

Digest of Cases Reported

Topics Appearing in this Digest

A	<p>Accord and Satisfaction</p> <p>Administrative Law</p> <p>Admiralty</p> <p>Agency</p> <p>Agriculture</p> <p>Animals</p> <p>Appeal and Error</p> <p>Arrest</p> <p>Arson</p> <p>Assault and Battery With a Dangerous Weapon</p> <p>Attorney and Client</p>	<p style="text-align: right;">G</p> <p>Guardian and Ward</p>
B	<p>Bailments</p>	<p style="text-align: right;">H</p> <p>Habeas Corpus</p> <p>Homesteads</p> <p>Homicide</p>
C	<p>Civil Procedure</p> <p>Commerce and Trade</p> <p>Confessions</p> <p>Constitutional Law</p> <p>Contracts</p> <p>Corporations</p> <p>Courts</p> <p>Criminal Law</p> <p>Custom</p>	<p style="text-align: right;">I</p> <p>Illegitimate Children</p> <p>Injunctions</p> <p>Interest</p>
D	<p>Decedents' Estates</p> <p>Domestic Relations</p>	<p style="text-align: right;">J</p> <p>Judges</p> <p>Judgments</p>
E	<p>Ejectment</p> <p>Embezzlement</p> <p>Eminent Domain</p> <p>Equity</p> <p>Estoppel</p> <p>Evidence</p> <p>Executors and Administrators</p>	<p style="text-align: right;">L</p> <p>Landlord and Tenant</p> <p>Larceny</p> <p>Legislative Power</p> <p>Licenses and Permits</p>
F	<p>Fish</p> <p>Former Administrations</p>	<p style="text-align: right;">M</p> <p>Marianas Custom</p> <p>Marianas Land Law</p> <p>Marshalls Custom</p> <p>Marshalls Land Law</p> <p>Motor Vehicles</p>
		<p style="text-align: right;">P</p> <p>Palau Custom</p> <p>Palau Land Law</p> <p>Payment</p> <p>Ponape Custom</p> <p>Public Lands</p> <p>Public Officers</p>
		<p style="text-align: right;">R</p> <p>Real Property</p> <p>Reckless Driving</p>

	S		U
Search and Seizure		United States	
Statutes			
	T		W
Torts		Waiver	
Treaties		Waste	
Trespass		Wills	
Truk Custom			Y
Truk Land Law			
Trusteeship		Yap Custom	
Trust Territory		Yap Land Law	

ADMINISTRATIVE LAW

A

ACCORD AND SATISFACTION.

Generally

Acceptance of a sum of money without agreement as to satisfaction of the full obligation will not operate as either an accord or compromise. *Bulele v. Loeak*, 4 T.T.R. 5.

The acceptance and use of a remittance by check, purporting to be "in full" or employing words of a similar import, or accompanied by a letter to that effect, amount to an accord and satisfaction of the larger claims of the creditor, assuming that the claim was unliquidated or disputed, so that an express agreement to accept, and the actual acceptance of, the smaller amount in full satisfaction would have been binding. *Quitugua v. Rota Shipping and Business Corp.*, 4 T.T.R. 378.

Offer and Acceptance--Conditions

To constitute an accord and satisfaction there must be an offer in full satisfaction of the obligation, accompanied by such acts and declarations as amount to a condition that if accepted it is in full satisfaction; and the condition must be such that the party to whom the offer is made is bound to understand that if he accepts, he does so subject to the conditions imposed. *Bulele v. Loeak*, 4 T.T.R. 5.

ADMINISTRATIVE LAW.

Land Title Determination

A land title determination is an official document of the Trust Territory Government and where properly authenticated and unchallenged the court is bound to adopt and accept the findings of such title determination. *Tudela v. Cabrera*, 4 T.T.R. 199.

Where plaintiff filed a claim which was decided against him and an appeal denied regarding one parcel of land arid where he did not take advantage of the opportunity to present claim as to another parcel of land, court would not create or establish some procedure where the claims to such lands could again be asserted against the Government of the Trust Territory or its Alien Property Custodian. *Rivera v. Trust Territory*, 4 T.T.R. 140.

Determination of ownership in question would be considered like a judgment quasi in rem. *Liwaika v. Bilimon*, 4 T.T.R. 123.

