*, 1 T.T.R. 377.

Evidence—Improperly Admitted

Where it is extremely doubtful whether trial court would have found accused guilty without improperly received evidence which covers vital point in case, finding of guilt will be reversed on appeal. *Borja v. Trust Territory*, 1 T.T.R. 280.

Where hearsay evidence is improperly admitted in criminal proceedings, but there is other uncontradicted testimony covering same statement of accused which was properly considered, accused is not preju-

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diced by erroneous ruling on evidence. *Bisente v. Trust Territory*, 1 T.T.R. 327.

—Obtained in Violation of Rights of Accused

Any evidence obtained in violation of Interim Regulation limiting time person may be held without being charged with criminal offense is inadmissible. (Interim Regulation No. 2-51, Sec. 55) *Haruo v. Trust Territory*, 1 T.T.R. 565.

—Physical Evidence

Whenever goods are taken as part of criminal act, fact of subsequent possession is indication that possessor was taker and doer of whole crime. *Nichig v. Trust Territory*, 1 T.T.R. 572.

Witnesses

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. *Borja v. Trust Territory*, 1 T.T.R. 280.

Prosecutor's Error or Admission

Accused in criminal prosecution is not entitled to acquittal as matter of right when prosecution rests without having covered essential point on which it appears probable that evidence is available. (Rules of Crim. Proc., Rules 1 and 13) *Ngirmidol v. Trust Territory*, 1 T.T.R. 274.

Decisions by courts outside Trust Territory, holding that accused is entitled as matter of right to acquittal at close of prosecution's case where prosecution has failed to prove essential element of crime and that if this is not granted he should be acquitted on appeal, have no application here. *Ngirmidol v. Trust Territory*, 1 T.T.R. 274.

When prosecution in criminal case rests without having covered essential point on which it appears probable that evidence is available, court should re-open prosecution and take testimony on point not covered when it appears point was overlooked through inadvertence or misunderstanding and it is probable that there is no great dispute about facts involved. *Ngirmidol v. Trust Territory*, 1 T.T.R. 274.

Surprise

Where taking of woman's underclothing was definitely an issue in prosecution for burglary, accused cannot properly claim any element of undue surprise or lack of opportunity to meet issue fully. *Olber v. Trust Territory*, 1 T.T.R. 559.

Sentence

Sentence imposed by District Court is clearly illegal where it purports to impose both imprisonment and fine and resolution under which penalties are provided only authorizes imprisonment or fine. (Palau Cong. Res. No. 11-55) *Flores v. Trust Territory*, 1 T.T.R. 377.

Where trial court erred in finding defendant guilty of both crime of trespass and malicious mischief, and sentence imposed was no greater

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than he could have reasonably and in his discretion imposed on one of charges alone, defendant is still entitled to new trial if he so desires. (T.T.C., Secs. 398, 401) *Bisente v. Trust Territory*, 1 T.T.R. 327.

Where punishment which could have been imposed on defendant in criminal proceedings was twenty times as great as was imposed on him, and he could have been imprisoned for term of one year, punishment of fine only was moderate and well within discretion of District Court. *Uaayan v. Trust Territory*, 1 T.T.R. 418.

—Comparison with Prior Sentences

Evidence of extenuating circumstances for mitigation of punishment are not sufficiently similar in cases of any two criminal offenses to merit comparison. *Taman v. Trust Territory*, 1 T.T.R. 415.

Comparison of sentences in two criminal cases involving same offense is illogical unless there is available for examination facts with respect to prior involvement in similar offenses. *Taman v. Trust Territory*, 1 T.T.R. 415.

District Court is not required to treat two criminal defendants alike, as court has right to consider other factors besides similarity between two defendants and their offenses in imposing punishment. *Uaayan v. Trust Territory*, 1 T.T.R. 418.

District Court is not required to be indulgent to one criminal defendant because, for reasons not readily apparent, it has yielded to argument of counsel on behalf of other criminal defendant in previous case. *Taman v. Trust Territory*, 1 T.T.R. 415.

—Modification

Where appellate court feels sentence in criminal prosecution is severe, it may reduce sentence even though finding no error in proceedings of trial court. *Romber v. Trust Territory*, 1 T.T.R. 591.

—Repeated Offender

Defendant in criminal proceedings who is repeated offender can hardly expect same light punishment meted out to first offender. *Taman v. Trust Territory*, 1 T.T.R. 415.

Facts of defendant's previous record are presumably before District Court in criminal case as well as facts relative to other defendants who were given lighter sentences in District Court. *Taman v. Trust Territory*, 1 T.T.R. 415.

—Restitution

Even if defendant in criminal proceedings leads authorities to stolen property after agreeing to make restitution, this does not necessarily make a case for lighter punishment. *Taman v. Trust Territory*, 1 T.T.R. 415.

Restitution accomplished by police in locating and seizing stolen goods is not such restitution as entitles defendant in criminal prosecution to special treatment. *Taman v. Trust Territory*, 1 T.T.R. 415.

CRIMINAL LAW

Appeals—Scope of Review

Trial court in criminal proceedings is better able to judge credibility of witnesses as to issue on which there is conflicting testimony than is appellate court. *Fanamthin v. Trust Territory*, 1 T.T.R. 412.

Trial judge in criminal prosecution is in better position than appellate court to weigh conflicting evidence and determine whether actions of accused constituted obstruction of justice. (T.T.C., Sec. 418) *Arokoy v. Trust Territory*, 1 T.T.R. 426.

Since all trials in Trust Territory are without juries, ordinary effect of lower court's receiving improper evidence is that on appeal evidence will be rejected and not considered. *Borja v. Trust Territory*, 1 T.T.R. 280.

When additional facts as to criminal trial are clearly established on appeal, court will consider these facts just as if they were properly included in record, in order to do substantial justice and avoid unnecessary delays and inconvenience. *Marbou v. Trust Territory*, 1 T.T.R. 269.

Scope of Review, see, also, Appeal and Error—Scope of Review.

—Prejudicial Error

It is duty of court on appeal not to set aside any finding, order or sentence for any error or omission unless error or omission has resulted in injustice to accused. (T.T.C., Sec. 497) *Flores v. Trust Territory*, 1 T.T.R. 377.

New Trial

Where justice requires granting accused in criminal appeal new trial if he so desires, accused may choose to let finding and sentence stand rather than proceed with new trial. *Ngirmidol v. Trust Territory*, 1 T.T.R. 274.

Pardon and Parole

Where power is granted to District Administrator to order party returned to prison for breach of conditions of parole, power is subject to normal requirements of due process of law. *Ichiro v. Bismark*, 1 T.T.R. 57.

Party who is released on parole is entitled to notice and opportunity to be heard before order returning him to prison is made, and failure to give such notice and opportunity to be heard renders such order defective. *Ichiro v. Bismark*, 1 T.T.R. 57.

Notice and opportunity to be heard are especially important in cases where person who is authorized to revoke parole exercises substantial judgment or discretion. *Ichiro v. Bismark*, 1 T.T.R. 57.

Where District Administrator is given power to revoke parole, he exercises substantial amount of judgment which might properly be influenced by many factors beyond mere question of whether breach of condition of parole has occurred. *Ichiro v. Bismark*, 1 T.T.R. 57.

If High Commissioner intends to authorize District Administrator to revoke parole without notice and opportunity to be heard, he will so

CUSTOM

stipulate under recognized power to make such express provision. *Ichiro v. Bismark*, 1 T.T.R. 57.

Where there is no stipulation by High Commissioner for revocation of parole without notice and opportunity to be heard, and due process clause is in force at time of attempted revocation, power to revoke parole for alleged breach of conditions cannot be exercised without notice and opportunity to be heard. *Ichiro v. Bismark*, 1 T.T.R. 57.

CUSTOM.

Generally

Custom is a law established by long usage. *Lalou v. Aliang*, 1 T.T.R. 94.

“Custom” is such usage as by common consent and uniform practice has become law of place, or of subject matter, to which it relates. *Lalou v. Aliang*, 1 T.T.R. 94.

Customs may change gradually, and changes may be started by some of people affected agreeing to some new way of doing things. *Lalou v. Aliang*, 1 T.T.R. 94.

Mere agreement to new ways of doing things by those to be benefited, without consent of those to be adversely affected, will not of itself work sudden change of customary law. *Lalou v. Aliang*, 1 T.T.R. 94.

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 T.T.R. 94.

Custom, see, also, Criminal Law—Custom; Constitutional Law—Custom; Specific Heading i.e. Yap Custom.

Applicability

Customary law of various parts of Trust Territory is in effect only so far as not changed by laws promulgated in Trust Territory Code. (T.T.C., Sec. 21) *Lazarus v. Tomijwa*, 1 T.T.R. 123.

When there is conflict between customary law and municipal ordinances, written law prevails. (T.T.C., Secs. 20, 21) *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 615.

When local custom fails to provide acceptable solution for problem involving all residents of governmental subdivision, it is right of one or more of three branches of government to advance solution. *Trust Territory v. Benido*, 1 T.T.R. 46.

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 T.T.R. 429.

DISTURBING THE PEACE

D

DISTURBING THE PEACE.

Generally

Any person who unlawfully and wilfully commits acts which annoy or disturb other persons so that they are deprived of their right to peace and quiet is guilty of disturbing the peace. (T.T.C., Sec. 426) *Medewes v. Trust Territory*, 1 T.T.R. 214.

Where person comes to house between 1:00 a.m. and 3:00 a.m. and calls to persons therein in loud voice, frightening entire household, his course of conduct is clearly breach of the peace as defined in Trust Territory Code. (T.T.C., Sec. 426) *Medewes v. Trust Territory*, 1 T.T.R. 214.

DOMESTIC RELATIONS.

Divorce—Custom

Divorce effected in accordance with local custom is recognized as valid. (T.T.C., Sec. 712) *Aisea v. Trust Territory*, 1 T.T.R. 245.

Divorce, see, also, Palau Custom—Divorce; Truk Custom—Divorce

DRUNKEN AND DISORDERLY CONDUCT.

Public Place

One of the elements to be proved in a prosecution for a violation of section 427 of the Trust Territory Code regarding drunken and disorderly conduct is that the offense occurred in a "public place". *Ngirboketereng v. Trust Territory*, 1 T.T.R. 216.

A public place is any place, even though privately owned or controlled, where persons have assembled, through common usage or by general invitation, express or implied. (T.T.C., Sec. 427) *Raimes v. Trust Territory*, 1 T.T.R. 262.

Any place may be made "public" by temporary assemblage, especially when assemblage is gathered to witness exhibition for hire. (T.T.C., Sec. 427) *Raimes v. Trust Territory*, 1 T.T.R. 262.

Room in which movie is shown and in which people are assembled may be public place within meaning of criminal statute defining drunken and disorderly conduct. (T.T.C., Sec. 427) *Raimes v. Trust Territory*, 1 T.T.R. 262.

E

EMINENT DOMAIN.

Generally

Property may not be taken for public use without just compensation. (T.T.C., Sec. 4) *Santos v. Trust Territory*, 1 T.T.R. 463.

EVIDENCE

Private property may not be taken for public use without consent or payment of just compensation. (T.T.C., Sec. 4) *Esebei v. Trust Territory*, 1 T.T.R. 495.

Taking of private property for public use without adequate compensation violates Trust Territory Bill of Rights. (T.T.C., Sec. 4) *Rusasech v. Trust Territory*, 1 T.T.R. 472.

Under present Trust Territory law, taking of private property without just compensation warrants legal action and ensures recovery of fair compensation. (T.T.C., Sec. 4) *Oiterong v. Trust Territory*, 1 T.T.R. 516.

Taking

Forfeiture of private property comes under interdict of Trust Territory Bill of Rights as taking of property for public use without just compensation. (T.T.C., Sec. 4) *Tamael v. Trust Territory*, 1 T.T.R. 520.

EQUITY.

Laches

Where party seeks aid of courts of present administration to upset situation which continued for many years under Japanese Administration, and made no effort to have this corrected by Japanese Administration, inference is strong that there was nothing she could legally do about it at that time. *Elisa v. Kejerak*, 1 T.T.R. 121.

EVIDENCE.

Documents—Witnesses

Purpose of witnessing document is to facilitate proof of execution of document and to remove doubt about it. *Gibbons v. Bismark*, 1 T.T.R. 372.

When person signs document as a witness he is certifying he was personally present and saw document executed. *Gibbons v. Bismark*, 1 T.T.R. 372.

Consenting to transaction shown by document is quite different matter from witnessing execution of document. *Gibbons v. Bismark*, 1 T.T.R. 372.

If person merely consents to document and does not witness it, he should not sign it as a witness. *Gibbons v. Bismark*, 1 T.T.R. 372.

To give support to witnesses document, witness should be able to show that person executing it did so physically and knew what he or she was doing and intended document to have effect. *Gibbons v. Bismark*, 1 T.T.R. 372.

When person signing document cannot read it, witnesses are of little value unless they can testify to what person indicated he knew about document and what he intended in putting his signature on it. *Gibbons v. Bismark*, 1 T.T.R. 372.

Where alleged witnesses to document were not present when deceased signed document and only know who signed it and under what circum-

EVIDENCE

stances it was signed from what witnesses were told by person to be benefited from it, they are not persuasive witnesses to execution of document. *Gibbons v. Bismark*, 1 T.T.R. 372.

F

FAILURE TO OBEY LAWFUL ORDER OF POLICEMAN.

Generally

Language of Trust Territory law regarding failure to obey lawful order of policeman contemplates signals or direction, immediately given in direction, control or regulation of traffic, and not general or specific instructions given operator an hour, day or month previously. (T.T.C., Sec. 815(h)) *Chisato v. Trust Territory*, 1 T.T.R. 195.

FORMER ADMINISTRATIONS.

Applicable Law

Under rules of international law, validity of rights of citizens to private property within ceded or conquered territory is determined by laws under which rights arose and existed. *Urrimech v. Trust Territory*, 1 T.T.R. 534.

Whether any act was legally wrong should be decided at time act was done, except when changed by some express provision in law. *Wasisang v. Trust Territory*, 1 T.T.R. 14.

Question of whether action of German Government in confiscating land on Ponape Island was legal must be decided according to law at time it took place. *Christopher v. Trust Territory*, 1 T.T.R. 150.

Under League of Nations Mandate, Japan was free to apply its laws to Palau Islands to same extent as though they had been geographical division of the Japanese Empire. *Ngiraibiochel v. Trust Territory*, 1 T.T.R. 485.

Laws of Japan were legally applicable to Palau Islands from December 17, 1920, onward, at least until American occupation. *Ngiraibiochel v. Trust Territory*, 1 T.T.R. 485.

Nothing in Trust Territory Code regarding exceptions to Japanese rule concerning lands below high watermark indicates legislative intent to make provisions retroactive. (T.T.C., Sec. 32) *Ngiraibiochel v. Trust Territory*, 1 T.T.R. 485.

If Japanese proclamation concerning boundaries of private ownership of land along sea was not in effect December 1, 1941, ownership of such land must be determined by rules of common law. *Ngiraibiochel v. Trust Territory*, 1 T.T.R. 485.

Official Acts

Court of present administration is bound by determinations made by previous administrations. *Aneten v. Olaf*, 1 T.T.R. 606.

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In absence of clear evidence of fraud or gross mistake, court will not upset decision of authorities formerly in office. *Ladore v. Ladore*, 1 T.T.R. 21.

It is not function of courts of present administration to upset official act of former administration taken many years before it gave up authority over land in question. *Idingel v. Mada*, 1 T.T.R. 164.

Court of present administration will not assume that German and Japanese Administrations would not have corrected any injustices. *Aneten v. Olaf*, 1 T.T.R. 606.

As succeeding sovereign, present administration of Trust Territory is entitled to rely upon and respect official acts of Japanese Administration. *Wasisang v. Trust Territory*, 1 T.T.R. 14.

Present government is entitled to rely upon and respect official acts of Japanese Administration. *Jatios v. Levi*, 1 T.T.R. 578.

Law-making authorities and not courts are entitled to upset special arrangements in land made by Japanese Government. *Jatios v. Levi*, 1 T.T.R. 578.

Fact that Japanese set up arrangement of land on Marshalls which violated local custom is not valid objection to it. *Jatios v. Levi*, 1 T.T.R. 578.

Where there is no showing that Japanese proclamation regarding taking of tidal lands in Palau Islands operated in discriminatory fashion upon party's land or imposed unusual burdens on him, it will be upheld as within government's legislative competence. *Ngiraibiochel v. Trust Territory*, 1 T.T.R. 485.

It is now too late for courts of present administration to upset decisions of German authorities with respect to ownership of land in Truk. *Wia v. Iosef*, 1 T.T.R. 434.

Change in Custom

Clear departure by former administration from customary law will not be disturbed where change persisted for twenty years prior to United States administration. *Levi v. Kumtak*, 1 T.T.R. 86.

Recognition of Established Rights

It is duty of nation receiving cession of territory to respect all rights of property as those rights were recognized by nation making cession. *Martin v. Trust Territory*, 1 T.T.R. 481; *Esebei v. Trust Territory*, 1 T.T.R. 495.

Under rules of international law, when ceded or conquered territory passes from one sovereign to another, rights of citizens to their private property remain unaffected by change in government. *Urrimech v. Trust Territory*, 1 T.T.R. 534.

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 re-

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quired further act to vest in him perfect title. *Urrimech v. Trust Territory*, 1 T.T.R. 534.

Present administration has obligation to recognize private property rights which were established under former administration except in cases where wrong occurred so near time of change of administration that there was no opportunity for it to be corrected through courts or other agencies of that administration. *Likiaksa v. Skillings*, 1 T.T.R. 87.

Private rights in land which were clear under Japanese Administration should be equally clear under present administration unless something very specific has happened to change them since end of Japanese Administration. *Orijon v. Etjon*, 1 T.T.R. 101.

It is not proper for court to upset situation which continued for many years under Japanese Administration, particularly where party seeking to do so fails to show anything clearly wrong with rights which adverse party was permitted to exercise during that administration. *Elisa v. Kejerak*, 1 T.T.R. 121.

Where party's rights in land are enforceable against Trust Territory Government to same extent they could have been enforceable against prior government, title to land may be perfected under machinery made available by Trust Territory for processing of such claims. *Urrimech v. Trust Territory*, 1 T.T.R. 534.

