

## Title 5.

### Judiciary.

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### CHAPTER 1.

#### GENERAL PROVISIONS.

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**§ 1. Separation of powers; grant of authority; appointment of judges and justices; budget requests.** — (1) The judiciary shall be independent of the executive and legislative powers and shall be vested in a high court for the Trust Territory, a district court for each administrative district, and a community court for each municipality, or for individual communities therein if the district administrator of the district in which the municipality is situated so determines.

(2) The Secretary of the Department of the Interior shall appoint the chief justice and associate justices of the high court, may make temporary appointments when a vacancy exists, and in addition may appoint temporary judges to serve on the high court.

(3) Budgetary requests for the territorial judiciary, with supporting justification, shall be drawn up by the chief justice of the Trust Territory and be submitted for the approval of the Department of the Interior by the High Commissioner as a separate item in the annual budget for the Trust Territory. (Department of Interior Order No. 2918, part IV; Code 1966, § 115; Code 1970, tit. 5, § 1.)

**§ 2. General powers of courts; admission and discipline of attorneys.** — (1) Each court of the Trust Territory shall have power to issue all writs and other process, make rules and orders, and do all acts, not inconsistent with law and with the rules made by the chief justice of the Trust Territory, as may be requisite for the due administration of justice, and, without limiting the generality of the foregoing powers, may grant bail, accept and forfeit security therefor, make orders for the attendance of witnesses with or without documents, make orders for the disposal of exhibits, and punish contempt of court.

(2) The high court may admit qualified persons as attorneys at law to practice in all the courts of the Trust Territory and may, for cause, discipline or disbar them. (Code 1966, § 179; Code 1970, tit. 5, § 2.)

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

**Power of disciplinary panel.** — Disciplinary panel composed of three judges of the high court may enter an order affecting the rights of a party to a disciplinary proceeding even though section does not expressly provide for adoption or promulgation of rules or procedures governing the practice of law in the Trust Territory. *Abrams v. Trust Territory High Court Disciplinary Panel* (App. Div., May, 1977).

**Disciplining of attorneys.** — There is no question that the high court has the power and

authority to discipline attorneys. It is expressed in statute, as well as being an inherent power correlated to the power to admit attorneys to practice in courts. Courts not only have the inherent power to discipline attorneys, but they are also charged with an obligation and duty to regulate attorneys practicing within their jurisdiction. *Abrams v. Trust Territory High Court Disciplinary Panel* (App. Div., May, 1977).

It is well accepted that the discipline of attorneys is a judicial function of the courts. *Abrams v. Trust Territory High Court Disciplinary Panel* (App. Div., May, 1977).

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

**Power of court to adopt procedures.** — Implicit in the power of the high court to admit and discipline attorneys is the authority to adopt procedures for carrying out its obligations. *Abrams v. Trust Territory High Court Disciplinary Panel* (App. Div., May, 1977).

**§ 3. Jurisdiction; persons and offenses.** — (1) A court of the Trust Territory may exercise personal jurisdiction in civil cases only over persons residing or found in the Trust Territory and who have been duly summoned or persons who voluntarily appear.

(2) Criminal cases shall be prosecuted and tried only in a court having territorial jurisdiction over the place where the crime was committed, except as provided in section 451 of this title. (Code 1966, § 117; Code 1970, tit. 2, § 3.)

**Actions against United States.** — Unless and until congressional authority exists for actions against United States to be brought in

Trust Territory court, court has no jurisdiction to entertain them. *Alig v. Trust Territory*, 3 TTR 64 (1965).

**§ 4. Same; territorial jurisdiction.** — (1) The jurisdiction of the high court shall extend to the whole of the Trust Territory.

(2) The jurisdiction of a district court shall extend to the whole of the administration district for which it is constituted, or any part thereof.

(3) The jurisdiction of a community court shall extend to the whole of the municipality or community for which it is constituted, or any part thereof. (Code 1966, § 116; Code 1970, tit. 2, § 4.)

**§ 5. Actions taken outside Trust Territory or territorial jurisdiction.** — Any action taken by a court or judge thereof outside the Trust Territory or the territorial jurisdiction of the court shall be valid and effective within the Trust Territory to the same extent as if taken therein and within the territorial jurisdiction of the court. (Code 1966, § 180; Code 1970, tit. 2, § 5.)

**§ 6. Sessions to be public.** — The proceedings of every court shall be public, except when otherwise ordered by the court for good cause. (Code 1966, § 186; Code 1970, tit. 2, § 6.)

## CHAPTER 2.

## HIGH COURT.

Sec.

51. Court of record; seal.  
52. Divisions of high court.  
53. Original of trial division.

Sec.

54. Appellate jurisdiction and review.  
55. Sessions.

**§ 51. Court of record; seal.** — The high court shall be a court of record and shall have a seal, which shall be kept in the custody of the clerk of courts at Truk. A duplicate original of the seal shall be kept in the custody of the clerk of courts for each other district. (Code 1966, § 128; Code 1970, tit. 5, § 51.)

**§ 52. Divisions of high court.** — The high court shall consist of a trial division and an appellate division. The trial division shall consist of the chief justice and the associate justices; however, sessions of the trial division may be held by any judge alone. The appellate division shall consist of three judges assigned thereto by the chief justice, two of whom shall constitute a quorum; provided, that either the chief justice or any associate justice may also sit as a member of the three-judge appellate division, in a case which he has not heard as a judge of the trial division. The concurrence of two judges shall be necessary to a determination of any appeal by the appellate division of the high court, but a single judge may make all necessary orders concerning any appeal prior to the hearing and determination thereof, and may dismiss an appeal for want of jurisdiction, or failure to take or prosecute it in accordance with the applicable law or rules of procedure, or at the request of the appellant. (Code 1966, § 121; Code 1970, tit. 5, § 52.)

**Absence of one judge from panel.** — While a full panel of three judges in the appellate division should be the rule, the absence of one judge, for whatever reason, does not deprive those remaining of the authority to render a valid decision, since two judges constitute the required quorum. *Guerrero Family, Inc. v. Micronesian Line, Inc.*, 5 TTR 531 (1971).