-Parties

Where land title determination was rendered without a party in interest participation and without notice to such person or his representative it was not binding upon such person. *Liwaika v. Bilimon*, 4 T.T.R. 123.

-Appeal

Under the provisions of Office of Management Regulation No.1, an appeal was provided to the Trial Division of the High Court, which could

ADMINISTRATIVE LAW

set aside, modify or amend the determination of the District Land Title Officer. (Office of Land Management Regulation No.1) Rivera v. Trust Territory, 4 T.T.R. 140.

ADMIRALTY.

Applicable Law-Generally

The Trust Territory Code does not specifically state the substantive law to be applied in maritime cases. Lakemba v. Milne, 4 T.T.R. 44.

-Common Law

The common law and the maritime law are not synonymous. Lakemba v. Milne, 4 T.T.R. 44.

In the United States the principles of the law maritime have been applied in suits in common-law courts. Lakemba v. Milne, 4 T.T.R. 44.

In the Judiciary Act of 1789, the first Congress declared the admiralty and maritime jurisdiction of the Federal Courts to be exclusive, yet reserved to suitors the right of a common-law remedy, where the common law is competent to give it. Lakemba v. Milne, 4 T.T.R. 44.

-Admiralty Law

The general rules of admiralty law apply regardless of whether one sues in admiralty, in a Federal Court, or in common law in a state court. Lakemba v. Milne, 4 T.T.R. 44.

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. (T.T.C., Sees. 22, 123) Lakemba v. Milne, 4 T.T.R. 44.

A claimant's recovery and the precise relief to be afforded him are determined by the admiralty law, which is applied whether he sues in the common law or in the admiralty court; while he may pursue his remedy at common law in the state court, that court must administer the admiralty law. Lakemba v. Milne, 4 T.T.R. 44.

-Law of the Flag

The law of the flag, not the law of the forum, is generally applied in matters of substantive law, thus it has been applied to contracts made in a foreign port by the master on behalf of the owner. Lakemba v. Milne, 4 T.T.R. 44.

Under the doctrine of "law of the flag," certain maritime matters are determined pursuant to the law of the state or nation whose flag the vessel flies. Lakemba v. Milne, 4 T.T.R. 44.

Jurisdiction-Generally

Except as limited by public international law, international agreement, or constitutional provision, a state has jurisdiction over all vessels flying the flag. Lakemba v. Milne, 4 T.T.R. 44.

ADMIRALTY

'-State Courts

Under the Judiciary Act of 1789 it is only the privilege to prosecute for a maritime cause in the common-law courts that is saved to a state court, not the right of election to determine that the defendant's liability is to be measured by the common law. *Lakemba v. Milne*, 4 T.T.H. 44.

Masters' Rights-Generally

The rights and privileges of a master depend upon the terms of his contract. *Lakemba v. Milne*, 4 T.T.R. 44.

The master's rights did not terminate with the final disabling of the ship because the voyage had been broken up by the defendant owners prior to that time and because such owners could have protected the ship by taking reasonable precautions. *Lakemba v. Milne*, 4 T.T.R.44.

-Dismissal

The owner cannot, without incurring liability in damages, dismiss before the end of the term one employed as master for a definite term, as for a particular voyage, except for sufficient cause. *Lakemba v. Milne*, 4 T.T.R. 44.

Seamen's Rights-Maintenance

Where the seaman is unable to return to his port of shipment in the vessel of his original employment, the general rule is that the seaman becomes entitled to maintenance ashore while awaiting a chance to go home, and to the expenses of his return, to the port from which he shipped. *Lakemba v. Milne*, 4 T.T.R. 44.

—Wages

Where the voyage is broken up by the act or fault of the owner, the seamen are entitled to wages for the period up to the time of abandonment and for such reasonable time as may be required for the return home of the seamen, subject to deduction of such sums as they may earn in the meanwhile. *Lakemba v. Milne*, 4 T.T.R. 44.

It was implied in plaintiff seamen's contracts that they were to receive prompt payment of salaries and such plaintiffs were entitled to recover damages from defendant owners of the vessel for failure of defendants to make prompt payment during their periods of employment and for defendants' practice of providing credit at defendants' stores rather than paying in cash or, when the ship was in a port with check cashing facilities, by check. *Lakemba v. Milne*, 4 T.T.R. 44.