Where only Trust Territory Government can now deliver title to property as contemplated in agreement between Japanese Government and grantee of property, it is required to carry out agreement of prior government and deliver proper title. *Urrimech v. Trust Territory*, 1 T.T.R. 534.

Matters of recognition by successor sovereign of equitable rights outstanding but undetermined at conclusion of prior sovereignty are not within purview of judicial branch except as they have been recognized by legislative branch. *Rusasech v. Trust Territory*, 1 T.T.R. 472.

Matters of recognition by subsequent sovereign of equitable rights outstanding but undisposed of under prior sovereign are not within purview of judicial branch except as recognized by legislative branch. *Tamael v. Trust Territory*, 1 T.T.R. 520.

Where land claimants treat land as being owned by them, this is indication of ownership and court will assume that German and Japanese Administrations would have corrected injustices. *Kaii v. Kiyoshi*, 1 T.T.R. 609.

Where there is no evidence of appeal to Japanese authorities when dispute arose over thirty years ago, it is now too late for review by present courts. *Kaii v. Kiyoshi*, 1 T.T.R. 609.

Where land claimants have been in possession of land for over seventy-five years and their title was recognized specifically by German authorities, they have title. *Penno v. Hartmann*, 1 T.T.R. 608.

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Alab rights which were clearly established and recognized for at least eight years under former administration will not be upset by courts of this administration on grounds existing then. *Lazarus v. Tomijwa*, 1 T.T.R. 123.

Heir of person recognized as *alab* by Japanese Administration is entitled to such rights pursuant to clear determination of Japanese Government. *Levi v. Kumtak*, 1 T.T.R. 36.

Redress of Prior Wrongs

It is not part of duty of nation receiving cession of territory to right wrongs which grantor nation may have committed upon every individual. *Martin v. Trust Territory*, 1 T.T.R. 481; *Esebei v. Trust Territory*, 1 T.T.R. 495.

There is no legal basis upon which sovereign power can be required to right ancient wrongs committed by prior power before cession or conquest of lands involved. *Ngirudelsang v. Trust Territory*, 1 T.T.R. 512.

There is no legal basis upon which sovereign power can be required to right ancient wrongs committed against its subjects by prior power before cession or conquest of lands involved. *Oiterong v. Trust Territory*, 1 T.T.R. 516; *Ngiratulemau v. Trust Territory*, 1 T.T.R. 530.

There is no adequate legal or equitable basis in general for redress of wrongs committed by prior sovereign against its own subjects such as is cognizable in court of equity. *Santos v. Trust Territory*, 1 T.T.R. 463.

Where question for determination by court involves redress of ancient wrongs of prior power by successor power, international law and not traditional principles of equity jurisprudence are applicable. *Rusasech v. Trust Territory*, 1 T.T.R. 472.

Where question for determination by court involves righting of ancient wrongs of prior power, answer is found in domain of international law and not in principles of equity jurisprudence. *Tamael v. Trust Territory*, 1 T.T.R. 520.

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 T.T.R. 516.

There is no valid legal or equitable ground for dispossessing Trust Territory Government of ownership and use of property when long interval of time has elapsed since party was wrongfully deprived of his title thereto by former government. *Ngirudelsang v. Trust Territory*, 1 T.T.R. 512; *Oiterong v. Trust Territory*, 1 T.T.R. 516; *Ngiratulemau v. Trust Territory*, 1 T.T.R. 530.

While it is duty of nation receiving cession of land to respect all rights of property as recognized by nation making cession, it is no part of its duty to right the wrong which grantor nation may have committed upon every individual. *Santos v. Trust Territory*, 1 T.T.R. 463.

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It is not proper function of courts of present administration to right wrongs which may have been persisted in for many years by former administration. *Wasisang v. Trust Territory*, 1 T.T.R. 14; *Levi v. Kumtak*, 1 T.T.R. 36; *Likiaksa v. Skillings*, 1 T.T.R. 87.

It is not proper function of courts of present administration to right wrongs which may have occurred during former administration and which persisted for many years during previous administration. *Christopher v. Trust Territory*, 1 T.T.R. 150.

It is not proper function of courts of present administration to right wrongs which may have been persisted in by former administration, and granting of relief from any hardship imposed by law then in force is matter of policy to be decided by law-making authorities. *Orijon v. Etjon*, 1 T.T.R. 101.

To expect court of one power to award relief which might have been obtained from prior sovereign, and to right wrongs which that power had persisted in for many years, is to impose unwarranted burden on courts and government of successor power. *Martin v. Trust Territory*, 1 T.T.R. 481.

No jurisdiction is conferred on courts of Trust Territory to award redress of wrongs where Trust Territory Government had no part in commission thereof. *Tamael v. Trust Territory*, 1 T.T.R. 520.

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 T.T.R. 472.

In absence of clear evidence of fraud or gross mistake, present administration has no obligation to rectify, as matter of right, any harshness of previous administration in failing to consent to transfer of land on Ponape Island in accordance with attempted will of owner. *Ladore v. Salpatierre*, 1 T.T.R. 18.

If there was some error in granting German title document for land on Ponape Island it is now too late to have it corrected as matter of right. *Neliana v. Nila*, 1 T.T.R. 171.

If transfers in 1920 of which party now complains were wrongful, it is now too late to expect courts of this administration to correct the wrong. *Isebong v. Kodeb*, 1 T.T.R. 365.

Request of party for land on Ponape Island identical in size to that taken under prior administration lies outside powers of court and should be presented to District Land Office. *Kresensia v. Trust Territory*, 1 T.T.R. 158.

—Exception to Applicable Doctrine

Only recognized exception to doctrine regarding righting of ancient wrongs of former power is in case where wrong occurred so closely to time of change of government so as to have afforded aggrieved party no opportunity to obtain redress in courts. *Ngirudelsang v.*

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Trust Territory, 1 T.T.R. 512; Oiterong v. Trust Territory, 1 T.T.R. 516; Ngiratulemau v. Trust Territory, 1 T.T.R. 530.

Exception to doctrine regarding righting of ancient wrongs of prior sovereign is when wrongs of grantor nation occurred so recently before cession that individual may not have had time to appeal to courts or authorities of that nation for redress. Santos v. Trust Territory, 1 T.T.R. 463; Martin v. Trust Territory, 1 T.T.R. 481; Esebei v. Trust Territory, 1 T.T.R. 495.

Present administration of Trust Territory is not required as matter of right to correct wrongs of former administration, except where wrong occurred so near time of change of administration there was no opportunity to correct it through courts or other agencies of former administration. Wasisang v. Trust Territory, 1 T.T.R. 14.

Unless there was inadequate time for individual to have recourse to courts of grantor nation to right alleged wrong, where matter was pending at time courts were closed because of war, there is no adequate basis for assumption of jurisdiction by Trust Territory courts. Esebei v. Trust Territory, 1 T.T.R. 495.

Exception to doctrine regarding righting of ancient wrongs of grantor nation is inapplicable where wrong occurred more than forty years ago and last effort to correct it occurred more than thirty years ago. Martin v. Trust Territory, 1 T.T.R. 481.

Where taking of private property by Japanese Government occurred in 1919, exception to general rule as to righting of ancient wrongs of former government is not applicable. Oiterong v. Trust Territory, 1 T.T.R. 516.

Taking of Private Property by Japanese Government—Limitations

Reasonable cut-off date for origination of claims involving transfers of land to Japanese Government is entirely matter of legislative prerogative. Tamael v. Trust Territory, 1 T.T.R. 520.

From 1946 or 1947 until June 29, 1953, no comprehensive machinery was available to process claim against Trust Territory Government for return of land, nor could claim be effectively prosecuted until Trust Territory Government had consented to its enforcement. Urrimech v. Trust Territory, 1 T.T.R. 534.

No adequate machinery was set up by Trust Territory Government for filing of claims against government for return of land or payment of compensation until January 11, 1951. Santos v. Trust Territory, 1 T.T.R. 463.

Trust Territory Administration policy statement regarding return of lands taken by Japanese Government from native owners is binding on courts until rescinded or modified. (Policy Letter P-1, December 29, 1947) Rusasech v. Trust Territory, 1 T.T.R. 472; Tamael v. Trust Territory, 1 T.T.R. 520.

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Decisions of former governments prior to March 27, 1935, relating to land ownership and rights are binding. (Policy Letter P-1, December 29, 1947) *Ngiraibiochel v. Trust Territory*, 1 T.T.R. 485.

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. (Policy Letter P-1, December 29, 1947) *Santos v. Trust Territory*, 1 T.T.R. 463.

Land transfers from non-Japanese owners to Japanese Government, corporations or nationals since March 27, 1935, are considered valid unless former owner establishes sale was not made of free will and just compensation not received. (Policy Letter P-1, December 29, 1947) *Tamael v. Trust Territory*, 1 T.T.R. 520.

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. (Policy Letter P-1, December 29, 1947) *Rusasech v. Trust Territory*, 1 T.T.R. 472; *Ngiraibiochel v. Trust Territory*, 1 T.T.R. 485; *Esebei v. Trust Territory*, 1 T.T.R. 495.

Where land was taken by Japanese Government by coercion and without payment of compensation, action was no better than forfeiture of property. *Tamael v. Trust Territory*, 1 T.T.R. 520.

Where taking of property by Japanese Government was not by free will of owner and just compensation not received, title to property ought to be returned to former owner where taking is construed to have occurred since March 27, 1935. (Policy Letter P-1, December 29, 1947) *Santos v. Trust Territory*, 1 T.T.R. 463.

Reasonable cut-off date for origination of claims against Trust Territory Government is entirely matter of legislative prerogative. *Rusasech v. Trust Territory*, 1 T.T.R. 472.

Where no claim is made by party that his land was transferred to Japanese Government or that consideration was paid by Japanese Government for tidal lands, Trust Territory administrative policy as to land transfers occurring since March 27, 1935, is not applicable. (Policy Letter P-1, December 29, 1947) *Ngiraibiochel v. Trust Territory*, 1 T.T.R. 485.

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 T.T.R. 495.

Fact that arrangement of land by Japanese Administration was induced by misrepresentations is not valid objection where parties or predecessors had time to appeal to Japanese Administration. *Jatios v. Levi*, 1 T.T.R. 578.

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Even if taking of private property by Japanese Government represents a taking prior to cut-off date set by Trust Territory policy, claim arising before that date is not necessarily barred. (Office of Land Management Regulation No. 1) *Tamael v. Trust Territory*, 1 T.T.R. 520.

If private property taken by Japanese Government is not returnable under provisions of administrative policy regarding transfers to Japanese Government from native owners, then claim for its return may still fall into one of categories of Office of Land Management Regulation No. 1, and land may be returnable thereunder. *Tamael v. Trust Territory*, 1 T.T.R. 520.

Prosecution of claims for return of land or payment of compensation in Japanese courts was effectively restrained by coming of war. *Santos v. Trust Territory*, 1 T.T.R. 463.

Action filed by party in High Court of Japanese Government was existing cause of action at time further action was stopped on account of war. *Esebei v. Trust Territory*, 1 T.T.R. 495.

Action filed by party in High Court of Japanese Government for return of land was existing cause of action at time further action was stopped on account of war. *Santos v. Trust Territory*, 1 T.T.R. 463.

Where no final decision was received from Japanese courts on party's claim up to coming of war, adequate time has not been permitted within meaning of general principle regarding ancient wrongs of grantor nation. *Esebei v. Trust Territory*, 1 T.T.R. 495.

Where no final decision on claim for return of land was handed down by Japanese courts prior to coming of war, adequate time has not been permitted for recourse to courts. *Rusasech v. Trust Territory*, 1 T.T.R. 472.

Where taking of property by Japanese Government was in suspense at date of declaration of war, it was not a taking prior to March 27, 1935. *Santos v. Trust Territory*, 1 T.T.R. 463.

For purpose of determining impact of limitations, any cause of action existing on May 28, 1951, is considered to have accrued on that date. (T.T.C., Sec. 324) *Santos v. Trust Territory*, 1 T.T.R. 463; *Esebei v. Trust Territory*, 1 T.T.R. 495.

Where party's claim for return of property taken by Japanese Government was existing cause of action on December 1, 1941, it is considered to have accrued on May 28, 1951. (T.T.C., Sec. 324) *Tamael v. Trust Territory*, 1 T.T.R. 520.

Where action filed by party in High Court of Japanese Government was stopped on account of war, and Trust Territory law provides that cause of action existing on May 28, 1951, is considered to have accrued on that date, party's claim was existing cause of action on December 7, 1941, and also on May 28, 1951. (T.T.C., Sec. 324) *Esebei v. Trust Territory*, 1 T.T.R. 495.

FORMER ADMINISTRATIONS

Where party's claim for return of land was existing cause of action at time further action in Japanese courts was stopped on account of war, claim was existing cause of action on December 7, 1941. Santos v. Trust Territory, 1 T.T.R. 463.

Where party's claim for return of land taken by Japanese Government in 1925 was effectively stayed by coming of war, and no machinery was set up by Trust Territory Government for filing of such claims until January 11, 1951, filing of claim with District Land Title Officer on May 25, 1954, was in apt time. (Office of Land Management Regulation No. 1) Rusasech v. Trust Territory, 1 T.T.R. 472.

Where taking of private property by Japanese Government occurred prior to March 27, 1935, but taking was protested and subjected to judicial interposition, and final adjudication occurred so shortly before closing of courts to further action as to have given party inadequate time for redress of wrongs, taking is held to have been in suspense and does not constitute taking prior to cut-off date. Tamael v. Trust Territory, 1 T.T.R. 520.

Where prosecution of party's claim was effectively restrained by coming of war, and no adequate machinery was set up by Trust Territory Government for filing of appellant's claims until January 11, 1951, party's claim filed with Land Title Officer on January 4, 1956, was filed in apt time. (Land and Claims Regulation No. 1; Office of Land Management Regulation No. 1) Esebei v. Trust Territory, 1 T.T.R. 495.

Where claim for return of land was existing cause of action on December 7, 1941, and claim was filed with District Land Title Officer on February 23, 1954, it was filed in apt time. (Office of Land Management Regulation No. 1) Santos v. Trust Territory, 1 T.T.R. 463.

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 T.T.R. 472.

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 T.T.R. 495.

Where claim for return of lands taken by Japanese Government in 1927 was undisposed of and pending in courts of Japanese Administration at time war began, it was existing cause of action on December 1, 1941, and also on May 28, 1951, and is considered to have accrued on latter date. (T.T.C., Sec. 324) Rusasech v. Trust Territory, 1 T.T.R. 472.

Where no final decision on party's claim for return of land or payment of compensation was received from Japanese courts up to coming of

HABEAS CORPUS

war, adequate time has not been permitted for recourse to courts. Santos v. Trust Territory, 1 T.T.R. 463.

Where prosecution of party's claim for return of property taken by Japanese Government was effectively stayed because of coming of World War II, and no machinery was set up for filing of such claims until January 11, 1951, party's claim is timely filed under applicable Land Management Regulation. (Land Management Regulation No. 1) Tamael v. Trust Territory, 1 T.T.R. 520.

Where Japanese courts determined clan's claim for return of property taken by government in 1939, and within two years any other effective action that might have been taken was barred by coming of war, adequate time for recourse to courts or elsewhere for redress of wrongs was not available to clan prior to change of sovereignty. Tamael v. Trust Territory, 1 T.T.R. 520.

Until Trust Territory Government opens doors to claims for redress of wrongs originating as far back as 1920 and 1934, court may not act where legislative branch has failed to do so. Ngiratulemau v. Trust Territory, 1 T.T.R. 530.

Until Trust Territory Government has opened door to claims for redress of wrongs originating as far back as 1927 and 1930, court may not act where legislative branch has failed to do so. Oiterong v. Trust Territory, 1 T.T.R. 516.

Until Trust Territory Government opens door to claims for redress of wrongs originating as far back as 1919, court may not restore what legislative branch has not sanctioned. Ngirudelsang v. Trust Territory, 1 T.T.R. 512.

Where taking of land of proper owner by Japanese Government occurred in 1920 and again in 1934, exception to rule regarding righting of ancient wrongs of former power is not applicable. Ngiratulemau v. Trust Territory, 1 T.T.R. 530.

Where taking of property by Japanese Government occurred in 1919, exception to doctrine regarding righting of ancient wrongs is not applicable. Ngirudelsang v. Trust Territory, 1 T.T.R. 512.

Where taking of private property by Japanese Navy occurred forty years prior to filing of claim, and thirty years have transpired since last effort to regain possession was made, claim is not cognizable by court of equity. Martin v. Trust Territory, 1 T.T.R. 481.

H

HABEAS CORPUS.

Generally

Where party is denied due process of law in revocation of his parole, his discharge on habeas corpus will be delayed in order that defect may be corrected. Ichiro v. Bismark, 1 T.T.R. 57.

HABEAS CORPUS

Jurisdictional Error

Writ of habeas corpus reaches jurisdictional error only and cannot properly be used to serve mere purpose of appeal or writ of error. (T.T.C., Sec. 4) *Purako v. Efou*, 1 T.T.R. 236.

Jurisdiction of court or judge to make order, judgment or sentence by which person is imprisoned is always proper subject of inquiry on habeas corpus. *Purako v. Efou*, 1 T.T.R. 236.

No court may properly release prisoner held under warrant, conviction, or sentence of another court, unless for want of jurisdiction or some other matter rendering its proceedings void. *Purako v. Efou*, 1 T.T.R. 236.

If alleged excess or want of jurisdiction is found to exist, judgment or order is absolutely void and prisoner may be discharged from custody. *Purako v. Efou*, 1 T.T.R. 236.

HOMESTEADS.

Generally

Typical homestead entry involves gift of land from public domain upon consideration grantee develop, improve, and occupy it for stated number of years, after which title vests in grantee. *Urrimech v. Trust Territory*, 1 T.T.R. 534.

Typical homestead entry involves no payment other than effort expended and conditions such as actual entry, residence, cultivation and restrictions against alienation. *Urrimech v. Trust Territory*, 1 T.T.R. 534.

Restriction Against Alienation

Trust Territory restriction against alienation of land under homestead agreement is prospective only and did not take effect in Trust Territory until November 15, 1952. (Executive Order No. 31) *Urrimech v. Trust Territory*, 1 T.T.R. 534.