The term "quorum," as applied to courts, generally refers to the requirement that a certain number of judges must be present in

order to render a valid decision. *Guerrero Family, Inc. v. Micronesian Line, Inc.*, 5 TTR 531 (1971).

**Dismissal of appeal on jurisdictional grounds.** — An appeal from a hearing before a disciplinary panel of three judges of the appellate division of the high court could be summarily dismissed by a single judge for lack of jurisdiction of the subject matter. *Abrams v. Trust Territory High Court Disciplinary Panel* (App. Div., May, 1977).

**§ 53. Original jurisdiction of trial division.** — The trial division of the high court shall have original jurisdiction to try all causes, civil and criminal, including probate, admiralty, and maritime matters and the adjudication of title to land or any interest therein. (Code 1966, § 123; Code 1970, tit. 5, § 53.)

**Similarity to U.S. Constitution.** — This section is somewhat similar to article 3, section 2 of the Constitution of the United States. *Lakemba v. Milne*, 4 TTR 44 (1968).

**Foreclosure actions to be brought in high court.** — Under present Trust Territory law, court action regarding foreclosure of mortgages in Palau District would have to be brought in the high court. *Iyar v. Sungiyama*, 2 TTR 154 (1960).

**Jurisdiction over land disputes.** — Adjudication of land disputes is within

exclusive original jurisdiction of the trial division of the high court. *Tasio v. Trust Territory*, 3 TTR 262 (1967).

**General jurisdiction.** — Under Trust Territory law, the trial division of the high court is court of general jurisdiction. *Alig v. Trust Territory*, 3 TTR 603 (App. Div. 1967).

**Claim for money damages based on alleged interest in land.** — Where claim of plaintiff for money damages is based on alleged interest in land superior to defendant's interest, matter is within original jurisdiction of high

court to try title or any interest in land, and not within district court's jurisdiction, which is limited in land matters to right of immediate possession. *Remoket v. Olekeriil*, 3 TTR 339 (1967).

**Action for recovery of money because of rights in land.** — Where complaint asks for recovery of money because of rights in land from which money is derived, action should be brought in trial division of the high court, and district court has no jurisdiction of subject matter. *Remoket v. Olekeriil*, 3 TTR 339 (1967).

**Admiralty and maritime matters.** — This section accords jurisdiction in admiralty and maritime matters to the high court. *Lakemba v. Milne*, 4 TTR 44 (1968).

**Substantive maritime law not stated.** — The Trust Territory Code does not specifically state the substantive law to be applied in maritime cases. *Lakemba v. Milne*, 4 TTR 44 (1968).

**§ 54. Appellate jurisdiction and review.** — (1) The appellate division of the high court shall have jurisdiction to review on appeal the decisions of the trial division of the high court:

- (a) In all cases originally in the high court;
- (b) In all cases decided by the high court on appeal from a district court, involving construction or validity of any law of the United States, or of any law or regulation of the Trust Territory, or of any written enactment intended to have the force of law of any official, board, or body in the Trust Territory;
- (c) In all cases decided by the high court on review of a district court or community court decision under section 353, of title 6 of this code, in which the high court has reversed or modified the decision so as to affect the substantial rights of the appellant.

(2) The trial division of the high court shall have jurisdiction to review on appeal the decisions of the district courts in all cases and shall also have jurisdiction to review on the record, as provided by section 353, of title 6 of this code, final decisions of the district courts and the community courts in which no appeal is taken.

(3) The appellate division of the high court shall, however, have jurisdiction, in its discretion, to review on appeal directly from a district or community court decisions involving construction or validity of any law of the United States, or of any law or regulation of the Trust Territory, or of any written enactment intended to have the force of law, if the appellate division considers that the public interest will be served thereby. (Code 1966, § 124; Code 1970, tit. 5, § 54.)

**Appellate division of high court — Jurisdiction of bill of rights questions.** — Appellate division of the high court has jurisdiction over questions arising under Trust Territory bill of rights. *Ngirasmengesong v. Trust Territory*, 1 TTR 615 (App. Div. 1958).

**Correction of trial division judgments.** — The only remedy to correct a judgment of the trial division is to appeal the case to the appellate division of the high court. *Rilometo v. Lanlobar*, 4 TTR 172 (1968).

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

**Suit against government for return of land comes within sovereign immunity doctrine.** — Suit against Trust Territory and certain of its officers for return of land taken by Japanese government and for damages and rents comes within doctrine of sovereign immunity, whereby government is immune from suit without its consent. *Alig v. Trust Territory*, 3 TTR 603 (App. Div. 1967).

**Effect of appellate decision.** — Where high court decides case on appeal from district court and appeal does not involve construction or validity of a law, regulation or enactment, further appeal rights are cut off. *Ngertelwang Clan v. Sechelong* (App. Div., February, 1976).

**Nature of the right to appeal.** — The right to appeal is purely a statutorily conferred right and the legislature has a large measure of discretion in prescribing the manner of criminal procedure. *Trust Territory v. Elias* (App. Div., January, 1975).

**Schedule of appeal does not deny equal protection.** — Where original conviction is in district court, and the decision is reviewed and affirmed by the trial division of the high court, appellants are not denied equal protection under the law because they are then denied a review by a three-judge panel even though there is no doubt that if the charge had originally been heard in the trial division of the high court the appeal would be to the appellate division of the high court. *Trust Territory v. Elias* (App. Div., January, 1975).

**Purpose of section.** — Section is designed to facilitate the orderly and efficient processing of cases, not to arbitrarily decide whether an appellant receives a single-judge review or a three-judge appellant panel. *Trust Territory v. Elias* (App. Div., January, 1975).

**Effect of prosecutor's discretion to**

**choose court in which to file complaint.** — Fact that prosecuting attorney can file complaint or information in either the district court or the trial division of the high court does not, in any way, invalidate the appeals process. In the final analysis the prosecuting attorney does not have the discretion to decide which appeal process the defendant shall have because the courts have the power to transfer cases. *Trust Territory v. Elias* (App. Div., January, 1975).