—Damages

Seamen are entitled to damages when discharged without their consent on account of the voyage being broken up by lack of funds, fault of the master, or the unseaworthiness, disability, or sale of the vessel, but not by perils of the sea. *Lakemba v. Milne*, 4 T.T.R. 44.

-Liens

While a master is not entitled to any lien against a ship for non-payment of wages and damages a seaman is entitled to such a lien if

ADMIRALTY

he elects to proceed against the ship rather than the owner. *Lakemba v. Milne*, 4 T.T.R. 44.

Voyage

The word "voyage" as used in connection with the rights and obligations of seamen denotes the transit to be performed by the seamen, that is the whole term of the seamen's service. *Lakemba v. Milne*, 4 T.T.R. 44.

The word "voyage" as used in connection with the rights and obligations of seamen, necessarily implies a definite beginning and end, and means a transit at sea from one terminus to another, the whole course of a vessel before reaching the port of final discharge. *Lakemba v. Milne*, 4 T.T.R. 44.

AGENCY.

Generally

The captain or master of a vessel is the agent of the owner and the knowledge of the master is the knowledge of the owner. *Trust Territory v. Kyoshin Maru No. 23*, 4 T.T.R. 452.

Liability of Principal

The liability of a principal is dependent upon the knowledge of an agent concerning a matter upon which it is his duty to give the principal information. *Trust Territory v. Kyoshin Maru No. 23*, 4 T.T.R. 452.

A master of a vessel owes a fiduciary duty or relationship of trust to the owner, and the owner is liable for the faithful and proper performance of every duty undertaken by the master within his actual or apparent authority. *Trust Territory v. Kyoshin Maru No. 23*, 4 T.T.R. 452.

Owners of vessels appoint the master and employ the crew and, consequently, the owners are held responsible for the conduct of the master and crew in the management of the vessel. *Trust Territory v. Kyoshin Maru No. 23*, 4 T.T.R. 452.

AGRICULTURE.

Quarantines-Generally

Section 734 of the Trust Territory Code gives authority to enforce quarantines and regulations established under Section 731 of the Code. (T.T.C., Sees. 734, 731) *Uchel v. Owen*, 4 T.T.R. 132.

-Emergency Measures

In the field of quarantine measures and enforcement Section 733 of the Code, which provides for immediate action in emergency quarantine subject to the later approval of the High Commissioner, is not unconstitutional. (T.T.C., Sec. 733) *Uchel v. Owen*, 4 T.T.R. 182.

It is impracticable, if not impossible, for the lawmaking power to foreknow and specifically enumerate all contagious diseases and pests that may arise affecting the horticultural industry of a state, thus to meet the necessities caused by new diseases as they may occur, and prevent

APPEAL AND ERROR

their spread, matters purely administrative may be left to administrative officers. (T.T.C., Sec. 733) Uchel v. Owen, 4 T.T.R. 132.

Insects and Pests-Destruction

The government may provide for the destruction without compensation of property which is infested with pests which are dangerous or suspected to be dangerous to the agricultural industry, where this is reasonably necessary for the protection of the agricultural industry. Uchel v. Owen, 4 T.T.R. 132.

ANIMALS.

Trespass-Injury to Animal

Appellee was liable for Injury to one of the trespassing animals as such extreme action as shooting could be justified only if clearly required for the defense of either person or property. Perman v. Varner, 4 T.T.R. 171.

APPEAL AND ERROR.

Generally

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 T.T.R. 172.

A verdict of guilty may not be reversed for any prejudice shown toward the government. Debesol v. Trust Territory, 4 T.T.R. 556.

Where evidence supported the verdict, the verdict of the court should not be reversed on the ground of failure of evidence to support the verdict. Tinteru v. Trust Territory, 4 T.T.R. 361.

All assignments of error not briefed or argued are deemed waived. Debesol v. Trust Territory, 4 T.T.R. 556.

If appellant had a particular extrajudicial statement in mind which "clearly exhibited prejudice" toward him he was obliged to point it out to the appellate court and was duty bound to have made objection during the trial. Debesol v. Trust Territory, 4 T.T.R. 556.