Merger with Leasehold Estate

Where transferee of rights of Japanese leasehold on Ponape Island, instead of requesting approval of transfer, acquires Homestead Permit, leasehold estate purportedly transferred merges into greater estate when applicant receives deed of fee title upon completion of requirements of Permit for development of land. *Kehler v. Kehler*, 1 T.T.R. 398.

Jointly-Held Permit

Where required by valid instructions of decedent, title acquired by devisee who applies for Homestead Permit is held jointly with co-beneficiary. *Kehler v. Kehler*, 1 T.T.R. 398.

I

INTERNATIONAL LAW.

Sovereignty

Right to enact laws determinative of boundaries of land lying along shores of open sea is traditional attribute of sovereignty. *Ngiraibiochel v. Trust Territory*, 1 T.T.R. 485.

—Sovereign Immunity

Implicit in sovereignty of nations is right to determine how, when, and under what circumstances they may be sued. *Tamael v. Trust Territory*, 1 T.T.R. 520; *Urrimech v. Trust Territory*, 1 T.T.R. 534.

J

JUDGMENTS.

Res Judicata

Court will not consider same contentions and evidence offered in previous case, although now offered by other parties, and arrive at opposite conclusion, but will consider new matter involving other parties not privies of those in former case, and pertaining to other property. *Abijai v. Jiwirak T.*, 1 T.T.R. 389.

Where no new matter is offered in opposition to *iroij lablab* rights determined in previous case, such opposition will fail. *Abijai v. Jiwirak T.*, 1 T.T.R. 389.

Continuing Jurisdiction

Where Palauan clan has failed to act with reasonable regard for rights of plaintiff in accordance with previous judgment, court will make further determinations. *Lalou v. Aliang*, 1 T.T.R. 290.

Judgment as to continuing payments which Palauan clan must make to its non-resident members out of future receipts or income from mining trust is subject to change by court at any time, upon showing of such substantial change of conditions that it is fair that distribution be ordered changed. *Lalou v. Aliang*, 1 T.T.R. 290.

If Palauan clan, at meeting at which those traditionally entitled to attend, decides in accordance with Palau custom upon method of use or distribution of future receipts from Mining Trust Agreement which meets conditions in original court judgment, court may modify part of judgment relating to exact payments to be made from future trust fund receipts. *Lalou v. Aliang*, 1 T.T.R. 290.

L

LARCENY.

Generally

Criminal code should not be used to determine conflicting claims to property. *Niforongu v. Trust Territory*, 1 T.T.R. 549.

LARCENY

Larceny is the fraudulent taking and carrying away of a thing without claim of right, with intention of converting it to use other than that of owner without his consent. *Fanamthin v. Trust Territory*, 1 T.T.R. 412.

Intent

Intent in trial for larceny is matter that must often be inferred from the circumstances. *Marbou v. Trust Territory*, 1 T.T.R. 269.

Although custom and usage in community may bear upon intent in criminal prosecution for larceny, no custom or usage to take another's property and convert it to one's own use without consent or giving of an equivalent can find support in law. *Marbou v. Trust Territory*, 1 T.T.R. 269.

Taking of property openly in honest belief of ownership absolves one from felonious intent. *Niforongu v. Trust Territory*, 1 T.T.R. 549.

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

Mere impression that taker had claim or property in goods will not negative felonious intent in criminal prosecution for larceny. *Marbou v. Trust Territory*, 1 T.T.R. 269.

In criminal prosecution for petit larceny, it is immaterial that defendant may have assumed he was merely borrowing property and would return it when it no longer served his needs. (T.T.C., Sec. 397) *Fanamthin v. Trust Territory*, 1 T.T.R. 412.

Petit—Value

In criminal prosecution for petit larceny, since trial judge is assumed to have sufficient acquaintance with local values of new and used merchandise, his findings in this regard will be followed by appellate court. (T.T.C., Sec. 397) *Fanamthin v. Trust Territory*, 1 T.T.R. 412.

Where evidence shows taking of personal property worth less than fifty dollars from home of another with intent to convert it to accused's own use, trial court is justified in finding accused guilty of petit larceny. (T.T.C., Sec. 397) *Fanamthin v. Trust Territory*, 1 T.T.R. 412.

LEGISLATIVE POWER.

Generally

Granting of relief from hardships, where there is no obligation to do so, is matter of policy to be decided by law-making authorities in Trust Territory and not by courts. *Wasisang v. Trust Territory*, 1 T.T.R. 14.

MALICIOUS MISCHIEF.**Generally**

It is legal impossibility under Trust Territory law for same act to constitute both trespass and malicious mischief where there is no break in incident or change of intention of accused. (T.T.C., Secs. 398, 401) *Bisente v. Trust Territory*, 1 T.T.R. 327.

Where there is no indication of any break in incident or change of intention by accused during actions constituting crime of malicious mischief, he cannot also properly be found guilty of trespass. (T.T.C., Secs. 398, 401) *Bisente v. Trust Territory*, 1 T.T.R. 327.

Malice

In trial for crime of malicious mischief, wilfulness and malice may be inferred from circumstances just as intent may be inferred in larceny cases. *Bisente v. Trust Territory*, 1 T.T.R. 327.

MARSHALLS CUSTOM.**Superseded**

Marshallese custom does not control over clearly expressed and firmly maintained determinations of Japanese Administration. *Lazarus v. Tomijwa*, 1 T.T.R. 123.

Determination of Japanese Administration concerning land law, which deviated substantially from Marshallese custom, effectively changed law so far as land in question is concerned. *Lazarus v. Tomijwa*, 1 T.T.R. 123.

Iroij Lablab

Under Marshallese custom, position of *iroij lablab* is primarily one of trust and responsibility, succession to which depends upon combination of birth and recognized ability. *Lainlij v. Lajoun*, 1 T.T.R. 113.

Under Marshallese custom, position of *iroij lablab* is not merely personal right which can be given away or abolished at will by one holding it. *Lainlij v. Lajoun*, 1 T.T.R. 113.

Iroij Lablab, see, also, Marshalls Land Law—*Liroij Lablab*.

—Recognition

Under Marshallese custom, once person recognizes another as his *iroij lablab*, he is expected to adhere to this selection unless and until some other firm determination is reached after period of stability, or unless and until *iroij lablab* so recognized permits some change. *Lainlij v. Lajoun*, 1 T.T.R. 113.

Principles applied to one who has once recognized another as his *iroij lablab*, and then wrongfully withdraws his recognition, would have no application to one who has never so recognized another, and whose predecessors in interest have never done so. *Lainlij v. Lajoun*, 1 T.T.R. 113.

MARSHALLS CUSTOM

Under Marshallese custom, those who have undertaken to support individual as successor *iroij lablab* owe him obligation of loyalty until there is some other fairly definite determination. *Lainlij v. Lajoun*, 1 T.T.R. 113.

Under Marshallese custom, *alab* has right to recognize another as *iroij lablab* against opposition of *iroij erik*, and to withhold share due *iroij erik* until he recognizes *iroij lablab*. *Abijai v. Jiwirak T.*, 1 T.T.R. 389.

Under Marshallese custom, where there is no proper recognition of party as *iroij lablab* at any time by parties having *alab* interest in *wato*, party's action in going upon land to harvest and remove copra therefrom was without legal ground, was unjustified, and amounts to trespass against which equity will relieve. *Liwinrak v. Jiwirak*, 1 T.T.R. 394.

Where *alab* parties were given express permission in 1950 from Civil Administrator to support a successor *iroij lablab*, they are justified in disregarding claimant as *iroij erik* so long as he refuses to recognize successor *iroij lablab* and there is no other definite determination on the matter. *Lainlij v. Lajoun*, 1 T.T.R. 113.

Under Marshallese custom, where an *iroij erik* has consistently refused to recognize another as *iroij lablab*, he is not required to recognize him as such nor to perform various personal services implicit in the relationship. *Abijai v. Jiwirak T.*, 1 T.T.R. 389.

Under Marshallese custom, where *iroij erik* consistently refuses to recognize another as *iroij lablab*, he may, without danger of loss of position, refrain from according to *iroij lablab* those personal indications of esteem required of an *iroij erik* who has participated in promoting and recognizing the *iroij lablab's* accession. *Abijai v. Jiwirak T.*, 1 T.T.R. 389.

Where party wrongfully refuses to recognize successor *iroij lablab*, his rights as *iroij erik* are suspended, although not completely forfeited, and if he agrees to recognize successor *iroij lablab* within reasonable time, he may resume the exercise of his powers. *Lainlij v. Lajoun*, 1 T.T.R. 113.

—Succession

Under present system of society and land ownership in Marshall Islands, there is obvious public interest in having question of succession of deceased *iroij lablab* determined as quickly and firmly as practicable. *Lainlij v. Lajoun*, 1 T.T.R. 113.

Under *iroij lablab* system in Marshall Islands, no *iroij lablab* has absolute right to control selection of successor of another *iroij lablab*, although he may be able to influence views of others in the matter. *Lainlij v. Lajoun*, 1 T.T.R. 113.

Under Marshallese custom, expressed wishes of *iroij lablab* as to his successor may have great influence with his people, but it cannot bind

MARSHALLS CUSTOM

them in such a way as to relieve them from obligations assumed after his death. *Lainlij v. Lajoun*, 1 T.T.R. 113.

Under Marshallese custom, where there is such reasonable uncertainty as to rightful successor to deceased *iroij lablab* so as to make substantial numbers of owners or interested persons hesitate before declaring their recognition, no valid claim to succession can be effectively made unless and until persons having rights in such lands recognize successor in such a fashion as to evince unmistakable choice. *Liwinrak v. Jiwirak*, 1 T.T.R. 394.

Where former judgment named party as temporary *iroij lablab* and recognized possibility of others having equal or better right to that title, party named is entitled to act as *iroij lablab* only until such time as there was clear decision as to proper person to exercise those powers. *Liwinrak v. Jiwirak*, 1 T.T.R. 394.

Where previous Civil Administrator determined there was no successor to deceased *iroij lablab*, *iroij erik* was justified in disregarding any successor so long as this determination remained in force. *Lainlij v. Lajoun*, 1 T.T.R. 113.

—Approval of Wills

Under Marshallese custom, approval of *iroij lablab*, or those entitled to exercise *iroij lablab* powers, is necessary to make will of rights in land effective. *Limine v. Lainej*, 1 T.T.R. 231.

Under Marshallese custom, approval of *iroij lablab* is necessary to make will of rights in land effective, although *iroij lablab* is expected to act within limits of law. *Lalik v. Elsen*, 1 T.T.R. 134.

Under Marshallese custom, where certain persons are allowed to choose who shall succeed them in rights in land, *iroij lablab* is expected to give effect to wishes of person making choice, so long as successor named is allowed by custom and there is no strong reason why wishes should not be followed. *Lalik v. Elsen*, 1 T.T.R. 134.

Under Marshallese custom, *iroij lablab* is one to decide whether, under all the circumstances, necessary people have been consulted about a will or have consented to it, and whether a will once made may be revoked. *Lalik v. Elsen*, 1 T.T.R. 134.

Except in few specific instances, *iroij lablab* under Marshallese custom is not expected to approve will unless satisfied there is good reason for disposition desired. *Lalik v. Elsen*, 1 T.T.R. 134.

Under Marshallese custom, *iroij lablab* may approve will in part and disapprove it in part, and his decision, if properly made, will be binding, no matter how clear it is that person making will desired something different. *Lalik v. Elsen*, 1 T.T.R. 134.

Bwij

Under Marshallese custom, just which people are referred to by term *bwij* in particular instance depends upon circumstances with regard to which it is used. *Limine v. Lainej*, 1 T.T.R. 231.

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Kallimur

Marshallese word *kallimur*, frequently translated as "will," includes many things which would not ordinarily be considered wills in usual American sense. *Lalik v. Elsen*, 1 T.T.R. 134.

Analogies drawn from idea of a "will" under English Statute of Wills or similar statutes in United States may not apply to Marshallese term *kallimur*. *Lalik v. Elsen*, 1 T.T.R. 134.

Written *kallimur*, indicating who will succeed to one's land rights, lacks much of element of voluntary choice implied in American idea of a will. *Lalik v. Elsen*, 1 T.T.R. 134.

Marshallese word *kallimur* implies a determination within limits allowed by Marshallese custom. *Lalik v. Elsen*, 1 T.T.R. 134.

Marshallese word *kallimur* may mean a determination by *iroij lablab* of present rights in land, or promises by others that are to have present effect without waiting for death of person making promise. *Lalik v. Elsen*, 1 T.T.R. 134.

Japanese effort to have *kallimur* approved by magistrate and Japanese Administration was simply precaution to avoid arguments later, and wills so approved and filed could still be made and revoked in accordance with Marshallese custom. *Lalik v. Elsen*, 1 T.T.R. 134.

MARSHALLS LAND LAW.

Generally

Marshallese system of land law, including both power and obligation of *iroij lablab* and limitations on it, has been carried over under American Administration, under general principles of international law and Trust Territory law. (T.T.C., Sec. 24) *Limine v. Lainej*, 1 T.T.R. 107.

Under Marshallese custom, there is no analogy between American idea of an absolute owner and Marshallese idea of holder of any one of levels of rights in common kinds of land ownership. *Jatios v. Levi*, 1 T.T.R. 578.

Under Marshallese custom, all levels of owners of land have rights which courts will recognize and obligations to each other which severely limit their control over land. *Jatios v. Levi*, 1 T.T.R. 578.

Under Marshallese custom, there is duty of loyalty up lines of feudal ownership and duty of protection of welfare of subordinates running down lines. *Jatios v. Levi*, 1 T.T.R. 578.

When substantial number of persons in community question another's title and land rights under Marshallese custom, party is excused from his refusal to honor such rights until court rules on question. *Levi v. Kumtak*, 1 T.T.R. 36.

Iroiġ Lablab—Obligations

Under Marshallese custom, *iroiġ lablab* is expected to make reasonable effort to maintain peace and order on his lands. *Lalik v. Lazarus S.*, 1 T.T.R. 143.

Where law leaves matters to their judgment, *iroiġ lablab* must act reasonably as responsible officials and not simply to satisfy personal wishes. *Limine v. Lainej*, 1 T.R.R. 107; *Abija v. Larbit*, 1 T.T.R. 382.

There must be good reason or reasons for decisions of *iroiġ lablab*, especially when there would upset clearly established rights. *Limine v. Lainej*, 1 T.T.R. 107.

Iroiġ lablab should exercise special patience in determining that subordinate rights in land have been lost or should be taken away because of failure to recognize someone as holding one of higher rights, when there is widespread doubt as to whether given person has in fact succeeded to that higher right. *Abija v. Larbit*, 1 T.T.R. 382.

Iroiġ lablab, in passing on land matters, must have good reasons for his decisions when these would upset rights that have been clearly established. *Abija v. Larbit*, 1 T.T.R. 382.

In passing on land matters, *iroiġ lablab* must act with honest regard for welfare of his people and with reasonable consideration for rights of all those having interests in the land. *Abija v. Larbit*, 1 T.T.R. 382.

An *iroiġ lablab*, in passing on land matters, must act with honest regard for welfare of his people and with reasonable consideration for rights of those having interests in land under Marshallese custom. *Lalik v. Elsen*, 1 T.T.R. 134.

Iroiġ lablab, in making determinations as to rights in land under them, must act with honest regard for welfare of their people, and with reasonable consideration for rights of those having interests in land under Marshallese custom. *Limine v. Lainej*, 1 T.T.R. 107.

Taking away of subordinate rights in land in Marshall Islands is drastic matter which should be undertaken by *iroiġ lablab* only after thorough investigation and reasonable attempt to settle matters by negotiation. *Abija v. Larbit*, 1 T.T.R. 382.

Action of *iroiġ lablab*, in attempting to establish claimant as *alab*, in complete disregard of rights established and clearly recognized by him years before, is unreasonable, contrary to Marshallese custom, and of no legal effect. *Limine v. Lainej*, 1 T.T.R. 107.

—Powers

Within limits imposed by various foreign administrations and growth of custom, *iroiġ lablab* retain all of their broad powers that have not been taken away from them. *Lalik v. Elsen*, 1 T.T.R. 134.

Although rights of those under *iroiġ lablab* are firmer and clearer than in former times, main outline of Marshallese system of land owner-

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ship remains in force, including general power and obligation by *iroij lablab* over lands under him. *Limine v. Lainej*, 1 T.T.R. 107.

Under Marshallese custom, power of *iroij lablab* to take away subordinate rights in land is time-honored. *Lalik v. Lazarus S.*, 1 T.T.R. 143.

Determinations made by *iroij lablab* with regard to his lands are entitled to great weight, and it is to be supposed they are reasonable unless it is clear they are not. *Limine v. Lainej*, 1 T.T.R. 107; *Lalik v. Lazarus S.*, 1 T.T.R. 143.

In the control of land, *iroij lablab* in Marshall Islands are still entitled to exercise their best judgment with considerable freedom. *Lalik v. Elsen*, 1 T.T.R. 134.

Under Marshallese custom, *iroij lablab* has power to take away or transfer subordinate rights in land for good reason and in doing so may make practical compromises, without deciding on technical basis wholly in favor of or against particular claim. *Abija v. Larbit*, 1 T.T.R. 382.

Iroij lablab, in their control over land, may consider what land various claimants already control, history of land, claimants' relationship to land in the past, and other matters which would not be material in system of fixed rules of inheritance and transfer of land. *Lalik v. Elsen*, 1 T.T.R. 134.

Iroij lablab may change category of land or determine it when category is doubtful, and so long as he uses his honest best judgment as responsible official and complies with requirements of law imposed by various foreign administrations still remaining in force, his decision is entitled to control in accordance with Marshallese custom. *Lalik v. Elsen*, 1 T.T.R. 134.

Under Marshallese custom, *iroij lablab* may make practical compromises as to disposition of land, rather than determine on technical basis that one group or person is entitled to whole of land. *Lalik v. Elsen*, 1 T.T.R. 134.

Under Marshallese custom, matter of terminating land rights for default should be taken up in first instance with persons entitled to exercise *iroij lablab* powers over land. *Jatios v. Levi*, 1 T.T.R. 578.

Under Marshallese custom, rights of those holding land under *iroij lablab* are distinctly subordinate to those of *iroij lablab*, and not so absolute as is common in case of land rights in United States. *Lalik v. Elsen*, 1 T.T.R. 134.