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

**§ 55. Sessions.** — (1) Sessions of the appellate division of the high court shall be held at such places and at such times as the chief justice may determine by rules or order from time to time.

(2) Sessions of the trial division shall be held, if practicable, four times in each year in each administrative district pursuant to rules or orders promulgated from time to time by the chief justice. (Code 1966, § 127; Code 1970, tit. 5, § 55.)

## CHAPTER 3.

## DISTRICT COURT.

Sec.

101. Jurisdiction.

102. Sessions.

103. Record to be filed with clerk of courts.

**§ 101. Jurisdiction.** — (1) Each district court shall have original jurisdiction concurrently with the trial division of the high court:

(a) In all civil cases (including proceedings for changes of name) where the amount claimed or value of the property involved does not exceed one thousand dollars, except admiralty and maritime matters and the adjudication of title to land or any interest therein (other than the right to immediate possession); provided, that each district court shall have jurisdiction to award alimony and support for children in divorce cases and separate support or separate maintenance for a spouse and support for children in support and maintenance cases regardless of whether the awards may ultimately exceed one thousand dollars, and to include in such award land or any interest therein owned by any parties in the case (but this shall not include jurisdiction to adjudicate the validity of such party's ownership of the land or interest therein in question);

(b) In all criminal cases involving offenses against the laws of the Trust Territory including generally recognized local customs, where the maximum punishment which may be imposed does not exceed a fine of two thousand dollars or imprisonment for five years, or both.

(2) Each district court shall have jurisdiction to review on appeal the decisions of the community courts of the district in all cases, civil and criminal. (Code 1966, § 138; Code 1970, tit. 5, § 101.)

**Adjudication of land disputes.** — Adjudication of land disputes is within exclusive original jurisdiction of the trial division of the high court. *Tasio v. Trust Territory*, 3 TTR 262 (1967).

**Jurisdiction of action for money damages resulting from land dispute.** — Where complaint asks for recovery of money because of rights in land from which money is derived, action should be brought in trial division of the high court, and district court has no jurisdiction of subject matter. *Remoket v. Olekeriil*, 3 TTR 339 (1967).

**Jurisdiction of high court to determine interest in land.** — Where claim of plaintiff for money damages is based on alleged interest in land superior to defendant's interest, matter is within original jurisdiction of high court to try title or any interest in land, and not within district court's jurisdiction, which is limited in land matters to right of immediate possession. *Remoket v. Olekeriil*, 3 TTR 339 (1967).

**District court's lack of jurisdiction concerning interests in land.** — Wife's action against her husband for specific performance of alleged promise to transfer land depended upon what interest, if any, wife had in the land, which had been conveyed to the husband only and which wife claimed a one-half interest

ownership of; and district court properly dismissed for want of jurisdiction due to statute providing district court did not have jurisdiction where title to or interest in land was involved. *Taisakan v. Taisakan*, 6 TTR 283 (1973).

**Distinction between claim for money and land dispute.** — There is distinction between action relating to claim for money, which is within jurisdiction of district court, and action which determines interests in land, which is not within power of district court to decide. *Remoket v. Olekeriil*, 3 TTR 339 (1967).

In action for specific performance of promise to transfer land, statute providing district court had no jurisdiction where title to or interest in land was involved could not be avoided by first granting the alternative relief of money damages equal to the value of the land and then ordering transfer of the land in satisfaction of the judgment, for when money judgment is satisfied through execution, the attached property is sold and the purchase payment is transferred to the judgment creditor. *Taisakan v. Taisakan*, 6 TTR 283 (1973).

**Jurisdiction of land possession questions similar to forcible entry and detainer action.** — Trust Territory law which gives district court jurisdiction to determine right to

immediate possession of land is similar to forcible entry and detainer action, which is regarded as possessory action, in which plaintiff need not be owner of property in dispute and issue of title is not raised. *Remoket v. Olekeriil*, 3 TTR 339 (1967).

**When district court has original jurisdiction.** — District court has original jurisdiction in all civil cases where amount claimed or value of property involved does not exceed \$1,000, except admiralty and maritime matters and adjudication of title to land or interests therein. *Sam v. Sam*, 3 TTR 203 (1966).

**Authority of district courts as to orders to right to possess land.** — District courts in Trust Territory have clear authority to determine and make orders as to right to immediate possession of land. *Aimeliik People v. Remengesau*, 2 TTR 320 (1962).

Purpose of the Trust Territory law allowing district courts to determine right to immediate possession of land is to have courts readily available to determine such rights in orderly manner in order to avoid resort to force. *Aimeliik People v. Remengesau*, 2 TTR 320 (1962).

**§ 102. Sessions.** — Each district court shall hold its sessions from time to time at the headquarters of the district or elsewhere therein as its business and the public interests may require and as the rules of procedure prescribed for it by the chief justice of the Trust Territory may direct. (Code 1966, § 139; Code 1970, tit. 5, § 102.)

**§ 103. Record to be filed with clerk of courts.** — The presiding judge of the district court shall promptly make, or cause to be made, and file with the district clerk of courts a record of each case heard and decided by the court. (Code 1966, § 140; Code 1970, tit. 5, § 103.)

Authority of the district courts in Trust Territory to issue orders regarding right to immediate possession of land is not limited to situations in which high court action is pending. *Aimeliik People v. Remengesau*, 2 TTR 320 (1962).

Although district and community courts cannot adjudicate title to land or any interest therein, this does not prevent district or community court from ordering transfer of land as payment for damages where there is no dispute about ownership and when value of land does not exceed jurisdictional limitation of court. *Miko v. Keit*, 2 TTR 582 (1964).

**Authority of district court does not extend to prayers for support.** — There is no authorization for district court to consider prayers for support except in actions for divorce or annulment and unless prayer is for amount within jurisdiction of court. *Sam v. Sam*, 3 TTR 203 (1966).

**Support prayer for action for divorce.** — Where total amount of support prayer for an action for divorce exceeds jurisdiction of district court, action must be brought in high court. *Sam v. Sam*, 3 TTR 203 (1966).