Final Judgment or Order

In order to be appealable a judgment or order must be final. Cruz v. Trust Territory, 4 T.T.R. 491.

An Order Denying Motion to Dismiss is not a final order and, therefore, is not a judgment or order from which an appeal can be taken. Cruz v. Trust Territory, 4 T.T.R. 491.

Upon an appeal from a land title determination the Trial Division tries the matter de novo and an appeal lies from a final judgment entered in a trial de novo. Calvo v. Trust Territory, 4 T.T.R. 506.

-Res Judicata

The argument that the "principles of res judicata apply to questions of jurisdiction" has no bearing on the question of the finality of a judgment for the purpose of an appeal. Cruz v. Trust Territory, 4 T.T.R. 491.

APPEAL AND ERROR

Counsel's right to prevent the matter of the denial of a motion to dismiss from becoming res judicata is preserved by the fact that an appeal can be had from the final judgment and at that time the court's ruling made at the time of denying the motion is not res judicata; it is like any ruling made at or before trial, subject to examination on the appeal from the final judgment. *Cruz v. Trust Territory*, 4 T.T.R. 491.

Evidentiary Error

Where there is fundamental error which goes to the very competence of the evidence which is produced, the court may properly take notice on its own motion. *Helgenberger v. Trust Territory*, 4 T.T.R. 530.

The fact that out-of-court statements were erroneously admitted as substantive evidence in the record on the request of the appellant without objection from the prosecutor would be "invited error" on appellant's part and court would ordinarily decline to notice it; however, where it was so fundamentally wrong to admit them and then employ them as substantive evidence court was required to take notice of it. *Debesol v. Trust Territory*, 4 T.T.R. 556.

Notice and Filing of Appeal-Excuse for Late Filing

Filing of a notice of appeal within the time limited is essential to the jurisdiction of the court upon appeal in the absence of some most unusual circumstances, the most clearly recognized exception being where the failure to file is the result of the default of some officer of the court. *Milne v. Tomasi*, 4 T.T.R. 488.

Mere ignorance of or failure to inquire about the law is clearly insufficient excuse for late filing of the notice. *Milne v. Tomasi*, 4 T.T.R. 488.

Scope of Review

It is the primary function of an appellate court to deal with questions of law. *Ladore v. Rais*, 4 T.T.R. 169.

Where the alleged error did not point out or specifically show wherein the trial court committed error court would decline to consider the issue. *Calvo v. Trust Territory*, 4 T.T.R. 506.

Where there was no indication that the issue of denial of due process was raised before the trial court and where there was nothing in the record relating to the point, the appellate court need not consider it. *Calvo v. Trust Territory*, 4 T.T.R. 506.

-Abuse of Discretion

Assigning as error "abuse of judicial discretion" without showing the particulars of the error complained of does not comply with the rule that the appellate court will not interfere with the decision of the trial court on a matter within its discretion unless abuse of that discretion is shown. *Debesol v. Trust Territory*, 4 T.T.R. 556.

-Facts

In the absence of the transcript of evidence, appellate court is limited to a review of the law and not the facts found. (Rule 32, Rules of

APPEAL AND ERROR

Criminal Procedure; Rule 23, Rules of Civil Procedure) Ngiralois' v. Trust Territory, 4 T.T.R. 517.

Where no transcript of evidence or draft report accompanied the appeal, there could be no review of the sufficiency of the evidence and the District Court's findings of fact must stand. *Perman v. Varner*, 4 T.T.R. 171.

Where there is any evidence from which the trial court might properly have drawn its conclusion as to the facts, that conclusion will not be disturbed on appeal. *Ladore v. Rais*, 4 T.T.R. 169.

A finding of fact by the Trial Division of the High Court shall not be set aside unless clearly erroneous. (T.T.C., Sec. 200) *Helgenberger v. Trust Territory*, 4 T.T.R. 530.

The findings of the trial court based upon the evidence will not be set aside unless there is manifest error. *Arriola v. Arriola*, 4 T.T.R. 486.

There being evidence sufficient in the trial court to justify conviction, appellate court will not upset the verdict. *Joseph v. Trust Territory*, 4 T.T.R. 412.