Under Marshallese custom, consent of person or persons entitled to exercise *iroij lablab* powers is essential to gift of *alab* rights, and attempted gift has only such effect as those concerned see fit to give it. *Lazarus v. Likjer*, 1 T.T.R. 129.

Under Marshallese custom, rights of *alab* and *dri jerbai* are subject to power and obligation of *iroij lablab* to make reasonable determina-

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tion in doubtful cases, so as to avoid controversies and secure constructive use of land. *Lalik v. Elsen*, 1 T.T.R. 134.

Under Marshallese custom, an *iroij lablab* might for good reason permit a gift of *alab* rights without the consent of *bwij* of that land. *Lazarus v. Likjer*, 1 T.T.R. 129.

Where there is no action by *iroij lablab*, court will not hold that past refusal of *dri jerbai* to recognize *alab* has barred their rights nor has past refusal of *alab* to recognize *iroij erik* barred his rights. *Jatios v. Levi*, 1 T.T.R. 578.

Where *iroij lablab* took away *alab* and *dri jerbai* rights in land due to fact acting *alab* and *dri jerbai* could not get along peaceably together, his action was reasonable. *Lalik v. Lazarus S.*, 1 T.T.R. 143.

Determination by *iroij lablab* to give land as *katleb* to third party after taking away others' rights therein was properly within his powers, and decision is binding upon parties. *Lalik v. Lazarus S.*, 1 T.T.R. 143.

—Limitation of Powers

Power of *iroij lablab* over rights in land under him is more limited than it once was. *Abija v. Larbit*, 1 T.T.R. 382.

In order for their decisions to have legal effect in land matters, *iroij lablab* must act within limits of the law, including Marshallese custom, so far as it has not been changed by higher authority. *Limine v. Lainej*, 1 T.T.R. 107.

All indigenous leaders, including *iroij lablab*, are expected to obey laws laid down for them by foreign administration, and to restrict exercise of their powers within limits of those laws. *Limine v. Lainej*, 1 T.T.R. 107.

After foreign supervision, powers of *iroij lablab* were limited and his power to wage war for settlement of disputes was prohibited. *Limine v. Lainej*, 1 T.T.R. 595.

Under present Marshallese custom, determinations of *iroij lablab* must meet requirements imposed by succeeding administering authorities in order to have legal effect. *Abija v. Larbit*, 1 T.T.R. 382.

Determinations of *iroij lablab*, when reasonable and proper under Marshallese custom, are binding on parties, but sudden attempted change of previous determination of *alab* rights, with no good reason and with representative of only one side of controversy present, is of no legal effect. *Abija v. Larbit*, 1 T.T.R. 382.

Power of an *iroij lablab* to transfer *alab* rights in land under him is more limited than it once was. *Limine v. Lainej*, 1 T.T.R. 107.

There is no indication that *iroij lablab* had rights under law in effect in 1941 to change *alab* rights in land at will. (T.T.C., Sec. 24) *Limine v. Lainej*, 1 T.T.R. 595.

MARSHALLS LAND LAW

—“Jebrik’s Side” of Majuro

Although decision of Japanese Government, not to have any *iroij lablab* for “Jebrik’s side” of Majuro Atoll was departure from Marshallese custom, it was clear determination by administering authority, making exception to or change in customary law. *Levi v. Kumtak*, 1 T.T.R. 36.

Determinations of Japanese Administration, in setting up and maintaining special arrangement for control of lands formerly under *iroij lablab*, changed the law so far as “Jebrik’s side” of Majuro Atoll is concerned, and established new way of exercising *iroij lablab* powers there. *Lazarus v. Tomijwa*, 1 T.T.R. 123.

Whether Japanese arrangement for *iroij lablab* lands on “Jebrik’s side” of Majuro Atoll should now be changed is question of policy for law-making authorities, not for courts to decide. *Lazarus v. Tomijwa*, 1 T.T.R. 123.

Special arrangement for lands of former *iroij lablab* on “Jebrik’s side” of Majuro Atoll, as it stood on December 1, 1941, is continued, with Trust Territory Government taking place of Japanese Administration, regardless of how much law varies from Marshallese custom. (T.T.C., Sec. 24) *Lazarus v. Tomijwa*, 1 T.T.R. 123.

Under special arrangement for exercise of *iroij lablab* powers on “Jebrik’s side” of Majuro Atoll, consent to gift of *alab* rights there must be given either by *droulul* without objection of the administration, or by administration itself. *Lazarus v. Likjer*, 1 T.T.R. 129.

Property rights formerly held by, and obligations due from, *iroij lablab* of “Jebrik’s side” of Majuro Atoll, have passed to Government of the Trust Territory. *Levi v. Kumtak*, 1 T.T.R. 36.

Failure of American Administration to exercise *iroij lablab* powers on “Jebrik’s side” of Majuro Atoll, previously held by Japanese Government, does not constitute waiver of such rights. *Levi v. Kumtak*, 1 T.T.R. 36.

Iroij Lablab, see, also, Marshalls Custom—*Iroij Lablab*.

Alab

Under Marshallese custom, *alab* is only one of owners of land, at one level in feudalistic system. *Jatios v. Levi*, 1 T.T.R. 578.

—Succession

Under Marshallese custom, determination made by *alab*, with or without approval of his *bwij* as to who should succeed him as *alab*, has no legal effect without approval of *iroij lablab*. *Limine v. Lainej*, 1 T.T.R. 231.

Where former *alab* tried to give *alab* rights to claimant and his *bwij*, it was of no legal effect when it lacked necessary consent of those exercising *iroij lablab* powers. *Lazarus v. Likjer*, 1 T.T.R. 129.

—Powers

Under Marshallese custom, *alab* of land in which his *bwij* holds *alab* rights has no power to give those rights away without consent of

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iroij lablab of the land, or those entitled to exercise *iroij lablab* powers over it. *Lazarus v. Likjer*, 1 T.T.R. 129.

—Limitation of Powers

Under Marshallese custom, *alab* may not put *dri jermal* off land without obtaining consent and may not disregard rights of *iroij erik* established by Japanese Government. *Jatios v. Levi*, 1 T.T.R. 578.

Dri Jermal—Revocation of Rights

Where status as to *iroij lablab* rights were in doubt in minds of many Marshallese in community, disregard by claimant and his *bwij* of their obligations to rightful *alab* will not result in termination of their *dri jermal* rights. *Lazarus v. Likjer*, 1 T.T.R. 129.

—Suspension of Rights

Under Marshallese custom, rightful *alab* and her *bwij* may themselves exercise *dri jermal* rights during such period as those otherwise entitled to hold these rights fail to recognize her as rightful *alab*. *Lazarus v. Likjer*, 1 T.T.R. 129.

Where *dri jermal* rights of party and his *bwij* who disregarded their obligations to rightful *alab* are suspended, they may be regained by their recognizing rightful *alab* within reasonable time. *Lazarus v. Likjer*, 1 T.T.R. 129.

Ninnin

Under Marshallese custom, there are special rules as to inheritance or transfer of rights in *ninnin* land. *Limine v. Lainej*, 1 T.T.R. 231.

Under Marshallese customary land law, *ninnin* gifts are not limited to one generation but pass on from one generation to descendants. *Jatios v. Levi*, 1 T.T.R. 578.

Under Marshallese custom, *ninnin* rights may, under proper circumstances, pass on from generation to generation among descendants of person who originally gave them to his child or children. *Limine v. Lainej*, 1 T.T.R. 231.

Under Marshallese custom, gift of *ninnin* land gives no rights to descendants of the mother's sisters, or descendants of one of mother's matrilineal ancestors. *Limine v. Lainej*, 1 T.T.R. 231.

Under Marshallese custom, fact that children and their descendants may permit *ninnin* rights to pass down among them in female line does not raise presumption of any rights outside of these children and their descendants. *Limine v. Lainej*, 1 T.T.R. 231.

When a man gives his children, with all necessary consents, the *alab* rights in land as *ninnin* under Marshallese system of land ownership, presumption is that rights given are limited to his children and their descendants, and that gift fails to give any rights to that part of childrens' maternal lineage outside of these children and their descendants. *Limine v. Lainej*, 1 T.T.R. 231.

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Under Marshallese custom, children to whom *ninnin* rights have been given, and their descendants, may be considered to constitute new *bwij*, or their "smaller *bwij*." *Limine v. Lainej*, 1 T.T.R. 231.

Under Marshallese custom, when "smaller *bwij*" holding *ninnin* rights has run out in female line, children of last generation of male members of "smaller *bwij*" may be permitted by *iroij lablab* to succeed to *alab* rights, even though there are members in female line of other branches still living. *Limine v. Lainej*, 1 T.T.R. 231.

Use Rights

Under Marshallese system of land tenure, there is strong obligation on all those holding various rights in piece of land at same time to cooperate in reasonable and friendly manner. *Lalik v. Lazarus S.*, 1 T.T.R. 143.

Under Marshallese system of land tenure, there is obligation on all those holding various rights in piece of land at same time to be loyal to those up the line and to protect welfare of those down the line. *Lalik v. Lazarus S.*, 1 T.T.R. 143.

Under Marshallese custom, certain persons holding rights in land under an *iroij lablab* may choose who, among limited number of persons, may succeed them. *Lalik v. Elsen*, 1 T.T.R. 134.

MAYHEM.

Generally

Question of whether injury to victim is noticeable enough to constitute permanent disfigurement within meaning of statute defining mayhem is question of fact which trial judge is in best position to determine. (T.T.C., Sec. 382) *Romber v. Trust Territory*, 1 T.T.R. 591.

MOTOR VEHICLES.

Operator's License

Requirement of licenses is function of legislative branch of government and not of executive branch. *Ngirabiluk v. Trust Territory*, 1 T.T.R. 185.

In absence of legislative authorization, any attempt on part of issuing agency to classify operators' licenses is without legal effect. *Ngirabiluk v. Trust Territory*, 1 T.T.R. 185.

Any operator's license issued under Trust Territory law is sufficient for purposes of that section, regardless of any attempted limitation contained in license. (T.T.C., Sec. 812(a)) *Ngirabiluk v. Trust Territory*, 1 T.T.R. 185.

If issuing authority has power to classify licenses and driver does not hold valid license for operating weapons carrier and is driving such vehicle, he has violated Trust Territory law requiring drivers to be licensed, not Trust Territory law requiring operator to have license

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in his possession while driving motor vehicle. (T.T.C., Secs. 812(a) and (i)) *Ngirabiluk v. Trust Territory*, 1 T.T.R. 185.

N

NEGLIGENT DRIVING.

Generally

Where appellant in criminal case had no previous knowledge as to defect in jeep, and there was no evidence of negligence on his part, incident out of which charge arose was accident and not violation of Trust Territory law regarding negligent driving. (T.T.C., Sec. 815 (b)) *Lenge v. Trust Territory*, 1 T.T.R. 197.

O

OBSTRUCTION OF JUSTICE.

Generally

Actual violence or threats are not required in order for acts to constitute crime of obstructing justice. (T.T.C., Sec. 418) *Arokoy v. Trust Territory*, 1 T.T.R. 426.

Resisting policeman while he is arresting third party is sufficient to constitute offense of obstructing justice. (T.T.C., Sec. 418) *Arokoy v. Trust Territory*, 1 T.T.R. 426.

In order to commit crime of obstructing justice it is not necessary to prevent arrest by policeman of third party nor is it material whether policeman could have made arrest if he had been more persistent. (T.T.C., Sec. 418) *Arokoy v. Trust Territory*, 1 T.T.R. 426.

P

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Clans

Under Palau custom, management and distribution of assets within clan is private matter in which clan is entitled to exercise wide discretion, so long as it acts with proper regard for interests of all its members in accordance with law, including customary law. *Lalou v. Aliang*, 1 T.T.R. 290.

Under Palau custom, clans commonly conduct routine business without notice to members living in villages other than that to which clan belongs. *Gibbons v. Kisaol*, 1 T.T.R. 219.

—Membership

Under Palau system of society, one of basic protections of individual is that he is born into certain clan, and it is doubtful whether he can completely lose his membership under any circumstances. *Lalou v. Aliang*, 1 T.T.R. 94.

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Under Palau custom, individual clan member may forfeit his right to some of benefits as member of clan because of misconduct or failure to fulfill all his clan obligations, and when he is absent part of his rights may be suspended. *Lalou v. Aliang*, 1 T.T.R. 94.

Under Palau custom, mere absence of clan member, no matter how long continued, does not work as forfeiture of either clan membership or rights to share in and use clan's assets. *Lalou v. Aliang*, 1 T.T.R. 94.

Under Palau custom, *rubaks* of municipality have no authority to split up clan or to rule members out of it merely because of non-residence. *Lalou v. Aliang*, 1 T.T.R. 94.

Lineage

Words for "clan" and "lineage" in Palau Islands have not yet received such firm and exact meaning that allowing lineage to act as clan for some purposes means it does not have obligations of lineage in other matters. *Merar v. Ucherebuuch*, 1 T.T.R. 359.

Family Obligations

Party's rightful inheritance cannot be forfeited because of his disclosure of sister's wrongdoing. *Yangilemau v. Mahobrimalei*, 1 T.T.R. 429.

—Child Support

Under Palau custom, child's basic protection is his right to support by his matrilineal lineage which is often more certain than any liability which might be imposed on child's father. *Orak v. Ngiraukloi*, 1 T.T.R. 454.

There is no basis in Palau custom whereby one clan reimburses or is required to reimburse another for expense of raising female child. *Ymesei v. Ringang*, 1 T.T.R. 421.

Under Palau custom, if child leaves father's family to take up residence with mother's side, there is nothing which can be done relative to reimbursement of father's side. *Ymesei v. Ringang*, 1 T.T.R. 421.

—Brothers Under the Custom

Under Palau custom, party's "brother under the custom" is entitled to preferential treatment of at least five to ten percent in transaction for sale of land by party. *Asanuma v. Flores*, 1 T.T.R. 458.

Under Palau custom, after claiming and receiving advantages of relationship of "brothers under the custom," party cannot repudiate relationship and escape its obligations or disadvantages. *Asanuma v. Flores*, 1 T.T.R. 458.

Under Palau custom, one altercation and beating is insufficient to terminate relationship of "brothers under the custom." *Asanuma v. Flores*, 1 T.T.R. 458.

Under Palau custom, where party attempts to get from his "brother under the custom" same price for real estate for which he was ready to

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sell to outsider, actions are entirely inconsistent with party's obligation under such customary law. *Asanuma v. Flores*, 1 T.T.R. 458.

Adoption

Where there is no credible evidence that party has deserted his adoptive family, Palau custom has no force in action concerning party's rights in property of adoptive family. *Yangilemau v. Mahoburimalei*, 1 T.T.R. 429.

Children's Money

Under Palau custom, side of family which has custody of child's Palauan money retains possession of it until other side is desirous of redeeming it, usually when child is to be married or brings gifts of value to clan having her custody. *Ymesei v. Ringang*, 1 T.T.R. 421.

Under Palau custom, when mother's side of child's family is willing to give up all claim to her and her property, they are entitled to child's Palauan money. *Ymesei v. Ringang*, 1 T.T.R. 421.

Curfew

Under Palau customary law there are restrictions on movement of people over public roads after dark. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 615.

Curfew and anti-noise ordinances are not contrary to Palau customary law. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 615.

Divorce—Support

Under Palau custom, there may be liability on father to support his children after divorce where father so agrees, particularly where after many years of marriage and birth of several children father desires divorce to marry someone else. *Orak v. Ngiraukloi*, 1 T.T.R. 454.

For those living in Palau Islands under Palauan system of society, there is no liability on a father to support his children who do not live with him or his "side" after divorce, in absence of special circumstances. *Orak v. Ngiraukloi*, 1 T.T.R. 454.

Marriage

Whether there should be any sudden change in Palau custom as to responsibilities of marriage and parenthood and, if so, what this change should be, are matters for determination by those having legislative authority. *Orak v. Ngiraukloi*, 1 T.T.R. 454.

Oral Wills

Under Palau custom, if child's deceased father leaves instructions for ultimate devolution of his property of which he is admittedly in control at time of his death, instructions will be given status of oral will and carried out in accordance with deceased's wishes. *Ymesei v. Ringang*, 1 T.T.R. 421.

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Chief's Title Land

Chief's title land is of very special importance under Palau customary law. *Gibbons v. Kisaol*, 1 T.T.R. 219.

Under Palau custom, use rights in chief's title land belong to chief as long as he holds office. *Dudiu v. Ngiraikelau*, 1 T.T.R. 504.

Under Palau custom, clan is normally expected to hold chief's title land as important indication of existence of clan and feature on which its recognition as clan is based. *Gibbons v. Kisaol*, 1 T.T.R. 219.

Under Palau custom, chief's title land is symbol of tribal unity and existence, and general pattern is for land to pass from chief to chief for use during period he is head of clan. *Kisaol v. Gibbons*, 1 T.T.R. 597.

Acquiescence by Palauan clan over long period of time, in devotion of land to exclusive use of reigning chief, results in its taking on character of chief's title land, on principles of waiver. *Dudiu v. Ngiraikelau*, 1 T.T.R. 504.

Clan land in Palau may become chief's title land, with use and control inhering in reigning chief by virtue of and during his period of office, where each reigning chief has taken control of entire production and has exclusively enjoyed lease income. *Dudiu v. Ngiraikelau*, 1 T.T.R. 504.

Where Palauan clan intended to give no more than personal use rights to first reigning chief who made use of clan land, but clan thereafter acquiesced in use of land by subsequent reigning chiefs, lease rights and exclusive control of income and production now inheres in reigning chief. *Dudiu v. Ngiraikelau*, 1 T.T.R. 504.

Where there is no evidence that Palauan clan conceded more than temporary use rights of land by each reigning chief during his term of office, clan is still possessed of reversionary rights to land, subject only to rights expressly or by necessary inference granted to reigning chief. *Dudiu v. Ngiraikelau*, 1 T.T.R. 504.

—Sale

Chief's title land in Palau is not subject to sale by chief without approval of all adult clan members in maternal line. *Dudiu v. Ngiraikelau*, 1 T.T.R. 504.