## CHAPTER 4.

## COMMUNITY COURT.

Sec.

- 151. Jurisdiction.
- 152. Oral process and returns.
- 153. Filing of record.

**§ 151. Jurisdiction.** — Each community court shall have original jurisdiction, concurrently with the trial division of the high court and the district court, in all civil cases where the amount claimed or value of the property involved does not exceed one hundred dollars, except admiralty and maritime matters and the adjudication of title to land or any interest therein (other than the right to immediate possession), and in all criminal cases involving offenses against the laws of the Trust Territory, including generally recognized local customs, where the maximum punishment which may be imposed does not exceed a fine of one hundred dollars, or imprisonment for six months, or both. (Code 1966, § 149; Code 1970, tit. 5, § 151.)

**Limitation of jurisdiction of 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. *Purako v. Efou*, 1 TTR 236 (1955).

Community court has no jurisdiction to try any person for bigamy, and conviction of this offense in community court is void. *Purako v. Efou*, 1 TTR 236 (1955).

**Authority to order transfer of land as payment for damages.** — Although district and community courts cannot adjudicate title to

land or any interest therein, this does not prevent district or community court from ordering transfer of land as payment for damages where there is no dispute about ownership and when value of land does not exceed jurisdictional limitation of court. *Miko v. Keit*, 2 TTR 582 (1964).

**Trial division of high court has jurisdiction over land disputes.** — Adjudication of land disputes is within exclusive original jurisdiction of the trial division of the high court. *Tasio v. Trust Territory*, 3 TTR 262 (1967).

**§ 152. Oral process and returns.** — All process and reports of service of process of a community court may be oral if the court deems best, but such oral process shall only be effective within the territorial jurisdiction of the court issuing it. (Code 1966, § 336; Code 1970, tit. 5, § 152.)

**§ 153. Filing of record.** — As promptly as possible after the final decision of a case in a community court, the presiding judge shall make, or cause to be made, and send a record of the case in the form prescribed by the rules of procedure adopted by the chief justice of the Trust Territory to the clerk of courts for the district in which the court was held. (Code 1966, § 150; Code 1970, tit. 5, § 153.)



## CHAPTER 5.

## JUDGES, OFFICERS AND EMPLOYEES.

**Subchapter I.****High Court.**

Sec.

- 201. Appointment of justices.
- 202. Rule-making power of chief justice.
- 203. Temporary judges
- 204. Special judges for murder cases.
- 205. Compensation of officers and employees.

**Subchapter II.****District Court.**

- 251. Appointment, tenure and salary of judges.
- 252. Assignment of associate judges.

**Subchapter III.****Community Courts.**

- 301. Appointment and tenure of judges.

Sec.

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- 303. Assignment of associate judges.
- 304. Assignment of other judges.

**Subchapter IV.****Miscellaneous Provisions.**

- 351. Disqualification of judges.
- 352. Clerk of courts; other officers and employees.
- 353. Assessors.
- 354. Utilization of citizens.
- 355. Authority to administer oaths.
- 356. Authority of judicial officers to exercise powers of notary public.

## SUBCHAPTER I.

*High Court.*

**§ 201. Appointment of justices.** — (1) There shall be a chief justice of the Trust Territory and one or more associate justices appointed by the Secretary of the Department of the Interior.

(2) The chief justice shall preside at any session of the high court which he attends.

(3) Whenever the chief justice is unable to perform the duties of his office or the office is vacant, his powers and duties shall devolve upon any associate justice designated by the chief justice, or in the absence of such designation, upon the senior associate justice in point of service, until such disability is removed or another chief justice is appointed and takes office. (Code 1966, § 120; Code 1970, tit. 5, § 201.)

**Discretion of chief justice in assigning cases not violative of due process.** — Action of chief justice who is disqualified from hearing case in assigning case first to one judge then to

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

**§ 202. Rule-making power of chief justice.** — The chief justice of the Trust Territory shall have administrative supervision over all the courts of the Trust Territory and their officers, and he may make rules not inconsistent with law regulating the pleading, practice and procedure, and the conduct of business in the several courts of the Trust Territory. (Code 1966, § 178; Code 1970, tit. 5, § 202.)

**Promulgation of rules as supplement to a statutory policy.** — Where there are rules promulgated as an administrative interpretation of, and administrative supplement to, a statutory policy, failure of the

legislating authority to repudiate such an interpretation by later enactments raises a presumption in favor of the correctness of such interpretation. *Marbou v. Termeteet*, 5 TTR 655 (1971).

**Administrative interpretation of statutes.** — With direct notice of administrative interpretation of the statutes and past opportunities to correct or amend, through legislation, any errors on the part of the rule-making authority, inaction by the legislating authority implies validation through acquiescence. *Marbou v. Termeteet*, 5 TRR 655 (1971).

**§ 203. Temporary judges.** — The Secretary of the Department of the Interior may from time to time designate temporary judges, learned in the law, who shall be qualified to sit in the appellate division of the high court during such period of time as the secretary may designate. During such period, each of these temporary judges shall be qualified to hold sessions of the trial division of the high court upon assignment by the chief justice. (Code 1966, § 122; Code 1970, tit. 5, § 203.)

**Discretion of chief justice in assigning cases not violative of due process.** — Action of chief justice who is disqualified from hearing case in assigning case first to one judge then to

**Authority of chief justice after disqualification.** — When the chief justice is disqualified from hearing a case he continues to have administrative supervision of all the courts in the Trust Territory and, even though disqualified, can make an assignment of the case. *Sonoda v. Burnett* (Tr. Div., April, 1977).

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

**§ 204. Special judges for murder cases.** — (1) The High Commissioner shall from time to time appoint for definite specified terms two or more special judges of the high court for each administration district to sit in the trial division of the court in the trial of murder cases.

(2) When a murder case is assigned for trial, the judge of the high court assigned to preside shall assign two of the special judges appointed for the district in which the trial is to take place to sit with him in the trial thereof. The special judges shall participate with the presiding judge in deciding, by majority vote, all questions of fact and sentence, but the presiding judge alone shall decide all questions of law involved in the trial and determination of the case. If the trial is by jury, however, the special judges shall participate only as assessors and in deciding on the question of sentence. (Code 1966, § 125; Code 1970, tit. 5, § 204.)