The weight of the evidence is for the trial court and is not decided anew in the appellate court. *Calvo v. Trust Territory*, 4 T.T.R. 506.

It is the function of the appellate court to ascertain whether there is any probative evidence in support of the trial court's findings and conclusions, and if there is any evidence in support, the findings of the trial court will not be disturbed. *Calvo v. Trust Territory*, 4 T.T.R. 506.

The Appellate Division of the High Court on appeal from a decision of the Trial Division cannot re-weigh the evidence and decide whether in its opinion it should reach the same or different conclusion as the trial judge did as to the facts. *Arriola v. Arriola*, 4 T.T.R. 486.

It is the function of the trial court, and not the appellate court, to make determinations of fact which are dependent upon conflicting evidence, and appellate court must test the sufficiency of proof on the basis of what the trial court had the right to believe and not on what the appellant wishes it believed. *Debesol v. Trust Territory*, 4 T.T.R. 556.

It is not the province of the Appellate Division to substitute its belief as to what the trier of fact should have found, and the Appellate Division must sustain the verdict if there is sufficient competent evidence in the record to support the lower court's finding. *Helgenberger v. Trust Territory*, 4 T.T.R. 530.

Appellate Division will not hesitate to set aside a finding of guilt when the evidence leaves it with reasonable doubt as to the justification of that finding. *Helgenberger v. Trust Territory*, 4 T.T.R. 530.

-Record

Where lower court's findings were supported by credible evidence its findings may not be disturbed on appeal. *Seiola v. Santos*, 4 T.T.R. 223.

APPEAL AND ERROR

-Witness Credibility

Whether witness' testimony was to be believed or not was for the trial judge and not appellate court. *Debesol v. Trust Territory*, 4 T.T.R. 556.

Even though trial judge was justified in disbelieving and rejecting all defense testimony he was not entitled to believe account of the affairs as set out in out-of-court statements. *Debesol v. Trust Territory*, 4 T.T.R. 556.

ARREST.

Arrest Without Warrant

Section 457, Trust Territory Code, authorizes arrest without warrant by a policeman who has "reasonable grounds" to believe a criminal offense has been committed. (T.T.C., Sec. 457) *Trust Territory v. Kaneshima*, 4 T.T.R. 340.

ARSON.

Generally

As arson is a crime under the written law it necessarily supersedes and replaces any applicable custom pursuant to Section 20 of the Code. (T.T.C., Secs. 390, 20) *Figir v. Trust Territory*, 4 T.T.R. 368.

ASSAULT AND BATTERY WITH A DANGEROUS WEAPON.

Dangerous Weapon

A leather shoe on the foot of a person who kicks an eye out of a victim's head is a dangerous weapon within the meaning of that term. (T.T.C., Sec. 377-A) *Trust Territory v. Sokau*, 4 T.T.R. 434.

ATTORNEY AND CLIENT.

Agreement for Fees

An agreement between the parties as to the furnishing of legal services was not an illegal agreement in itself, the illegality if any, went to that portion of the agreement dealing with the compensation of the plaintiff. *Palting v. Guerrero*, 4 T.T.R. 160.

An agreement for compensation between an attorney and client which provides that part of the attorney's fees will be an interest in land in the Trust Territory will not be enforced by the court where the attorney is not a citizen of the Trust Territory. *Palting v. Guerrero*, 4 T.T.R. 160.

B

BAILMENTS.

Generally

Delivery of the automobile in question by the plaintiff to the renter under the agreement between the parties constituted a bailment. *Palacios v. Ngiraked*, 4 T.T.R. 98.

CIVIL PROCEDURE

Liability-Bailee

The common-law liability of a bailee is only for the exercise of due care in the use, custody and return of the property. *Palacios v. Ngiraked*, 4 T.T.R. 98.

A bailee may enlarge his liability by contract, express or implied. *Palacios v. Ngiraked*, 4 T.T.R. 98.

The obligations of a bailee under an express contract are fixed primarily by the terms of the contract itself. *Palacios v. Ngiraked*, 4 T.T.R. 98.

Under the rental agreement in question the bailee in effect made herself an insurer of the property against all damage, except any caused by the fault of the bailor, and therefore she was liable for the breach of the terms of the agreement even though the damage to the property had not been shown to have been caused by any fault on her part. *Palacios v. Ngiraked*, 4 T.T.R. 98.