Under Palau custom, where chief's title land is sold, land survey authorities inform clan members they must find other land for chief if clan is to be recognized. *Kisaol v. Gibbons*, 1 T.T.R. 597.

Even if property in Palau Islands is held for benefit of clan by its chief, sale by him to purchaser either without authority or in violation of instructions conveys to bona fide purchaser without notice a title good against the world. *Ngiraikelau v. Trust Territory*, 1 T.T.R. 543.

—Transfer

Voluntary transfer by clan of chief's title land is not contemplated under Palau custom, and can only be effected as extraordinary matter with consent of entire clan. *Gibbons v. Kisaol*, 1 T.T.R. 219.

Under Palau custom, determination to dispose of chief's title land requires notification of all clan members and counsel of clan elders. *Kisaol v. Gibbons*, 1 T.T.R. 597.

Under Palau custom, where there is no consideration for transfer of chief's land and where prominent members of clan were not aware of it, chief is entitled to recover land. *Kisaol v. Gibbons*, 1 T.T.R. 597.

Chief's title land in Palau Islands cannot be voluntarily transferred by clan without consent of at least every adult clan member in maternal line living in Palau Islands, given either personally or through someone entitled under Palau custom to represent him. *Gibbons v. Kisaol*, 1 T.T.R. 219.

Under Palau custom, transfer of chief's title land of lineage requires consent of any "strong" senior members of lineage there may be. *Gibbons v. Bismark*, 1 T.T.R. 372.

Under Palau custom, chief's title land of lineage cannot be transferred by chief of lineage alone, even if he is sole surviving actual blood member of lineage in female line, if there are other "strong" senior members who stand in position like that of blood members in female line. *Gibbons v. Bismark*, 1 T.T.R. 372.

Under Palau custom, "strong" senior members of lineage whose consent is necessary for transfer of chief's title land are those who have been brought up in lineage and faithfully fulfilled their obligations to it, or are related to lineage by blood as members of another lineage closely connected with it in same clan and who have been adopted into lineage and faithfully fulfilled obligations to it. *Gibbons v. Bismark*, 1 T.T.R. 372.

Under Palau custom, where at least one "strong" senior member of deceased's lineage refused to consent to alleged transfer of chief's title land by deceased, transfer is of no legal effect. *Gibbons v. Bismark*, 1 T.T.R. 372.

Clan Ownership

Regardless of whether certain group more closely resembles conventional Palau clan or lineage, group's land rights which were received from clan are held under clan. *Merar v. Ucherebuuch*, 1 T.T.R. 359.

Where lineage in Palau Islands has been allowed freedom of action in some matters, this does not free lands, use of which it received through cooperation and permission of clan, from traditional controls and rights of clan. *Merar v. Ucherebuuch*, 1 T.T.R. 359.

—Use Rights

Under Palau custom, approval of or acquiescence in construction of house on clan land indicates nothing more than temporary use right

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of sufficient land on which to build home. *Dudiu v. Ngiraikelau*, 1 T.T.R. 504.

Under Palau custom, where clan acquiesces in construction of house on its land, owner of land retains title and owner of improvement keeps title thereto, with possession of land to be restored to owner thereof when improvement is removed, or at some other agreed date. *Dudiu v. Ngiraikelau*, 1 T.T.R. 504.

Under Palau custom, members of clan who do not actually live on clan land are entitled to benefits from land according to services which they render to clan and needs of its different members. *Lalou v. Aliang*, 1 T.T.R. 94.

—Income Distribution

Payments which are made to Palauan Clan under Mining Trust Agreement are for purpose of reimbursing clan for phosphate removed from and damage to land that they would otherwise have use of. *Lalou v. Aliang*, 1 T.T.R. 94.

Palauan Clan which receives money from Mining Trust Agreement may work out division of money received from mining trust, so long as it gives fair consideration to welfare of all its members in accordance with accepted Palau custom. *Lalou v. Aliang*, 1 T.T.R. 94.

Members of Palauan Clan to which income from Mining Trust Agreement is distributed are entitled to be considered in clan's share of income, and payments in place of income, and to share in such distribution from time to time, even though they are not residents of land on which mining takes place. *Lalou v. Aliang*, 1 T.T.R. 94.

Members of Palauan Clan who do not actually live on land covered by Mining Trust Agreement are not necessarily entitled to fixed portion of clan's share of trust income nor to payments at fixed intervals. *Lalou v. Aliang*, 1 T.T.R. 94.

Where members of Palauan Clan to which income from Mining Trust Agreement is paid do not actually live on land covered by Mining Agreement, they are not entitled to share equally with members of clan who are living on such land. *Lalou v. Aliang*, 1 T.T.R. 94.

Members of Palauan Clan who do not actually live on land covered by Mining Trust Agreement are only entitled to such portion of payments from trust fund as fairly represents portion of benefits from land which they as non-residents would be entitled to receive under Palau custom if there were no Mining Trust Agreement. *Lalou v. Aliang*, 1 T.T.R. 94.

—Reversionary Rights

Under Palau custom, where clan protests leasing of clan land and its registration as chief's title land, actions indicate clan never intentionally gave up its reversionary rights and at all times considered it retained right to oppose arbitrary abuse of use rights which it admittedly granted. *Dudiu v. Ngiraikelau*, 1 T.T.R. 504.

—Transfer

Under Palau custom, chief of clan has no authority to dispose of clan land without consent of clan. *Ngirchongerung v. Ngirturong*, 1 T.T.R. 68.

Family Ownership

Within Palau clan, status of both family property and clan property is clearly recognized. *Arbedul v. Ngirturong*, 1 T.T.R. 66.

Under Palau system of clan and family organization, lands owned by individual families within clan constitute class of property distinct from lands owned by clan as a whole. *Arbedul v. Ngirturong*, 1 T.T.R. 66.

Under Palau custom, assignment of family land to individual to use during his lifetime raises no presumption of ownership of anything more than use rights assigned, no matter how long individual lives and enjoys use of land. *Ngirchongerung v. Ngirturong*, 1 T.T.R. 71.

Under Palau custom, fact that person holds title as head of family for many years and enjoys use of lands going with title does not give him power to dispose of land, regardless of how he acquired title. *Ngirchongerung v. Ngirturong*, 1 T.T.R. 71.

Under Palau custom, chief of clan has no authority to dispose of land owned by family within clan without consent of such family. *Arbedul v. Ngirturong*, 1 T.T.R. 66; *Ngirchongerung v. Ngirturong*, 1 T.T.R. 68; *Ngirchongerung v. Ngirturong*, 1 T.T.R. 71.

Under controlling Palau custom, head of family has no authority to dispose of family land without consent of family. *Ngirchongerung v. Ngirturong*, 1 T.T.R. 71.

Individual Ownership

Individual land was foreign concept that had no place originally in Palau customary land law. *Ngiruhelbad v. Merii*, 1 T.T.R. 367.

Older Palau custom is of little help in determining exact effect and implications of concept of individual land. *Ngiruhelbad v. Merii*, 1 T.T.R. 367.

Since concepts of "individual land" and transfer of land by written instrument are foreign to Palau custom, general principles of land transfers applied by administering authorities who introduced concepts, rather than Palau custom, will be used in determining ownership of land. *Asanuma v. Flores*, 1 T.T.R. 458.

Purpose of introducing concept of individual land in Palau was to get away from complications and limitations of Palau matrilineal clan and lineage system and to permit individual control of land and patrilineal inheritance. *Ngiruhelbad v. Merii*, 1 T.T.R. 367.

—Decedents' Estates

Under Palau custom, where there are number of heirs or persons among whom deceased has directed individually owned land be divided, deceased's oldest surviving brother or sister may protect rights of all

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concerned and arrange details of division. *Ngiruhelbad v. Merii*, 1 T.T.R. 367.

Under Palau custom, where deceased individual land owner has left only one child and directed that properties should go to him, there is nothing for oldest surviving brother or sister of deceased's matrilineal family to do concerning deceased's properties. *Ngiruhelbad v. Merii*, 1 T.T.R. 367.

Under Palau custom, where deceased owner of individual land has directed that properties pass to his adopted son, properties will go to son free of any rights in deceased's brother or in any matrilineal lineage or clan of which deceased was a member. *Ngiruhelbad v. Merii*, 1 T.T.R. 367.

Japanese Survey—Presumptions

Presumption that determinations made in Japanese land survey of 1941 were correct is strong in case of issues which were matter of controversy at that time. *Baab v. Klerang*, 1 T.T.R. 284.

In order to overcome presumption that determinations made in Japanese land survey are correct, there must be clear showing that determination in question is wrong, especially where listing in survey was not in individual name of one who was head of group which he would ordinarily represent in dealing with outsiders and which now claims interest in the land. *Baab v. Klerang*, 1 T.T.R. 284.

Where party fails to show individual rights in land, presumption arising from listing of land in report of Japanese survey in 1941 as personal land of another must stand as against such party. *Ngirchongerung v. Ngirturong*, 1 T.T.R. 75.

Where land in Palau was listed as personal land of individual in Japanese survey of 1941, land belongs either to that individual or to family or clan of which he is one of leading members. *Ngirchongerung v. Ngirturong*, 1 T.T.R. 75.

—Rebuttal

While determinations made in official Japanese land survey of 1938-1940 in Palau Islands are entitled to great weight, they are not absolutely conclusive. *Orukem v. Trust Territory*, 1 T.T.R. 356.

Listing of ownership of land in Palau in report of Japanese survey of 1941 does not prevent court from inquiring into true situation. *Ngirchongerung v. Ngirturong*, 1 T.T.R. 71.

Recognition by Japanese Government surveyors of purported transfer of land in Palau is at most only some evidence that effective transfer has been made. *Ngirchongerung v. Ngirturong*, 1 T.T.R. 71.

Recognition by Japanese Government surveyors of purported transfer of land to individual is at most only some evidence that effective transfer has been made, and does not prevent court from inquiring into true situation. *Arbedul v. Ngirturong*, 1 T.T.R. 66.

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Where land in Palau was listed in Japanese survey as private property of individual in charge of it and who had lawful use of it, and represented it in dealings with outsiders, presumption of private ownership is weakened. *Ngirchongerung v. Ngirturong*, 1 T.T.R. 71.

Presumption arising from listing or recording of land in Japanese land survey of 1938-1940 as individual land of party's predecessor in interest is effectively rebutted where evidence shows transfer to party's predecessor did not have necessary approval or was handled in unusual way. *Orukem v. Trust Territory*, 1 T.T.R. 356.

Where listing of land in individual's name in Japanese survey may easily have occurred because of loose way of referring to title in Palau, and land often was listed in name of head of family without raising any discussion at time, presumption arising from listing of land in individual's name has been effectively rebutted. *Ngirchongerung v. Ngirturong*, 1 T.T.R. 71.

PERSONAL PROPERTY.

Contributed Shares

Where cost of building boat was borne by decedent, but labor and construction were supplied by extended family in consideration of right to use boat without charge, beneficiaries of decedent's personal property succeed to ownership of boat subject to use rights at reasonable times by extended family. *Kehler v. Kehler*, 1 T.T.R. 398.

Where deceased contributed to fund to purchase outboard motor and motor is later sold, beneficiary of personal property is entitled to share of amount received in sale and is accountable to others for amount they contributed. *Kehler v. Kehler*, 1 T.T.R. 398.

POLICE POWER.

Generally

Police power is necessary and important attribute of every civilized government. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 345.

Police power includes power to make laws to secure public peace, good order, and comfort of community. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 345.

Proper exercise of police power does not interfere with right to due process of law. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 615.

Rights guaranteed under United Nations Charter and Trusteeship Agreement are subject to proper exercise of police power. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 345.

Those concerned with United Nations have considered that human rights and fundamental freedoms are not unlimited, but subject to various limitations in public interest. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 345.

POLICE POWER

Freedom of movement guaranteed by Article 7 of Trusteeship Agreement is expressly subject to requirements of public order and security. (Trusteeship Agreement, Art. 7) *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 345.

Guarantee of liberty in Trust Territory Code does not interfere with proper exercise of police power. (T.T.C., Sec. 3) *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 345.

Possession and enjoyment of all individual rights are regularly considered subject to police power. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 345.

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. (T.T.C., Sec. 4) *Trust Territory v. Benido*, 1 T.T.R. 46.

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. (T.T.C., Sec. 4) *Trust Territory v. Benido*, 1 T.T.R. 46.

General principles requiring courts to make every reasonable presumption in favor of validity of legislation apply with particular emphasis to exercises of police power. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 345.

An act in exercise of police power should be upheld by courts unless clearly unreasonable, or unless act is so clearly unreasonable that no fair minded man can think it reasonable. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 345.

Basic standard by which validity of all exercises of police power should be tested is that all regulations and acts under it must be reasonable under all circumstances. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 345.

In testing validity of regulations and acts in exercise of police power, question is not whether particular exercise of power imposes restrictions on rights secured to individuals, but whether restrictions so imposed are reasonable. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 345.

In exercise of police power, what constitutes reasonable restriction in particular situation depends in part on established customs of those concerned, or what people of community are used to. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 345.

In determining whether particular municipal ordinance is reasonable under all the circumstances, local conditions must be considered. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 345.

Where real community problem exists in which public has proper interest in protecting itself, and means adopted tend to promote that in-

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terest, those having legislative authority have wide discretion in determining what interests of public require and what measures shall be taken to protect those interests. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 345.

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. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 345.

Curfew

Right to use public highways is a common right inhering in public but is subject to reasonable police regulations. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 615.

Municipalities may prohibit violations of peace and quiet on public streets which occur at times when they are most disturbing. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 615.

Municipality has regulatory power to eliminate noise disturbance and movement over city streets during quiet hours of early morning. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 615.

Municipal ordinance prohibiting unnecessary noise after midnight and establishing curfew for businesses, pedestrians and drivers is justified application of police power and does not encourage disrespect for human rights and fundamental freedoms under United Nations Charter. (United Nations Charter, Art. 76) *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 615.

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 operation of ordinance. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 345.

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 T.T.R. 615.

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. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 345.

Elections

Municipal regulations which provide for election of traditional chief in order to prevent warfare between opposing factions are essential to preservation of good order and promotion of domestic tranquility and represent reasonable exercise of police power. *Trust Territory v. Benido*, 1 T.T.R. 46.

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Municipal regulation is invalid as unreasonable exercise of police power insofar as it purports to disqualify accused from holding titles which may be legally conferred in future. *Trust Territory v. Benido*, 1 T.T.R. 46.

Licensing

In exercise of its police power to require licenses government may make any reasonable classification which it deems necessary to police purpose intended by legislature. *Ngirabiluk v. Trust Territory*, 1 T.T.R. 185.

Municipal Ordinances

Test of validity of municipal regulation is whether it is reasonable exercise of delegated power under all the circumstances. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 615.

In determining whether municipal ordinance is reasonable, it is essential to validity to prescribe definite rules of action for guidance of public officials in whom discretion has been vested. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 615.

Where municipal regulations are reasonable exercise of police power, those accused of violating regulations are not deprived of due process of law. (Interim Regulation No. 4-48, Ch. 5, Sec. 3(IV)) *Trust Territory v. Benido*, 1 T.T.R. 46.

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 T.T.R. 615.

Appropriate means to exercise police power rests within discretion of municipal authorities and courts will not interfere unless means employed amount to unreasonable and oppressive interference with individual and property rights. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 615.

It is not necessary for legislature to prescribe specific rules of action in laws where it is difficult or impracticable to lay down definite and comprehensive rules, or where discretion relates to administration of police regulation and is necessary to protect public morals, health, safety or general welfare. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 615.

PONAPE CUSTOM.

Generally

Under Ponapean custom, wearing of woman's underclothing by a man is accepted method of showing love for woman. *Olber v. Trust Territory*, 1 T.T.R. 559.

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Family Obligations

Under Ponape customary law, obligation of uncle to support and assist daughter of deceased brother is personal one and does not give property rights to niece. *Aknes v. Weli*, 1 T.T.R. 323.

Under Ponape custom, in absence of other evidence, services by nephew for his uncle in exchange for room and board creates no legal basis for claim against uncle's estate. *Kehler v. Kehler*, 1 T.T.R. 398.

Under Ponape custom, widow who remarries loses all claims upon her deceased husband's family. *Idingel v. Mada*, 1 T.T.R. 164.

Adoption

Under Ponape custom, recognized by Japanese Administration, legally adopted child of deceased inherited land with rights which were superior to true brother of deceased. *Petiele v. Max*, 1 T.T.R. 26.

Nanmarki

Under Ponape custom, there is no way of settling dispute over who shall be traditional chief other than by war. *Trust Territory v. Benido*, 1 T.T.R. 46.

Under Ponape custom *Nanmarki* was public official who was expected to take fatherly interest in welfare of those under him and to use influence to secure what he considered proper handling of lands in area for which he was responsible. *Godlieb v. Welten*, 1 T.T.R. 175.

Whether actions of *Nanmarki* in encouraging transfer of land were proper are to be determined by ideas which prevailed at that time as to what was proper under law and social conditions then existing on Ponape Island. *Godlieb v. Welten*, 1 T.T.R. 175.

Oral Wills

Verbal will is valid testamentary disposition under Ponape customary law, and court must give effect to full intent of testator, not preferring one beneficiary over another. *Kehler v. Kehler*, 1 T.T.R. 398.

PONAPE LAND LAW.

Obligation to Support

Agreement by transferee of land to take care of transferor is clearly in accord with Ponape custom and public policy recognized by Japanese Administration. *Lusama v. Eumpeseun*, 1 T.T.R. 249.

Right of grantor of land on Ponape Island to cancel gift is dependent upon gross failure of grantee to perform agreement of support, and cancellation must be clearly shown. *Eneriko v. Marina*, 1 T.T.R. 334.

Where land on Ponape Island is transferred upon agreement to take care of grantor and there is gross failure to perform agreement by grantee, transfer may be cancelled and land transferred by grantor to another. *Eneriko v. Marina*, 1 T.T.R. 334.

Where there is clear showing of agreement to support and a gross failure to perform agreement by transferee, transfer may be cancelled

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and land transferred to another. *Lusama v. Eunpeseun*, 1 T.T.R. 249. Heirs of grantor of land on Ponape Island do not have standing to revoke gift of grantor for grantee's gross failure of support. *Eneriko v. Marina*, 1 T.T.R. 334.