**Appointment of special judges for murder cases.** — Under this section special judges of the high court are appointed to sit in the trial of murder cases in the trial division and participate with a presiding judge of the high court in deciding, by majority vote, all questions of fact. *Helgenberger v. Trust Territory*, 4 TTR 530 (App. Div. 1969).

**Triers of fact in murder case.** — In the Trust Territory in a prosecution for murder the triers of fact are the presiding judge together with two special judges provided for under this section. *Helgenberger v. Trust Territory*, 4 TTR 530 (App. Div. 1969).

**Function of special judges.** — The special judges sit, in effect, in the place of a jury, since they are limited to participating with the presiding judge in deciding, by majority vote, all questions of fact and sentence; the judge of the high court, who presides, alone decides all questions of law. *Helgenberger v. Trust Territory*, 4 TTR 530 (App. Div. 1969).

**Qualification of special judges.** — It is not required that special judges appointed to sit in trial of murder cases be learned in the law; they do not sit as judges, but as triers of fact when no jury is provided. *Helgenberger v. Trust Territory*, 4 TTR 530 (App. Div. 1969).

**Power of special judges to question witnesses.** — As special judges participate in deciding facts and sentence, and as the court has the authority to examine witnesses, it follows that special judges may question witnesses just the same as the high court justice. *Trust Territory v. Minor* (App. Div., May, 1976).

**Instruction of special judges as to law.** — Presiding judge is not required to instruct the special judges concerning the law as is required in a trial by jury. The procedure whereby the presiding judges inform the special judges concerning the law applicable is discretionary. *Trust Territory v. Techur* (App. Div., June, 1976).

**§ 205. Compensation of officers and employees.** — The rates of compensation of special judges of the trial division of the high court, associate judges of the district courts, presiding and associate judges of the community courts, assessors, clerks of courts and other officers and employees of the courts shall be fixed by the chief justice of the Trust Territory with the approval of the High Commissioner, and shall be paid out of funds appropriated or allotted to the judiciary of the Trust Territory. (Code 1966, § 184; Code 1970, tit. 5, § 205.)

## SUBCHAPTER II.

### *District Court.*

**§ 251. Appointment, tenure and salary of judges.** — The district court for each administrative district shall consist of a presiding judge and may include one or more associate judges, all of whom shall be appointed by the High Commissioner, by and with the advice and consent of the Congress of Micronesia as provided by law, for three-year terms, subject to removal by the trial division of the high court for cause after hearing. The presiding judge of a district court shall receive a salary to be fixed by the chief justice, with the approval of the High Commissioner, which salary shall not be diminished during his term of office. No judge of a district court may be an officer or employee of the Trust Territory government, or any political subdivision thereof, during his tenure in office. The High Commissioner may appoint a special judge of the high court appointed for a district pursuant to section 204 of this title to serve also as presiding or associate judge of the district court for the district. (Code 1966, § 136; Code 1970, tit. 5, § 251; P.L. No. 6-23, § 1.)

**§ 252. Assignment of associate judges.** — If associate judges have been appointed for a district court, one or more of them shall be assigned by the presiding judge of the district court from time to time to sit in the court for the hearing and determination of particular cases or proceedings pursuant to the rules of procedure prescribed for the court by the chief justice of the Trust Territory. (Code 1966, § 137; Code 1970, tit. 5, § 252.)

## SUBCHAPTER III.

### *Community Courts.*

**§ 301. Appointment and tenure of judges.** — The community court for each municipality or community therein shall consist of a presiding judge and may include one or more associate judges, all of whom shall be appointed by the district administrator of the district in which the municipality is located, upon nominations made as provided in section 302 of this chapter for definite terms specified by him, subject to removal by the trial division of the high court for cause after hearing. The trial division of the high court may suspend a judge of a community court for cause. (Code 1966, § 145; Code 1970, tit. 5, § 301.)

**§ 302. Nomination of judges.** — The presiding judge and associate judge or judges of a community court shall be nominated by popular vote or otherwise as the district administrator of the district in which the municipality or community concerned is located deems most in accord with the wishes of the people of the municipality or community and consistent with the proper administration of justice. If nominations are to be made by popular vote, the

offices of judge shall be voted for separately and not as incidental to any other office. The district administrator shall give due consideration to all nominations made for the office of judge of a community court. He shall not be bound to appoint a person nominated if he is not satisfied that the nominee is properly qualified for the appointment, but he may in that case appoint a qualified person without further nomination. Whenever the district administrator deems it practicable in view of the wishes of the people of the municipality or community and in view of the number of qualified persons available, he shall appoint as judges of the community court only persons who hold no office in the executive branch of the government of the municipality or the Trust Territory. (Code 1966, § 146; Code 1970, tit. 5, § 302.)

**§ 303. Assignment of associate judges.** — If associate judges have been appointed for a community court they may individually hold separate sessions of the court when assigned to do so by the presiding judge or two or more of them may sit together in sessions of the court when so assigned by the presiding judge. When two or more judges sit together in a community court, the presiding judge or, in his absence, the oldest judge present, shall preside and the decision of the court shall be determined by the majority vote of the judges present. (Code 1966, § 147; Code 1970, tit. 5, § 303.)

**§ 304. Assignment of other judges.** — Any judge of a community court may be invited by the presiding judge of another community court to sit in that court either for the hearing and determination of a particular case or cases or for a specified period of time, and, if willing and able to accept, the judge so invited shall have all the powers of an associate judge of that community court for the hearing and determination of the cases or during the period specified. (Code 1966, § 148; Code 1970, tit. 5, § 304.)

#### SUBCHAPTER IV.

##### *Miscellaneous Provisions.*

**§ 351. Disqualification of judges.** — No judge shall hear or determine or join in hearing and determining an appeal from the decision of any case or issue decided by him. No judge shall sit in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to participate in the hearing and determination of the case. (Code 1966, § 181; Code 1970, tit. 5, § 351.)

**Cross reference.** — Judges in Federated States of Micronesia, Part III, Title 5.

**Judge's powers of discretionary action suspended.** — Section, in disqualifying a judge, suspends his powers only so far as discretionary action in the case is concerned. *Sonoda v. Burnett* (Tr. Div., April, 1977).

**Discretionary power of chief justice in assigning cases not violative of due process.** — Action of chief justice who is disqualified from hearing case in assigning first to one judge then to another does not violate

plaintiff's right to due process of law. *Sonoda v. Burnett* (Tr. Div., April, 1977).

**Original hearing in appellate division creates no "lower court" decision.** — Where original hearing is in the appellate division from which there is no appeal, there has been no "lower court" decision within the terms of section which would preclude dismissing this matter for lack of jurisdiction. *Abrams v. Trust Territory High Court Disciplinary Panel* (App. Div., May, 1977).

**§ 352. Clerk of courts; other officers and employees.** — (1) The chief justice of the Trust Territory shall appoint a clerk of courts for each

administration district who shall act as clerk of the high court when held in the district and of the district court for the district.

(2) The chief justice may also appoint such other officers and employees of the courts as he deems necessary and may remove any clerk or other officer or employee. (Code 1966, § 182; Code 1970, tit. 5, § 352.)

**§ 353. Assessors.** — A judge presiding in the trial division of the high court may select one or more assessors to sit with him at the trial of any case to advise him in regard to the local law and custom which may be involved, but not to participate in the determination of the case. (Code 1966, § 126; Code 1970, tit. 5, § 353.)

**§ 354. Utilization of citizens.** — Citizens of the Trust Territory shall be employed as judges, officers and employees of the courts to the maximum extent consistent with proper administration of such courts. (Code 1966, § 183; Code 1970, tit. 5, § 354.)

**§ 355. Authority to administer oaths.** — The following officials are authorized to administer oaths:

- (1) Any court;
- (2) Any judge;
- (3) The clerk of courts for a district, subject to such limitations as the chief justice of the high court may impose;
- (4) Any other person authorized in writing by the High Commissioner, and a certified copy of whose authorization is filed with the clerk of courts for the district in which he acts. (Code 1966, § 447; Code 1970, tit. 5, § 355.)

**§ 356. Authority of judicial officers to exercise powers of notary public.** — Each judge, clerk of courts and assistant clerk of courts shall have authority to administer oaths and affirmations and take acknowledgements of deeds, mortgages, and other instruments, and exercise all other powers of a notary public. (Code 1966, § 185; Code 1970, tit. 5, § 356.)

## CHAPTER 6.

## CONCURRENT JURISDICTION.

Sec.

401. Trial division of high court.

402. District court.

403. Transfer of cases.

**§ 401. Trial division of high court.** — The trial division of the high court has original jurisdiction concurrently with the district and community courts in all cases within the original jurisdiction of the latter courts, but need not exercise that jurisdiction in any case which it determines can be promptly and properly tried in the district or community court having jurisdiction, and may transfer the case to that court for trial and determination. (Code 1966, § 161; Code 1970, tit. 5, § 401.)

**§ 402. District court.** — The district court shall exercise its original jurisdiction in all cases in which it has concurrent jurisdiction with a community court and which can be heard by it with convenience to the parties and witnesses and without undue delay. (Code 1966, § 162; Code 1970, tit. 5, § 402.)

**§ 403. Transfer of cases.** — Any case brought in the trial division of the high court or a district court may be transferred by the court in which it has been brought to any other court which has jurisdiction to try it. Any case brought in a community court may be transferred by the court in which it has been brought to the trial division of the high court or the district court having jurisdiction, with the consent of the court to which it is transferred. Any case pending in a district court or community court may be transferred to the trial division of the high court, or to the district court for the district in which the case was brought, by order of the trial division of the high court. Upon receiving a certified copy of an order of the trial division of the high court making such transfer, the court in which the case was pending shall take no further action on the merits of the case, but may make orders of a temporary nature which justice may require and which are not inconsistent with the orders of the trial division of the high court. (Code 1966, § 163; Code 1970, tit. 5, § 403.)

**Purpose of section.** — Section is designed to facilitate the orderly and efficient processing of cases, not to arbitrarily decide whether an appellant receives a single-judge review or a three-judge appellant panel. *Trust Territory v. Elias* (App. Div., January, 1975).

**Effect of prosecutor's discretion to choose court in which to file complaint.** — Fact that prosecuting attorney can file

complaint or information in either the district court or the trial division of the high court does not, in any way, invalidate the appeals process. In the final analysis the prosecuting attorney does not have the discretion to decide which appeal process the defendant shall have because the courts have the power to transfer cases. *Trust Territory v. Elias* (App. Div., January, 1975).

## CHAPTER 7.

## EXTRATERRITORIAL JURISDICTION.

Sec.	Sec.
451. Crimes committed outside the Trust Territory.	454. Application of Trust Territory laws on vessels and aircraft.
452. Effect of previous trial.	455. Application of other law.
453. Place of trial.	456. "Trust Territory vessel" defined.

**§ 451. Crimes committed outside the Trust Territory.** — The jurisdiction of the courts of the Trust Territory shall extend to all criminal offenses committed outside the territorial limits of the Trust Territory by any person on board a Trust Territory vessel or aircraft. (Code 1966, § 208; Code 1970, tit. 5, § 251; P.L. No. 4C-61, § 1.)

**Non-citizen resident protected while employed on sea-going vessel; obligated to observe laws.** — For the duration of the time non-citizen resident was enlisted or employed aboard a vessel licensed under the provisions of the Code and at sea, he would still receive the protections and benefits accorded any Trust

Territory resident, and would also be subject to the obligations and liabilities of a Trust Territory resident, and that, of course, includes the obligation to observe all Trust Territory criminal prohibitions. *Kodang v. Trust Territory*, 5 TTR 581 (1971).