German Land Title

Land law in Ponape was changed drastically by German Government in 1912 by issuing land titles with numerous provisions which changed customary law. *Kilara v. Alexander*, 1 T.T.R. 3.

Issuance of German title documents for land on Ponape Island was official act of government then in power and it is presumed that documents gave ownership in accordance with their terms. *Neliana v. Nila*, 1 T.T.R. 171.

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 T.T.R. 613.

Land on Ponape Island held under German title document is subject to land law stated in standard form of document except for any subsequent changes. *Likaor v. Iriarte*, 1 T.T.R. 53.

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. (T.T.C., Sec. 24) *Petiele v. Max*, 1 T.T.R. 26.

Land on Ponape Island held under standard form of title issued by German Government is controlled by law stated in document, except for specific changes promulgated during German, Japanese or American Administrations. *Ladore v. Ladore*, 1 T.T.R. 21.

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. (T.T.C., Sec. 24) *Kilara v. Alexander*, 1 T.T.R. 3.

Family agreements concerning disposition of land on Ponape Island held under German land title were encouraged by Japanese Administration and considered in accord with public policy. *Godlieb v. Welten*, 1 T.T.R. 175.

German land law introduced to Ponape Island system of extended family ownership with title placed in one man who had imposed upon him obligation to allow his male relatives without land and his unmarried female relatives to make their livelihood on land. *Kilara v. Alexander*, 1 T.T.R. 3.

Property on Ponape Island held under German land title is vested in owner with benefit of and subject to all rights and obligations imposed by system of private land ownership set forth in standard form of title document issued by German Government on Ponape in 1912, except as modified by law. *Pelitin v. Lorenzo*, 1 T.T.R. 307.

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Determination by Committee of Seven in Kitti (advisory administrative body) is of no legal effect in determining ownership of land on Ponape Island held under German land title. *Eneriko v. Marina*, 1 T.T.R. 334.

Nanmarki's concern with land on Ponape Island was recognized by German title document under which *Nanmarki's* consent was necessary to transfer land and to determine who should succeed to land for which deceased owner left no heir within categories specified in title document. *Godlieb v. Welten*, 1 T.T.R. 175.

—Presumption of Ownership

Presumption is that ownership of land on Ponape Island under German land title vests in person in whose name document stands or in his heirs under document. *Likaor v. Iriarte*, 1 T.T.R. 53.

Presumption is that ownership of land on Ponape Island held under standard form of German title document, with rights and benefits and subject to obligations set forth in document, vests in person in whose name document is issued. *Neliana v. Nila*, 1 T.T.R. 171.

Party claiming rights to land on Ponape Island under German title has superior right to possession over party claiming under expired lease. *Francisca v. Ladore*, 1 T.T.R. 303.

Presumption is that ownership of land on Ponape Island rests in person in whose name German title document stands, but presumption may be overcome by clear evidence showing that owner is under legal obligation to recognize rights of others in property. *Pernando v. Paulus*, 1 T.T.R. 32.

Presumption that person in whose name German land title is issued is owner of land on Ponape Island can be overcome by clear evidence showing that he is under legal obligation to recognize certain rights of others in property. *Lusama v. Eunpeseun*, 1 T.T.R. 249.

Although it is presumed that person in whose name German land deed is issued is owner of land on Ponape Island, presumption may be overcome by clear evidence showing that person is under legal obligation to recognize certain rights of others in property. *Petiele v. Max*, 1 T.T.R. 26.

Presumption of ownership of land on Ponape Island by person in whose name German land title is issued may be overcome by clear evidence to contrary, but mere testimony that someone else had rights in land before title documents were issued is not sufficient to overcome presumption. *Neliana v. Nila*, 1 T.T.R. 171.

Where individual remained in possession of land on Ponape Island under claim of ownership as heir under German land title for about seventeen years, up to end of Japanese Administration, and has continued in possession since, it would not be proper for court now to attempt to upset his possession. *Belimina v. Pelimo*, 1 T.T.R. 210.

PONAPE LAND LAW

—Approval of Transfer

Sale, gift or rental of land on Ponape Island held under German land title could be made only with consent of *Nanmarki* and Governor, and no attempted will was effective to transfer land without such consent. *Ladore v. Salpatierre*, 1 T.T.R. 18.

Use instructions accompanying transfer of land on Ponape Island may be considered by *Nanmarki* and Governor in approving transfers. *Sarapina v. Eldridge*, 1 T.T.R. 297.

Under German land law on Ponape Island inheritance was subject to fixed rules and gifts or sales of land were not allowed without consent of Governor and *Nanmarki*. *Kilara v. Alexander*, 1 T.T.R. 3.

Under German land title, gift of land on Ponape Island to one not entitled to inherit under German title required permission of *Nanmarki* and Governor. *Plus v. Pretrik*, 1 T.T.R. 7.

In order for adopted daughter or son of sister to inherit land on Ponape Island held under German land title, consent of *Nanmarki* and Governor was necessary. *Miako v. Losa*, 1 T.T.R. 255.

Nanmarki, having once consented to transfer of land on Ponape Island, cannot change or upset determination without good reason, and any later conflicting determination will be of no legal effect. *Moses v. Moses*, 1 T.T.R. 339.

Any question as to right of *Nanmarki* to act for government in transferring title document for land on Ponape Island is not defect of which party is entitled to take advantage. *Neliana v. Nila*, 1 T.T.R. 171.

Japanese official whose title was "Head of Ponape Branch Office" was lawful successor to Governor and was authorized to exercise powers of Governor under standard form of German title document for land on Ponape Island. *Ladore v. Ladore*, 1 T.T.R. 21.

Head of Ponape Branch Office (Japanese official) was lawful successor to Governor and was authorized to exercise power of approval of transfers of land. *Pernando v. Paulus*, 1 T.T.R. 32.

High Commissioner or his authorized representatives may exercise powers reserved to Governor under German land title document pertaining to land on Ponape Island. *Petiele v. Max*, 1 T.T.R. 26.

Civil Administrator of Ponape or Governor of Eastern Carolines may exercise power of approval granted to Governor under German title document if authorized by High Commissioner. *Plus v. Pretrik*, 1 T.T.R. 7.

Where owner sells land with approval of *Nanmarki* but not that of government, transferor has legal title pending further action by government, but transferee is entitled to be treated as owner as against all persons except government. *Iosep v. Welianter*, 1 T.T.R. 315.

PONAPE LAND LAW

Failure of transferee to have transfer of land on Ponape Island endorsed on document by Head of Ponape Branch Office is not defect of which private individual outside government and not having superior rights to land can take advantage. *Ladore v. Ladore*, 1 T.T.R. 21.

While not preventing government from taking other action later, consent of *Nanmarki* gives transferee of land in Ponape held under German title right to be treated as title holder as against all persons except government. *Moses v. Moses*, 1 T.T.R. 339.

There is presumption that division of land on Ponape Island with required consents and which is later confirmed by parties effectively divides ownership of land. *Weirland v. Weirland*, 1 T.T.R. 201.

Where sale of land on Ponape Island is made by owner with required consents, it makes no difference whether sale was consented to or discussed by family. *Ladore v. Ladore*, 1 T.T.R. 21.

If land on Ponape Island has been divided with approval of *Nanmarki* and official Japanese surveyor, it makes little or no difference in whose name German title document was left or transferred to where government had given notice that it would be replaced by Japanese documents showing divisions. *Weirland v. Weirland*, 1 T.T.R. 201.

Where transfer of land on Ponape Island was approved by *Nanmarki* and concurred in by Head of Ponape Branch Office, and one seeking to upset transfer made no effort to obtain title during balance of Japanese Administration, it would not be proper function of court to upset it now. *Godlieb v. Welten*, 1 T.T.R. 175.

Effect of American Administration's inaction regarding consent to transfer of land in Ponape held under German title has been to consent tentatively to *Nanmarki's* determinations where they are reasonable and made around time of transfer. *Moses v. Moses*, 1 T.T.R. 339.

Where American Administration has not set up method for obtaining consent of Governor necessary for transfers of German land titles to land on Ponape Island, effect is that administration tentatively consents to determination of *Nanmarki* in such matters, although government is not prevented from taking other action later, and transferee has right to be treated as title holder as against all persons except government. *Lusama v. Eunpeseun*, 1 T.T.R. 249.

Failure to obtain consents of *Nanmarki* and Governor to transfer of land on Ponape Island as required by Japanese Administration is not defect of which any man with lesser right to possession is entitled to take advantage. *Godlieb v. Welten*, 1 T.T.R. 175.

Even though beneficiary of family agreement to transfer land on Ponape Island has failed to show consents of *Nanmarki* and Governor as required by Japanese Administration, agreement transferred to him right to possession and use except as against government or anyone who might show better right. *Godlieb v. Welten*, 1 T.T.R. 175.

PONAPE LAND LAW

Where two parties, each claiming to be oldest son of deceased, holder of German land title, have agreed to divide land on Ponape Island, and division has been approved by *Nanmarki* and by Japanese surveyor, court will uphold division. *Weirland v. Weirland*, 1 T.T.R. 201.

Extent to which Mortlock custom is to be considered in determining who shall inherit land on Ponape Island held under German title vests in discretion of *Nanmarki* and Governor. *Lampert v. Julia*, 1 T.T.R. 318.

—Use Rights

Where owner conveys German land title to land on Ponape Island with express written instructions creating rights in others to use land, and transfer is approved by *Nanmarki* and by Ponape Branch Office, court will require transferee to recognize rights established in instructions. *Sarapina v. Eldridge*, 1 T.T.R. 297.

Transferee of land subject to use rights in others may permit relatives to take produce from land as long as rights of others entitled to use of land are not interfered with or their shares reduced. *Sarapina v. Eldridge*, 1 T.T.R. 297.

Where land on Ponape Island held under German title is transferred with instructions as to use rights, transferee, subject to rights in others, is obligated to supervise use of land with sympathetic consideration for needs and wishes of persons named in instructions. *Sarapina v. Eldridge*, 1 T.T.R. 297.

Although person given use rights in land is obligated to comply with instructions of title holder which are reasonably necessary to avoid conflicts between those having interests in land, she is not obligated to ask title holder each time before taking produce from land, since this is unreasonable inconvenience. *Sarapina v. Eldridge*, 1 T.T.R. 297.

Where written instructions accompanying transfer of land on Ponape Island held under German title provide that transferee shall take care of certain woman, latter may take such produce from land as she reasonably desires as freely as is consistent with exercise of similar rights by others named in instructions and designated by transferee. *Sarapina v. Eldridge*, 1 T.T.R. 297.

Determination of legal title to land on Ponape Island does not effect enjoyment of *maka* and other use rights in land by extended matrilineal family as granted to them by decedent, and rights of title holder are also subject to rights of all unmarried female relatives to live on and use property. *Kehler v. Kehler*, 1 T.T.R. 398.

—Equitable Interests

Court will recognize arrangement for issuance of title document in name of one person with understanding that some other person will have equitable life interest in land. *Petiele v. Max*, 1 T.T.R. 26.

Where title to land on Ponape Island is transferred to another under agreement that transferee hold part of land for third party, and divi-

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sion is approved by *Nanmarki* and Governor, transferee is under obligation to recognize rights of third party. *Pernando v. Paulus*, 1 T.T.R. 32.

—Easements

Where land on Ponape Island held under German land title is traversed by roads not mentioned in title document, said roads are rights of way across property. *Kilara v. Alexander*, 1 T.T.R. 3.

—Eminent Domain

Under German land title, land on Ponape Island could be taken for official purposes without remuneration. *Kresensia v. Trust Territory*, 1 T.T.R. 158.

—Vacancy in Title

Where transferee has not received approval of *Nanmarki* and Governor as required under German land title, there is vacancy in legal title of land on Ponape Island. *Plus v. Pretrik*, 1 T.T.R. 7.

Where there are no lawful heirs or transferees of land on Ponape Island held under German title, there is vacancy in legal title, and unless and until government designates owner, right of possession is controlled by worth of claims to it. *Miako v. Losa*, 1 T.T.R. 255; *Francisca v. Ladore*, 1 T.T.R. 303.

Where title to land on Ponape Island is vacant, until government designates owner, right of possession and use of land is controlled by worth of different claims to it, which depend upon agreements and conduct of those who formerly owned land. *Plus v. Pretrik*, 1 T.T.R. 7.

Where there are no lawful heirs to land on Ponape Island held under German land title, there is vacancy in title, and right to determine who shall succeed vests with *Nanmarki* and Governor. *Lampert v. Julia*, 1 T.T.R. 318.

In absence of proof of action as to ownership by Governor, *Nanmarki's* determination, when based on good reason, gives person he has designated as owner right to possession of land on Ponape so long as title remains vacant. *Miako v. Losa*, 1 T.T.R. 255.

Until *Nanmarki* and government determine ownership of land on Ponape Island formerly held under German land title, both parties claiming land under instructions of former owner have obligation to cooperate, and plan of cooperative use under which land was worked for twenty years before 1954 should continue. *Lampert v. Julia*, 1 T.T.R. 318.

—Women's Rights

Under German title document there is no provision for inheritance of land on Ponape Island by daughters as matter of right. *Belimina v. Pelimo*, 1 T.T.R. 210.

System of land inheritance for Ponape Island established by German Government in 1912 made no provision for inheritance by daughters as matter of right. *Kantalaria v. Torres*, 1 T.T.R. 199.

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Where, at time of death of claimant's father, daughters could not inherit land under system of inheritance established by German Government for Ponape Island, title to land passed to father's brother and not to female claimant. *Kantalaria v. Torres*, 1 T.T.R. 199.

In accordance with policy of Japanese Administration, transfer of land to women after 1941 was not against public policy. *Petiele v. Max*, 1 T.T.R. 26.

After 1941, transfers of land on Ponape Island to or for benefit of women were not against public policy. *Miako v. Losa*, 1 T.T.R. 255.

Although after 1941 Japanese Administration permitted transfers of land on Ponape Island to females, rule was not extended to include right of females to inherit land, and right of inheritance did not inhere in females until 1957. (Ponape District Order No. 8-57) *Kehler v. Kehler*, 1 T.T.R. 398.

Women could not inherit land on Ponape Island under German title before February 1, 1957. (Ponape District Order No. 8-57) *Enerko v. Marina*, 1 T.T.R. 334.

Since a woman was not within one of categories of German land title document as entitled to inherit land, her interest in lands on Ponape Island under such document is subject to approval of *Nanmarki* and Governor. *Petiele v. Max*, 1 T.T.R. 26.

Person claiming land on Ponape Island must recognize right of woman transferee to hold land pending approval of *Nanmarki* and Governor. *Petiele v. Max*, 1 T.T.R. 26.

—Succession

Inheritance of land on Ponape Island held under German land title is controlled by provisions stated in standard form except for any changes made during subsequent administrations. *Ladore v. Salpatierre*, 1 T.T.R. 18.

Land on Ponape Island held under German title certificate is subject to rules of inheritance and succession stated in document except as modified by action of subsequent administrations. *Kehler v. Kehler*, 1 T.T.R. 398.

In absence of action of lawmaking authorities to permit it, attempt to substitute Mortlock system of land tenure by private agreement within family for German land title system as to land held under German title is definitely contrary to public policy and of no legal effect in Ponape. *Miako v. Losa*, 1 T.T.R. 255.

Although court recognizes that both German and Japanese authorities allowed simple and definite agreements for recognition of rights in person other than title holder, it will not permit substitution of Mortlock system of land tenure which might control land for generations. *Miako v. Losa*, 1 T.T.R. 255.

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Where there is no present transfer or valid testamentary disposition, German title to land on Ponape Island passes in succession to heirs designated in document. *Kehler v. Kehler*, 1 T.T.R. 398.

Written instructions accompanying transfer of land on Ponape Island which attempt to place land under former system of matrilineal clan inheritance are of no binding effect as contrary to public policy of German land reform. *Sarapina v. Eldridge*, 1 T.T.R. 297.

Under German land title document for Ponape Island, upon death of owner, property passes undivided to male relative entitled to inheritance, and testamentary disposition is not allowed. *Likaor v. Iriarte*, 1 T.T.R. 53.

Under German title document, oldest living son inherited land on Ponape Island on death of father and in absence of any disposition consented to by *Nanmarki* and Governor. *Ladore v. Ladore*, 1 T.T.R. 21.

Under German land title, eldest son of title holder of land on Ponape Island did not have absolute right of inheritance since prospective interest could be cut off by transfer to another with approval of *Nanmarki* and Governor. *Pernando v. Paulus*, 1 T.T.R. 32.

Under German title, prospective interest of eldest son in land on Ponape Island may be cut off by transfer by title holder to someone else with approval of *Nanmarki* and Governor. *Lusama v. Eunpeseun*, 1 T.T.R. 249.

Oldest adopted son of land owner who would have inherited under German land title has no right to revoke gift of land by his father to third party which was consented to by *Nanmarki* and Ponape Branch Office. *Ladore v. Cantero*, 1 T.T.R. 343.

Natural child who has been adopted into another family is not prevented from inheriting from natural father land on Ponape Island held under German title. *Ladore v. Ladore*, 1 T.T.R. 21.

Where decedent leaves no sons, his oldest brother will inherit land on Ponape Island which decedent held under German land title. *Kehler v. Kehler*, 1 T.T.R. 398.

On death of owner, in absence of living sons, land on Ponape Island passes to his older brother in accordance with terms of German title document and remains in him except for such effect as is given to family agreement providing otherwise. *Godlieb v. Welten*, 1 T.T.R. 175.

—Wills

Transfers of land on Ponape Island by will were not permitted under German title document. *Eneriko v. Marina*, 1 T.T.R. 334.

Under German land titles, testamentary disposition of land on Ponape Island is prohibited, and attempted oral will in favor of decedent's wife and daughter cannot be given effect. *Kehler v. Kehler*, 1 T.T.R. 398.

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Attempted will of land on Ponape Island held under German title document is considered to be request for future transfer to be effected by someone else, which request need not be given effect. *Likaor v. Iriarte*, 1 T.T.R. 53.

No will was effective to transfer land on Ponape Island held under German title without consent of *Nanmarki* and Governor. *Ladore v. Ladore*, 1 T.T.R. 21.

Where instructions of decedent as to disposition of land on Ponape Island are invalid without approval of *Nanmarki* and Governor, neither party named in instructions is entitled to inherit under German title document. *Lampert v. Julia*, 1 T.T.R. 318.