**§ 452. Effect of previous trial.** — No person shall be tried by a court of the Trust Territory for an offense committed outside the territorial limits of the Trust Territory who has already been lawfully tried on the merits for substantially the same offense by a court of another jurisdiction. (Code 1966, § 209; Code 1970, tit. 5, § 452.)

**§ 453. Place of trial.** — Trials for offenses committed outside the territorial limits of the Trust Territory may be held in any court of the Trust Territory competent to try the offender for the offense charged; provided that it is within that court's territorial jurisdiction that the offender is found or into which he is first brought or in which he resides. (Code 1966, § 210; Code 1970, tit. 5, § 453.)

**Editor's note.** — In the 1970 Code, the last part of this section read: "... competent to try the offender for the offense charged within which court's territorial jurisdiction the

offender is found or into which he is first brought or in which he resides." The language has been changed to achieve clarity.

**§ 454. Application of Trust Territory laws on vessels and aircraft.** — The criminal laws of the Trust Territory shall, except where a contrary intent is clearly indicated in the law, apply outside the territorial limits of the Trust Territory to all persons on board a Trust Territory vessel or aircraft. (Code 1966, § 211; Code 1970, tit. 5, § 454; P.L. No. 4C-61, § 2.)

**Criminal laws to be given extra-territorial effect.** — All criminal laws of the Trust Territory are to be given their lawful extra-territorial effect unless the contrary intent is clearly indicated. *Kodang v. Trust Territory*, 5 TTR 581 (1971).

**Non-citizen residents protected while on sea-going vessel; obligated to observe laws.** — For the duration of the time non-citizen resident was enlisted or employed aboard a

vessel licensed under the provisions of the Trust Territory Code and at sea, he would still receive the protections and benefits accorded any Trust Territory resident, and would also be subject to the obligations and liabilities of a Trust Territory resident, and that, of course, includes the obligation to observe all Trust Territory criminal prohibitions. *Kodang v. Trust Territory*, 5 TTR 581 (1971).

**§ 455. Application of other law.** — The criminal law of any other jurisdiction which is applicable under international law may also be enforced by courts of the Trust Territory in trial of offenses committed outside the territorial limits of the Trust Territory, whenever, in the opinion of the court, justice and comity will be aided thereby. (Code 1966, § 212; Code 1970, tit. 5, § 455.)

**§ 456. "Trust Territory vessel" defined.** — The term "Trust Territory vessel" as used in this chapter shall mean a vessel belonging in whole or in part to the government of the Trust Territory, or to any permanent resident of the Trust Territory, or to any association, partnership, company, or other entity organized under the laws of the Trust Territory, or to any government corporation authorized by the United States Congress to conduct business in the Trust Territory, or to any corporation created by the High Commissioner of the Trust Territory or by any subordinate of his or by any successor in responsibility. (Code 1966, § 213; Code 1970, tit. 5, § 456.)

**Non-resident citizen protected while employed on sea-going vessel; obligated to observe laws.** — For the duration of the time non-citizen resident was enlisted or employed aboard a vessel licensed under the provisions of the Code and at sea, he would still receive the protections and benefits accorded any Trust

Territory resident, and would also be subject to the obligations and liabilities of a Trust Territory resident, and that, of course, includes the obligation to observe all Trust Territory criminal prohibitions. *Kodang v. Trust Territory*, 5 TTR 581 (1971).



## CHAPTER 8.

## JURIES AND JURY TRIAL.

Sec.	Sec.
501. Right to trial by jury	508. Talesmen summoned from bystanders.
502. Challenges permitted in civil actions.	509. Summoning jurors.
503. Qualifications of jurors.	510. Disqualification of chief of police.
504. Exemptions from jury service.	511. Challenge for frequency of service.
505. Exclusion or excuse from service.	512. Jury fees.
506. Manner of drawing jurors.	513. Application of chapter; adoption by district legislature.
507. Apportionment of jurors within districts.	

§ 501. **Right to trial by jury.** — Subject to the restriction set forth in section 513 of this chapter:

(1) *Criminal actions.* Any person accused by information of committing a felony punishable by more than five years imprisonment or by more than two thousand dollars fine, or both, shall be entitled to a trial by a jury of six persons and the federal rules of criminal procedure heretofore or hereafter promulgated shall be applicable thereto, except that the jury shall be of six persons or such smaller number as the parties may stipulate with the approval of the court. The government shall be entitled to three peremptory challenges and the defendant or defendants jointly to five peremptory challenges. If there is more than one defendant, the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly.

(2) *Civil actions.* (a) In civil actions in the trial division of the high court where the amount claimed or value of the property involved exceeds one thousand dollars exclusive of interest and costs, the parties shall be entitled to a trial by a jury of six persons, of all legal (as distinguished from equitable) issues, to the same extent and under the same circumstances that they would be entitled to a trial by jury if the case were pending in a United States district court and were within the jurisdiction of that court, and the federal rules of civil procedure heretofore or hereafter promulgated, which are not inconsistent with this subsection, shall be applicable so far as all matters affecting trial by jury are concerned; provided, however, that there shall be no right to trial by jury in actions against the Trust Territory specified in subsection (3), section 251 of title 6 of this Code, or for annulment, divorce, adoption or eminent domain proceedings.

(b) Any party on demanding a trial by jury shall pay to the clerk of courts a jury fee of five dollars unless permission to proceed without prepayment of fees under section 404 of title 6 of this Code has been granted or is granted upon a motion on or before the day of filing of the demand for trial by jury. If the jury fee is not so paid and permission to proceed without prepayment of fees is not so granted, the demand for trial by jury shall be of no force and effect. (Code 1966, §§ 215, 227; Code 1970, tit. 5, § 501.)

**Right to jury trial limited.** — Section gives a limited right to trial by jury. Provision was sought to provide for jury trial only in cases where jurisdiction lay exclusively with trial division of high court and to ban jury trial in the

district courts. Those cases which could be tried before district courts clearly were not regarded as so serious as to warrant being tried by juries. *Sonoda v. Trust Territory* (App.Div., November, 1976).