Upon approval of *Nanmarki* and Ponape Branch Office, Japanese Administration permitted present transfers of remainder interest in land on Ponape Island with life estate reserved to grantor, but transfer by will was not permitted until 1957. (Ponape District Order No. 9-57) *Eneriko v. Marina*, 1 T.T.R. 334.

Where owner of land on Ponape Island died before 1957, attempted will is invalid and land passes in accordance with rules of succession on title document. (Ponape District Order 9-57) *Eneriko v. Marina*, 1 T.T.R. 334.

Japanese Lease—Generally

Japanese lease of land on Ponape Island involved personal reliance upon lessee with broad powers of supervision reserved to government. *Elina v. Danis*, 1 T.T.R. 206.

—Transfer

Where neither party has obtained government approval for transfer of Japanese lease of land on Ponape Island, neither has right to balance of leasehold, and disposition of land is in discretion of government. *Elina v. Danis*, 1 T.T.R. 206.

Until such time as District Land Office grants permission to transfer lease of land on Ponape Island issued by Japanese Administration, court will weigh claims and interests of all parties in determining right to immediate possession. *Elina v. Danis*, 1 T.T.R. 206.

—Termination

Under Japanese lease of land on Ponape Island, rights of lessee expire on death or later issuance of lease to another, and instructions of lessee cannot absolutely control its disposition. *Aknes v. Welu*, 1 T.T.R. 323.

Where holder of Japanese lease to land on Ponape Island dies, it must be presumed his rights under lease were either cut off by his death or substitution of another lease for the one to him. *Ukau v. Mairid*, 1 T.T.R. 312.

—Succession

Where title to land on Ponape Island is vacant after death of holder of Japanese lease, party who originally gained possession lawfully may continue in possession unless and until action is taken by government as to disposition of land. *Ukau v. Mairid*, 1 T.T.R. 312.

Japanese lease of land on Ponape Island cannot be inherited or transferred by will as of right, and disposition of land after death of lessee rests in discretion of government. *Ukau v. Mairid*, 1 T.T.R. 312.

Japanese lease of land on Ponape Island held by decedent cannot be devised without permission of Director of South Seas Bureau or his successor, Trust Territory Government. *Kehler v. Kehler*, 1 T.T.R. 398.

Japanese lease of land on Ponape Island could not be inherited as matter of right, and on death of lease holder, permission of Director of South Seas Bureau was necessary for transfer. *Elina v. Danis*, 1 T.T.R. 206.

Japanese lease of land on Ponape Island can neither be inherited nor disposed of by will as matter of right, and designation of successor has no controlling effect although it may be considered by government. *Aknes v. Weli*, 1 T.T.R. 323.

Japanese Supervised Lease—Generally

Supervised land was common form of leasing land on Ponape Island under Japanese Administration. *Idingel v. Mada*, 1 T.T.R. 164.

Japanese agreement of supervised land on Ponape Island was one under which supervisor's continuing to hold possession of land depended primarily on good will and general policy of government rather than upon legal rights. *Moya v. Trust Territory*, 1 T.T.R. 182.

Supervised lease of land on Ponape Island was agreement under which supervisors continuing to hold possession of land depended primarily on good will and general policy of government rather than upon legal rights. *Idingel v. Mada*, 1 T.T.R. 164.

Where successor to Japanese supervisor of lease of land on Ponape Island agreed to pay predecessor for crops planted on land at time of change of possession out of government funds, he is not obligated to pay until he receives said funds, and where successor makes no such agreement he has incurred no legal liability for what is growing there. *Moya v. Trust Territory*, 1 T.T.R. 182.

Where Japanese lease of land on Ponape Island reserved great powers of supervision in government, it cut off rights of any former possessor of land. *Mikelina v. Simon*, 1 T.T.R. 153.

Government of Trust Territory has succeeded to rights of Japanese Administration under supervised leases of land on Ponape Island issued by former administration. *Mikelina v. Simon*, 1 T.T.R. 153.

Remedy available to former lessee of Japanese supervised lease of land on Ponape Island which government may be willing to grant as

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matter of policy is not for courts to decide. *Moya v. Trust Territory*, 1 T.T.R. 182.

—Cancellation

Japanese Administration on Ponape Island reserved right to cancel leases and appoint supervisor at any time and without compensation. *Idingel v. Mada*, 1 T.T.R. 164.

Supervised lease agreement issued by Japanese Administration for lands on Ponape Island gave government right to cancel lease at any time without payment of damages. *Moya v. Trust Territory*, 1 T.T.R. 182.

—Succession

Supervised lease of land on Ponape Island does not grant supervisor any interest in land which can be inherited as matter of right. *Idingel v. Mada*, 1 T.T.R. 164.

Japanese supervised lease of land on Ponape Island could not be inherited as of right, and on death of holder permission of Director of South Seas Bureau was necessary for transfer. *Mikelina v. Simon*, 1 T.T.R. 153.

Question of succession on death of supervisor of Japanese lease of land on Ponape Island is left to discretion of government. *Idingel v. Mada*, 1 T.T.R. 164.

Until action by government is taken as to vacant title to land on Ponape Island, son and adopted son of deceased supervisor of Japanese land lease have greater right to possession than widow who has remarried. *Idingel v. Mada*, 1 T.T.R. 164.

Until such time as some person acquires permission from Land Office for transfer of Japanese lease of land on Ponape Island, person who originally gained possession may continue in possession. *Mikelina v. Simon*, 1 T.T.R. 153.

Where neither party claiming right to succeed as lessee under Japanese land lease on Ponape Island has applied to government for transfer of lease, neither has right to balance of leasehold, and question of disposition of land rests in discretion of government, which may consider questions of policy and moral rights not proper for court to pass upon. *Mikelina v. Simon*, 1 T.T.R. 153.

Japanese Survey

Official Japanese land survey on Ponape Island which began about 1941 was intended to form basis for issuance of new title documents, and there is strong presumption that determinations made in survey were correct unless contrary is clearly shown. *Belimina v. Pelimo*, 1 T.T.R. 210.

Where German land titles were replaced by Japanese Government with Japanese documents showing divisions approved by surveyors, pre-

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sumption is that division of land on Ponape Island approved by Japanese surveyors is absolute and each owner of part of divided lot has complete control over his part. *Teresita v. Ioakim*, 1 T.T.R. 147.

Presumption that determinations of Japanese land survey of 1941 are correct will overcome any suspicion as to validity of division arising from long delay in bringing action. *Kilement v. Eskalen*, 1 T.T.R. 309.

Although presumption that official acts of former administration were proper would ordinarily uphold endorsement of land title to land on Ponape Island, contrary determination of Japanese survey outweighs presumption arising from endorsement. *Belimina v. Pelimo*, 1 T.T.R. 210.

Kusaie—Adoption

Kusaie custom does not permit adopted son to transfer to another any rights he may be expressly given in land by adopting parents. *Seku v. Freddie*, 1 T.T.R. 82.

Under Kusaie custom, land which adopting parent has not disposed of by testament will not pass to adopted son if parent leaves any true issue by blood. *Seku v. Freddie*, 1 T.T.R. 82.

Under Kusaie custom, where deceased land owner leaves adopted son and true daughter, land will pass to daughter even though adopted son has assisted in planting land. *Seku v. Freddie*, 1 T.T.R. 82.

Under Kusaie custom, where adopted son has been given by adopting parents certain plots of land as inheritance, presumption is that permission extends no longer than life of adopted son and is personal to him, unless there is clear evidence to the contrary. *Seku v. Freddie*, 1 T.T.R. 82.

—Japanese Survey

As Japanese survey of Kusaie in 1932 placed primary emphasis on determination of boundaries, there is no assurance that all claims to ownership were considered or that there was any detailed investigation of extent of or basis for any alleged owner's interest in land shown under his name. *Jesse v. Ebrean*, 1 T.T.R. 77.

Listing of party's name in Japanese survey of Kusaie in 1932 is at best only some evidence as to ownership or control. *Jesse v. Ebrean*, 1 T.T.R. 77.

Where neither the person in whose name land is shown on Japanese survey of land on Kusaie nor person through whom he claims has been in physical control of property for ten to fifteen years before survey, and neither has been in control since, any presumption that owner shown on survey is true owner has been overcome. *Jesse v. Ebrean*, 1 T.T.R. 77.

—Transfers

Under Kusaie custom, transfer of land by woman or her family to husband in connection with marriage is presumed to be *tuka* unless there is clear evidence to contrary. *Likiaksa v. Skillings*, 1 T.T.R. 87.

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Under Kusaie custom, gift of land by woman or her family to husband in connection with marriage (*tuka*) transfers all rights of ownership in the land. *Likiaksa v. Skillings*, 1 T.T.R. 87.

Under Kusaie custom, when father gives oldest son authority to manage land, son has strong obligation to obey, support and respect father, and if he fails to fulfill obligations, father may revoke son's authority to manage land and may dispose of land as he wishes. *Peter v. Konlulu*, 1 T.T.R. 85.

—Use Rights

Under Kusaie custom, one's right to use land may be subject to his living with owner. *Balsissa G. v. Tulenoa*, 1 T.T.R. 91.

Under Kusaie custom, permission by stepmother for her stepson living with her to use land with understanding he is to support her is revocable when cohabitation ceases, and stepson has no rights in land, nor does stepmother have obligation to compensate him. *Mike v. Intekma*, 1 T.T.R. 80.

Under Kusaie custom, one who has right to use land does not lose it completely when he first ceases to live with owner, and although he cannot exercise right while away, he may exercise it if he returns within a few years. *Balsissa G. v. Tulenoa*, 1 T.T.R. 91.

Under Kusaie custom, where one who has use right in land fails to live in household of title holder for as long as ten years, he loses all rights to land and to anything growing there. *Balsissa G. v. Tulenoa*, 1 T.T.R. 91.

Mokil

Under Mokil custom, division of one's land upon death is made in accordance with instructions left by deceased. *Orijon v. Etjon*, 1 T.T.R. 101.

Under Mokil custom, owner of land may divide it unequally among children and others, and may entrust management and division of land to another relative. *Orijon v. Etjon*, 1 T.T.R. 101.

Under Mokil custom, son of land owner has no absolute right to inherit from his father. *Orijon v. Etjon*, 1 T.T.R. 101.

Under Mokil custom, if son is left out of division of land without his consent and he promptly protests to *Nanmarki*, latter may induce heirs of land to give up part of land to son. *Orijon v. Etjon*, 1 T.T.R. 101.

Under Mokil custom, where son appears to accept family arrangement for disposition of father's land and leads family to reasonably believe he has consented to arrangement, he is not allowed to upset arrangements thirty to forty years later. *Orijon v. Etjon*, 1 T.T.R. 101.

Ngatik—Inheritance

Customary law on Ngatik Atoll with regard to wills is entirely different from that on Ponape Island and was not affected by German land reform. *Toter v. Iouanes*, 1 T.T.R. 160.

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Under Ngatik custom, last instructions which are made voluntarily by owner while he is of sound mind will control disposition of land. *Toter v. Iouanes*, 1 T.T.R. 160.

Under Ngatik custom, land on Ngatik Atoll may be devised by owner among relatives and those who take good care of him in serious sickness. *Toter v. Iouanes*, 1 T.T.R. 160.

PROPERTY.

See Personal Property; Real Property

PUBLIC LANDS.

Succeeding Sovereign

In area of property rights, present government of Trust Territory is in position like that of succeeding sovereign taking over government of land conquered by it or ceded to it by another nation. *Wasisang v. Trust Territory*, 1 T.T.R. 14.

All rights in land acquired by German and Japanese Governments are property of Trust Territory Government. (Policy Letter P-1, December 29, 1947) *Ngiraibiochel v. Trust Territory*, 1 T.T.R. 485.

Any interest previously owned or held by Japanese Government in land or other property in Trust Territory is vested in Alien Property Custodian. (Interim Regulations Nos. 4-48, 6-48, 3-50) *Wasisang v. Trust Territory*, 1 T.T.R. 14.

Interest in land previously held by Japanese Government is vested in Alien Property Custodian. *Christopher v. Trust Territory*, 1 T.T.R. 150.

Government of Trust Territory has succeeded to rights of Japanese Administration under Japanese leases of land on Ponape Island. *Elina v. Danis*, 1 T.T.R. 206.

Trust Territory's Alien Property Custodian is empowered to vest in himself title to alien property, including property formerly owned by private Japanese national. (T.T.C., Sec. 533) *Ngirkelau v. Trust Territory*, 1 T.T.R. 543.

Japanese national's title to property in Palau Islands passed to Trust Territory's Alien Property Custodian just as effectively as if made in appropriate deed of conveyance. *Ngirkelau v. Trust Territory*, 1 T.T.R. 543.

Although no consideration was paid by Trust Territory's Alien Property Custodian for transfer of property from Japanese national to him, and therefore he does not fulfill all requirements of bona fide purchaser, he is entitled to same position as was occupied by prior bona fide purchaser. *Ngirkelau v. Trust Territory*, 1 T.T.R. 543.

Determination of Ownership

Where lands were formerly or are used, occupied or controlled by United States Government or Trust Territory Government, District Land

PUBLIC LANDS

Title Officer may determine ownership of lands and effect their return to party found to be owner. (Office of Land Management Regulation No. 1) *Tamael v. Trust Territory*, 1 T.T.R. 520.

Where there is no legal title to land, question of disposition of land rests in discretion of government, which may consider questions of policy and moral rights which it would not be proper for court to pass upon. *Idingel v. Mada*, 1 T.T.R. 164.

Sale

Where agreement between government and grantee of property contains no restrictions against alienation, nor requirements for development and occupancy, agreement is one of purchase on contract, with title to vest in grantee upon making final payment under contract. *Urrimech v. Trust Territory*, 1 T.T.R. 534.

Where government and grantee of property contract that latter will make payments for twenty-five years after which title to property will vest in him, and grantee transfers his interest after making payments for twenty-four years, transferee's two years of occupancy may be tacked on to transferor's twenty-four years to give transferee total over projected twenty-five year minimum under contract. *Urrimech v. Trust Territory*, 1 T.T.R. 534.

Shore Lands

Under American view, individual ownership of lands along navigable tidewaters extends only to high watermark. *Ngirai biochel v. Trust Territory*, 1 T.T.R. 485.

Under common law, land along sea below high watermark belonged to the crown, and was held in trust for benefit of all the people. *Ngirai biochel v. Trust Territory*, 1 T.T.R. 485.

Under American view, state owns, in trust for the people, navigable tidewaters between high and low watermarks within each state's boundaries, and soil under them, as inseparable attribute of state sovereignty. *Ngirai biochel v. Trust Territory*, 1 T.T.R. 485.

Shore Lands, see, also, Real Property—Shore Lands

Use Rights

Oral revocable permission to use land granted by United States authorities creates tenancy at will which is automatically terminated by death of person to whom permission to use land is granted. *Idingel v. Mada*, 1 T.T.R. 164.

Revocable permit from American Administration to use land on Ponape Island permits exercise of only such rights in land as Alien Property Custodian might have and is not a determination of who should succeed to vacant title. *Francisca v. Ladore*, 1 T.T.R. 303.

REAL PROPERTY.

Gifts

Where party is given general power to take charge of owner's property, power does not operate to give control over property which is no longer owner's to give because it was subject matter of prior gift. *Yangilemau v. Mahoburimalei*, 1 T.T.R. 429.

Any power granted party to control property left by former owner is ineffective and inoperative with respect to trees which were subject matter of prior gift. *Yangilemau v. Mahoburimalei*, 1 T.T.R. 429.

Where gift of trees was effected during donor's lifetime, trees do not represent property owned by donor at time of his death. *Yangilemau v. Mahoburimalei*, 1 T.T.R. 429.

Quiet Title—Presumption of Ownership

Possession for long period of time and construction of a number of buildings on land are indications of ownership of land. *Aneten v. Olaf*, 1 T.T.R. 606.

—Laches

Where party lets matter rest for long time, there is strong presumption that she agreed to division of land which she did not dispute at the time. *Wia v. Iosef*, 1 T.T.R. 434.

Where clan had ample opportunity to protect its interest in land held for it by chief, and number of years passed from date property was leased to bona fide purchaser to date of sale to him, clan is estopped to complain of transfer by chief whom it allowed to hold title. *Ngirkelau v. Trust Territory*, 1 T.T.R. 543.

Sales

Where land owner enters into agreement regarding disposal of land and receives benefits of agreement, he cannot act to defeat agreement by transferring land without consent of other party to agreement. *Plus v. Pretrik*, 1 T.T.R. 7.

—Bona Fide Purchaser

As between two innocent persons, one of whom must suffer consequences of breach of trust, one who made it possible by his act of confidence must bear the loss. *Ngirkelau v. Trust Territory*, 1 T.T.R. 543.

Transfer of or encumbrance upon real estate or any interest therein, other than lease for term not exceeding one year, is not valid as against subsequent purchaser or mortgagor of same real estate who buys in good faith for valuable consideration without notice of prior transfer, if transfer to subsequent purchaser is recorded first. (T.T.C., Sec. 1023) *Asanuma v. Flores*, 1 T.T.R. 458.

REAL PROPERTY

Where title to real property is permitted by rightful owner to stand in name of another who makes unauthorized sale to third person who pays value without notice of the infirmity, true owner is estopped from setting up his title or interest. *Ngirkelau v. Trust Territory*, 1 T.T.R. 543.

Where seller in Palau Islands gives buyer clear evidence of full ownership of land, and latter buys land on that evidence in good faith and for value paid, without notice of seller's prior oral agreement with third party to sell same land to him, first buyer acquires full title to land free of third party's claims. *Asanuma v. Flores*, 1 T.T.R. 458.

Shore Lands

Land along seashore which is covered by ebb and flow of tide waters is real property and is exclusively subject to laws of country within which it is situated. *Ngiraibiochel v. Trust Territory*, 1 T.T.R. 485.

Only that country within which land along seashore is situated can prescribe mode by which title thereto passes from one person to another or any interest therein gained or lost. *Ngiraibiochel v. Trust Territory*, 1 T.T.R. 485.

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. (T.T.C., Sec. 24) *Ngiraibiochel v. Trust Territory*, 1 T.T.R. 485.