§ 502. **Challenges permitted in civil actions.** — In civil cases tried before a jury, each party shall be entitled to two peremptory challenges. Several defendants or several plaintiffs shall be considered as a single party for the purposes of making challenges; if there is more than one defendant, the court may allow the defendants additional peremptory challenges and permit them

to be exercised separately or jointly. All challenges for cause or favor, whether to array or panel or to individual jurors, shall be determined by the court. (Code 1966, § 229; Code 1970, tit. 5, § 502.)

**§ 503. Qualifications of jurors.** — Any citizen of the Trust Territory or of the United States who has attained the age of eighteen years and who has resided within the district for a period of one year immediately prior to jury service is competent to serve as a juror unless:

(1) He has been convicted in a court of record in any jurisdiction of a crime punishable by imprisonment for more than one year and his civil rights have been restored by pardon or amnesty; or,

(2) He is unable to read, write, speak, and understand either English or the principal local language of the part of the district in which he is to serve; or,

(3) He is incapable by reason of mental or physical infirmities to render efficient jury service; or,

(4) He is exempted from service as a juror by any law of the Trust Territory. (Code 1966, § 216; Code 1970, tit. 5, § 503.)

**Accepting interested juror reversible error.** — For a court to accept a juror whose reversible error. "Iroj" on Jebdrik's Side v. Jakeo, 5 TTR 670 (1972). Iroj Erik was counsel for one of the parties was

**§ 504. Exemptions from jury service.** — The following persons shall be exempt from jury service:

(1) Members in actual service in the armed forces of the United States;

(2) Members of the Micronesia police or fire department of the Trust Territory or a subdivision thereof who are actively engaged in the performance of official duties;

(3) Public officers in the executive, legislative, or judicial branches of the government of the Trust Territory or a subdivision thereof who are actively engaged in the performance of official duties. (Code 1966, § 217; Code 1970, tit. 5, § 504.)

**§ 505. Exclusion or excuse from service.** — (1) A judge of the high court may, for good reason, excuse or exclude from jury service any person called as a juror.

(2) Any class or group of persons may, for the public interest, be excluded from the jury panel or excused from service as jurors by order of a high court judge based on a finding that such jury service would entail undue hardship, extreme inconvenience, or serious obstruction or delay in the fair and impartial administration of justice; provided, that no citizen of the Trust Territory or of the United States shall be excluded from service as a juror on account of race, color or religion. (Code 1966, § 218; Code 1970, § 505.)

**§ 506. Manner of drawing jurors.** — (1) The names of jurors for an array shall be publicly drawn from a box containing the names of not less than one hundred qualified persons at the time of each drawing. The jury box shall from time to time be refilled by the clerk of courts of the district or one of his assistant clerks of courts and the presiding judge of the district court or an associate district court judge designated by such presiding judge.

(2) The judge and the clerk or assistant clerk shall alternately place one name in the box until the box shall contain at least one hundred names or such larger number as the court determines. The judge and the clerk or assistant clerk shall obtain these names in a manner approved by the court. (Code 1966, § 219; Code 1970, tit. 5, § 506.)

**§ 507. Apportionment of jurors within districts.** — (1) Jurors shall from time to time be selected from such parts of the districts as the court directs so as to be most favorable to an impartial trial and not incur unnecessary expense or unduly burden the residents of any part of the district with jury service. To this end the court may direct the maintenance of separate jury boxes for some or all of the places for holding court in the district.

(2) Jurors summoned for service at one place for holding court in a district may, if the public convenience so requires and the jurors will not be unduly burdened thereby, be directed by the court to serve at another place in the same district. (Code 1966, § 220; Code 1970, tit. 5, § 507.)

**§ 508. Talesmen summoned from bystanders.** — Whenever sufficient jurors are not available, the court may require the chief of police to summon a sufficient number of talesmen from the bystanders. (Code 1966, § 221; Code 1970, tit. 5, § 508.)

**§ 509. Summoning jurors.** — (1) When a court orders an array of jurors to be drawn, the clerk of courts or an assistant clerk of courts shall issue summonses for the number of jurors determined by the court to be required, and deliver such summonses to the chief of police for service.

(2) Each person drawn for jury service may be served personally or by registered or certified mail addressed to such person at his usual residence or place of business.

(3) Such service shall be made by the chief of police or a member of the Micronesia police selected by him, who shall attach to his return the addressee's receipt for the registered or certified summons where service is made by mail. (Code 1966, § 222; Code 1970, tit. 5, § 509.)

**§ 510. Disqualification of chief of police.** — Whenever in the opinion of the court the chief of police is disqualified to summon jurors, the court may appoint some other disinterested person who shall take an oath to perform such duty truly and impartially. (Code 1966, § 223; Code 1970, tit. 5, § 510.)

**§ 511. Challenge for frequency of service.** — A juror may be challenged on the ground that he has been summoned and served as a juror in another array within one year of the challenge. (Code 1966, § 224; Code 1970, tit. 5, § 511.)

**§ 512. Jury fees.** — (1) Jurors shall receive the following fee for actual attendance at the place of trial and for the time necessarily occupied in going to and from such place at the beginning and end of such service or at any time during the same: five dollars per day.

(2) For the distance necessarily traveled to and from a juror's residence by the shortest practicable route in going to and returning from the place of service, at the beginning and end of the term of service, and for all additional necessary daily transportation expense: three cents per mile, except that if a juror is transported at government expense without charge to him, he shall receive no mileage allowance for the distance he is so transported. If daily travel appears impracticable, subsistence of four dollars per day shall be allowed. Whenever in any case the jury is ordered to be kept together and not to separate, the cost of subsistence during such period shall be paid upon order of the court in lieu of the foregoing subsistence allowance. (Code 1966, § 225; Code 1970, tit. 5, § 512.)

**§ 513. Application of chapter; adoption by district legislature.** — This chapter may be adopted as to any district of the Trust Territory by an act of the district legislature thereof and shall have the force and effect of law. After

the effective date of such an act, all trials in that district subject to the terms hereof shall be governed by this chapter. This chapter shall have no force and effect in any district whose district legislature has not adopted it. (Code 1966, §§ 214, 226; Code 1970, tit. 5, § 513.)