Shore Lands, see, also, Public Lands—Shore Lands

S

SEARCH AND SEIZURE.

Generally

Provisions of Trust Territory Code relating to search and seizure are construed in light of Federal Rules of Criminal Procedure, Rule 41(e). *Nichig v. Trust Territory*, 1 T.T.R. 572.

If accused in criminal prosecution voluntarily complies with requests of police for evidence, it is not error to admit such evidence. *Nichig v. Trust Territory*, 1 T.T.R. 572.

Defendant is not prejudiced by receipt of knife into evidence in criminal trial where there is no showing of attempt to use it unlawfully. *Nichig v. Trust Territory*, 1 T.T.R. 409.

Motion To Suppress Evidence

Person aggrieved by illegal search and seizure may move for return of property and to suppress its use as evidence, but such motion must be made before trial unless opportunity therefor did not exist or accused was not aware of grounds for motion, except that court, in its discretion, may entertain motion at trial or hearing. (T.T.C., Sec. 485) *Nichig v. Trust Territory*, 1 T.T.R. 572.

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Trial court in criminal prosecution has discretion to refuse to entertain motion to suppress evidence obtained by illegal search and seizure when motion is presented at trial. *Nichig v. Trust Territory*, 1 T.T.R. 572.

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 T.T.R. 409.

STATUTES.

Approval

Requirement that district orders must be approved by High Commissioner prior to promulgation as law was not retroactive. (HICOM-TERPACIS ADMIN dispatch 240255Z, May, 1950) *Kentiy v. Trust Territory*, 1 T.T.R. 188.

Construction

Primary rule of construction of statutes is to ascertain and declare intent of legislature and to carry intention into effect. *Kalifin v. Trust Territory*, 1 T.T.R. 242.

Intention of legislature, when discovered, must prevail in interpretation of statutes, despite any contrary rule of construction declared by previous acts. *Kalifin v. Trust Territory*, 1 T.T.R. 242.

It is duty of courts to adopt construction of law which will make it consistent with Constitution if language of law will permit. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 345.

Particular words in ordinance should be construed in light of both purpose of ordinance as a whole and rights guaranteed to individuals by legislation such as Bill of Rights, so as to reconcile them and give effect to both if fairly possible. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 345.

—Prospective Effect

Unless legislative intent to make statutory provisions retroactive clearly appears, they are to be given prospective effect only. *Ngirai-biochel v. Trust Territory*, 1 T.T.R. 485.

—Separability

Where invalid portion of municipal regulation is separable from valid portion, latter is upheld as valid. *Trust Territory v. Benido*, 1 T.T.R. 46.

Presumption of Validity

Although courts have duty to declare enactment invalid which is clearly repugnant to fundamental law of area, courts are bound to approach such questions with greatest possible caution. *Trust Territory v. Benido*, 1 T.T.R. 46.

As long as means adopted by those having legislative authority are within bounds of reason, it is for them, not courts, to decide whether

STATUTES

particular means adopted are wise, expedient or desirable, or whether some milder measure would be sufficient. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 345.

Mere possibility of abuse is not sound objection to validity of law, and it is not for courts to presume law will be unlawfully administered. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 345.

There is presumption in favor of validity of legislative enactment, which presumption extends to municipal ordinances. *Trust Territory v. Benido*, 1 T.T.R. 46.

T

TRESPASS.

Generally

There may be conviction for trespass only if court finds acts complained of were done without accused committing or attempting to commit any other crime against property under Trust Territory Code. (T.T.C., Sec. 401) *Bisente v. Trust Territory*, 1 T.T.R. 327.

Acts cannot constitute crime of trespass under Trust Territory law unless they are done without accused committing or attempting to commit certain other crimes, of which malicious mischief is one. (T.T.C., Sec. 401) *Bisente v. Trust Territory*, 1 T.T.R. 327.

If judge in criminal trial finds all elements of malicious mischief are proved, he cannot properly find all elements of trespass are proved. (T.T.C., Secs. 398, 401) *Bisente v. Trust Territory*, 1 T.T.R. 327.

In criminal prosecution for trespass, where there is reasonable doubt on question of whether owner gave accused permission to enter house, finding of trespass in entering house is not warranted. (T.T.C., Sec. 401) *Olber v. Trust Territory*, 1 T.T.R. 559.

Intent

Where individual takes woman's underclothing from clothesline without any firm basis for knowing whose it is and knowing he has no actual permission from anyone to take it, he is interfering with peaceful use and possession of another, even though he hopes owner will approve. *Olber v. Trust Territory*, 1 T.T.R. 559.

TRUK CUSTOM.

Divorce

Under Truk custom, marriage may be dissolved by either spouse "throwing away" other spouse. *Purako v. Efou*, 1 T.T.R. 236.

—Recording

Under Truk custom, any marriage may be dissolved by either spouse at any time at will without action by any court, magistrate or other official. *Purako v. Efou*, 1 T.T.R. 236.

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Under Truk custom, marriage may be dissolved at any time at will without action by court, Magistrate, or official, by either spouse "throwing away" other spouse. (T.T.C., Sec. 714) *Aisea v. Trust Territory*, 1 T.T.R. 245.

Failure to record divorce in municipal office has no effect on validity of divorce under Truk custom. (T.T.C., Sec. 714) *Aisea v. Trust Territory*, 1 T.T.R. 245.

While order issued during Navy Administration that divorces be recorded in municipal offices resulted in evidence of divorce, order was repealed and recording or failure to record in municipal office a divorce effected in accordance with local custom has no effect on validity of divorce. *Purako v. Efou*, 1 T.T.R. 236.

—Civil Liability

Under Truk custom, liability for civil damages may result from "throwing away" of one's spouse. *Purako v. Efou*, 1 T.T.R. 236.

—Criminal Liability

Under Truk custom, "throwing away" of spouse does not constitute crime and cannot be punished as violation of criminal statute. (T.T.C., Sec. 434) *Aisea v. Trust Territory*, 1 T.T.R. 245.

Under Truk custom, "throwing away" of spouse does not constitute crime, and conviction of such alleged offense in Community Court is void. *Purako v. Efou*, 1 T.T.R. 236.

Where court transfers land to one spouse after criminal conviction of other spouse for wrongfully obtaining divorce under Truk custom, transfer is void since criminal conviction is void, but parties may stipulate that transfer is settlement of civil damages, or aggrieved spouse may sue for civil damages. *Aisea v. Trust Territory*, 1 T.T.R. 245.

TRUK LAND LAW.

Group Ownership

On islands of Truk Atoll, holding of land by family groups of varying degrees of inclusiveness is common practice. *Santer v. Onita*, 1 T.T.R. 439.

Groups holding land on Truk Atoll are usually constituted on matrilineal basis but groups on bilateral and patrilineal basis are also recognized. *Santer v. Onita*, 1 T.T.R. 439.

Under Truk custom, when half-brothers combine their land, effect is to form new, small land-holding group consisting initially just of themselves and, after them, of their children. *Santer v. Onita*, 1 T.T.R. 439.

Under Truk custom, no member of group owning land has right to exclude another member of group from use and benefit of land. *Santer v. Onita*, 1 T.T.R. 439.

Where it becomes clear that members of group of land owners under Truk custom cannot come to practical agreement as to use of land,

TRUK LAND LAW

court, after giving opportunity for further hearing, will order equitable division of land between them. *Santer v. Onita*, 1 T.T.R. 439.

In dividing land where group of Truk land owners cannot agree upon division, court will give due consideration to who bore burden of rehabilitating land after war. *Santer v. Onita*, 1 T.T.R. 439.

Lineage Ownership

Matrilineal family or lineage ownership is most common form of ownership on Truk Atoll. *Nusia v. Sak*, 1 T.T.R. 446.

—Use Rights

Under Truk custom, granting of permission to *afokur* to use land for his lifetime does not imply any loss of ownership by lineage. *Nusia v. Sak*, 1 T.T.R. 446.

Under Truk custom, where lineage members actively use land with *afokur*, evidence is clearly insufficient to show any transfer of title to land to him. *Nusia v. Sak*, 1 T.T.R. 446.

Under Truk custom, use of lineage land by *afokur* is in accord with custom, but rights of *afokur* extend no further than particular permission granted. *Nusia v. Sak*, 1 T.T.R. 446.

Under Truk custom, use of land and sharing of production by *afokur* of former lineage head with other members of lineage does not constitute proof of title interest in *afokur* or of his right to continue sharing production. *Lus v. Totou*, 1 T.T.R. 552.

—Transfers

Under Truk custom, where it is clear that land is owned by lineage, transfer to child of male member is not to be presumed but must be established by clear and convincing evidence. *Lus v. Totou*, 1 T.T.R. 552.

Under Truk custom, transfer to child of male member of lineage must be consented to by all male members of lineage or generally acquiesced in by them. *Lus v. Totou*, 1 T.T.R. 552.

Under Truk custom, transfer of matrilineally held land to issue of male members is not to be presumed without showing of positive agreement by entire lineage or clear acquiescence in definite transfer. *Nusia v. Sak*, 1 T.T.R. 446.

Under Truk custom, transfer by *afokur* of former lineage head of title to piece of lineage land or use rights is ineffective to give any property rights or use rights to transferee in absence of consent by lineage. *Lus v. Totou*, 1 T.T.R. 552.

—Gifts

Under Truk custom, there are well-recognized situations in which land is given by one lineage to another, where gift carries with it use rights and most incidents of ownership. *Kilion v. Cheche*, 1 T.T.R. 442.

TRUSTEESHIP

Under Truk custom, system of retained rights in donor lineage is similar to practice in United States of donating title in fee to charitable corporation, subject to reversion to someone else on breach of condition. *Kilion v. Cheche*, 1 T.T.R. 442.

Under Truk custom, although donee lineage may agree to permit donor lineage to take food from lands donated at any time by informal agreement, this does not affect basic rights in the land. *Kilion v. Cheche*, 1 T.T.R. 442.

Under Truk custom, lineage making gift to another lineage retains right to "first fruits" and reversionary interest which may give it right to possession under certain circumstances, particularly if lineage receiving gift dies out completely. *Kilion v. Cheche*, 1 T.T.R. 442.

Under Truk custom, if donee lineage does not wish to continue on basis of informal agreement with donor lineage, then it must either recognize obligations to present "first fruits" to donor and donor's reversionary interest, or make some arrangement regarding donated land which is satisfactory to donor. *Kilion v. Cheche*, 1 T.T.R. 442.

—Sales

Where lineage permits other persons to deal with land in Truk as their own for long period without raising any objection, holding them out as at least entitled to act as owners, lineage cannot then attempt to upset sale by other persons to third party. *Tosiko v. Upuili*, 1 T.T.R. 436.

Mortlock Islands

Mortlock system of land tenure is drastically different from German land reform system on Ponape, since former involves matrilineal lineage ownership under supervision of headman with individuals restricted to use rights that are subject to readjustment as circumstances change. *Lampert v. Julia*, 1 T.T.R. 318.

System of land tenure in Mortlocks combines matrilineal inheritance with obligation to see that male members of lineage receive land by gift during father's life. *Miako v. Losa*, 1 T.T.R. 255.

System of land tenure in Mortlocks involves frequent transfers without approval based on degree of cooperation of children. *Miako v. Losa*, 1 T.T.R. 255.

TRUSTEESHIP.

Administering Authority—Powers

Administration of territory under League of Nations' Mandate or United Nations' Trusteeship requires that customary law shall be subject to change by administering authority. *Lazarus v. Tomijwa*, 1 T.T.R. 123.

Trusteeship Agreement authorizes administering authority to institute regulations necessary to protect inhabitants against social abuses, and this language is designed to encompass complex of protective devices and regulations encompassed within concept of police power. (Trustee-

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ship Agreement, Arts. 6, 7) *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 615.

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 anti-noise laws. *Ngirasmengesong v. Trust Territory*, 1 T.T.R. 615.

TRUST TERRITORY.

Administering Authority—Obligations

Administering authority has responsibility for maintenance of law and order within Trust Territory. (Trusteeship Agreement, Art. 5, Sec. 3) *Trust Territory v. Benido*, 1 T.T.R. 46.

Applicable Law

Spanish, German and Japanese laws are no longer in effect in Trust Territory except with respect to certain land laws and excepting also status of local customary law included within any repealed enactments. (T.T.C., Sec. 23) *Ngiraibiochel v. Trust Territory*, 1 T.T.R. 485.

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 Trust Territory Code or by laws of Trust Territory in effect on date of adoption of Code or subsequently. (T.T.C., Sec. 22) *Ngiraibiochel v. Trust Territory*, 1 T.T.R. 485.

Trust Territory law which repeals regulations, orders and directives of United States Military Government does not repeal existing district orders. (T.T.C., Sec. 26) *Kentiy v. Trust Territory*, 1 T.T.R. 188.

Promulgation of Trust Territory Code does not repeal existing district orders whether such orders were issued prior to requirement of High Commissioner's approval or subsequent thereto. *Kentiy v. Trust Territory*, 1 T.T.R. 188.

Trust Territory law which provides that Territory laws include district orders promulgated by District Administrators with approval of High Commissioner does not effect repeal of district orders issued by Civil Administrators either with approval of High Commissioner after that was required or without his approval prior to time such requirement was made. (T.T.C., Sec. 20) *Kentiy v. Trust Territory*, 1 T.T.R. 188.

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. (Executive Order No. 32; T.T.C., Secs. 20, 26, 28; Staff Memorandum No. 68) *Kalifin v. Trust Territory*, 1 T.T.R. 242.

Administrative Procedures Manual does not modify executive orders nor itself constitute new law affecting general public. (T.T.C., Sec. 28) *Kentiy v. Trust Territory*, 1 T.T.R. 188.

Land Law

Land law in effect in Trust Territory on December 1, 1941, remains in effect except as changed by express written enactment. (T.T.C., Sec. 24) *Orijon v. Etjon*, 1 T.T.R. 101.

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 of the Pacific Islands. (T.T.C., Sec. 24) *Levi v. Kumtak*, 1 T.T.R. 36.

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. (T.T.C., Sec. 24) *Ngiraibiochel v. Trust Territory*, 1 T.T.R. 485.

Land law in effect in 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 Marshallese custom. (T.T.C., Sec. 24) *Lazarus v. Tomijwa*, 1 T.T.R. 123.

—Limitations

Limitations for actions for recovery of land in Trust Territory is twenty years. (T.T.C., Sec. 316) *Santos v. Trust Territory*, 1 T.T.R. 463; *Esebei v. Trust Territory*, 1 T.T.R. 495.

Suits Against

There can be no action against government for return of property in its possession or claimed by it without its consent. *Rusasech v. Trust Territory*, 1 T.T.R. 472; *Tamael v. Trust Territory*, 1 T.T.R. 520.

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YAP CUSTOM.**Married Women**

Under Yap custom, married woman during marriage often ceases to be member of family group of which she was part before her marriage, and becomes instead associated with her husband's family group. *Duguwen v. Dogned*, 1 T.T.R. 223.

Under Yap custom, when woman's husband is absent and she remains his wife, various arrangements are often worked out for her subsistence. *Duguwen v. Dogned*, 1 T.T.R. 223.

Under Yap custom, married woman is expected to obtain her subsistence primarily from lands in which her husband has rights and from those lands, if any, in which rights have been set off or given to her by agreement of her patrilineal extended family in connection with her marriage. *Duguwen v. Dogned*, 1 T.T.R. 223.

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YAP LAND LAW.

Patrilineal Ownership

Use of term "owner" in regard to piece of land in Yap is misleading. *Duguwen v. Dogned*, 1 T.T.R. 223.

Traditional method of land ownership in Yap is by family or household groups which hold right to immediate possession and use but whose possession is frequently subject to rights in persons outside family. *Duguwen v. Dogned*, 1 T.T.R. 223.

Yapese land usage is extremely flexible and matter of land rights within particular family group are normally controlled by family agreements. *Duguwen v. Dogned*, 1 T.T.R. 223.

Under Yap custom, inheritance of land rights continues largely within patrilineal extended family. *Duguwen v. Dogned*, 1 T.T.R. 223.

—Supervision

Under Yap custom, it is generally expected that oldest capable male in family, as kind of trustee, will supervise use rights in land with proper regard for reasonable needs of rest of family and subject to family's control, to whose wishes he is expected to yield if contrary to his own. *Duguwen v. Dogned*, 1 T.T.R. 223.

—Use Rights

Under Yap custom, when family is unable to agree on rights in land after seeking advice of local leaders, there is no provision in custom for settling matter other than by fighting. *Duguwen v. Dogned*, 1 T.T.R. 223.

It is duty of court under Trust Territory law to determine matter of rights in land under Yap custom in order to avoid danger of physical conflict or serious injustice. *Duguwen v. Dogned*, 1 T.T.R. 223.

Under Yap custom, in case of disputes between different persons having right to use same land, it is generally possible for parties to secure help of village leaders in bringing about agreement. *Duguwen v. Dogned*, 1 T.T.R. 223.

Although member of family or household having use rights in land in Yap may refer to himself as "owner," from Yapese point of view this does not exclude possibility of several others having similar or other rights in same land at same point of time. *Duguwen v. Dogned*, 1 T.T.R. 223.

Where both parties to land dispute in Yap have right to use land, they must do so in proportion to their respective needs and as long as they perform their traditional kinship obligations. *Duguwen v. Dogned*, 1 T.T.R. 223.

Under Yap custom, several people may have right to take from particular piece of land without having to make specific arrangement about it between themselves, and they have implied obligation to do so in

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way which will not upset others having rights in the land. *Duguwen v. Dogned*, 1 T.T.R. 223.

Under Yap custom, although former holder of use rights in land may express desire as to disposition of rights on his death, his desire is not absolutely binding, although an important factor to be considered by family in determining future control of land. *Duguwen v. Dogned*, 1 T.T.R. 223.

Fact that Yappese clan permitted use rights to be exercised for many years by non-member of clan, that clan has had no meeting for several years and has no active leader, and that many members of clan have moved away, does not deprive clan of ownership of land. *Filimew v. Pong*, 1 T.T.R. 11.

Where clan permitted use rights to be exercised for many years by non-member of clan, and transferee had no authority to dispose of land after his death, question of who shall now have use rights in land or what disposition shall be made of it can still be determined by clan meeting in accordance with Yap custom. *Filimew v. Pong*, 1 T.T.R. 11.