C

CIVIL PROCEDURE.

Generally

The judicial process, which includes both the pre-trial conference and the trial, is a search for truth, and a search for a just solution to what one must assume to be a legitimate controversy, and at no point is a party to an action to assert that which he does not know to be true, nor is the trial to be reduced to a guessing game, with the parties introducing the element of surprise through a sudden shift of factual stance. *Sedek v. Esedep*, 4 T.T.R. 167.

Where no testimony was introduced regarding two matters mentioned in plaintiff's complaint, plaintiff was deemed to have abandoned them. *Jetnil v. Buonmar*, 4 T.T.R. 420.

Where plaintiff claims that on certain dates set forth in the complaint some of the defendants stole items listed under such dates but does not claim that each defendant participated on each date, the causes of action should not be joined in one action. *Yinug v. Googag*, 4 T.T.R. 156.

The matters of the rights of the chiefs of the land in question and the question of whether such rights have been properly exercised could not fairly be decided without the chiefs involved or their present successors being made party to a suit concerning the land. *Mitmad v. Garafel*, 4 T.T.R. 113.

Burden of Proof

Where defendant was untruthful on the witness stand and guilty of wrongfully fabricating evidence to present in court, the court is fully justified in accepting plaintiff's version of the events; the maxim *!alsus in uno, !alsus in omnibus* applies. *Mendiola v. Quitugua*, 4 T.T.R. 314.

CIVIL PROCEDURE

Withdrawal of Counsel

When counsel is permitted to withdraw, the court will ordinarily set the matter over for action at a future date, after his client has been given an opportunity to procure other counsel. *Sedek v. Esedep*, 4 T.T.R. 167.

Motion to Dismiss

Where motion to dismiss was denied, court clearly indicated it considered the petitioner had made out a prima facie case and where objector elected to present no evidence his objection would be overruled. In the matter of *De Castro*, 4 T.T.R. 3.

Costs

While contention that complaint showed failure to comply with the requirements of the applicable statute relative to notice was correct, the complaint alleged, and the court found as a fact, that trespass occurred on more than one occasion. *Perman v. Varner*, 4 T.T.R. 171.

Damages

The appropriate manner to determine the exact amount due from one party to another under a judgment is to request the court in that action to determine the correct amount and a petition or request bearing the title and number of the case should be presented and heard in order to determine the amount due. *Rilometo v. Lanlobar*, 4 T.T.R. 172.

Where no proof of the specific amount of damage was presented at trial a plaintiff is entitled to only nominal damages. *Wena v. Maddison*, 4 T.T.R. 194.

On appeal, where record was completely devoid of any evidence of damages actually suffered by the plaintiff, the matter must be returned to the lower court for a determination of loss actually suffered. *Seiola v. Santos*, 4 T.T.R. 223.

Where plaintiff had no rights in land in question he could not receive money damages for compensation for working the land. *Salmon v. Norman*, 4 T.T.R. 274.

Where report of team of surveyors and agricultural appraisers as to loss occasioned by bulldozing of crops on land leased by government appeared to be reasonable, it was sufficient to sustain plaintiff's claims. *Ellechel v. Chris Berg Const. Co.*, 4 T.T.R. 429.

Where bailor left the matter of the salvage value of the parts of the property still usable after the accident so undetermined right up to the trial the court considered the bailee could not fairly be charged with any interest prior to judgment. *Palacios v. Ngiraked*, 4 T.T.R. 98.

COMMERCE AND TRADE.

Interstate Commerce

The United States Constitutional prOVISions as to interstate commerce do not prohibit the regulations imposed by Public Law 4-22.. (Public Law 4-22) *Trust Territory v. Traid Corporation*, 4 T.T.R. 300.

CONSTITUTIONAL LAW

CONFESSIONS.

Admissibility

Statements made after a knowing and intelligent waiver of counsel are admissible, however, when the accused changes his mind and requests counsel, any statement he makes thereafter is not admissible until consultation with counsel. (T.T.C., Sec. 464(d)(2)» Trust Territory v. Sokau, 4 T.T.R. 434.

Where the confession was made before the police persuaded the accused he needed counsel it was admissible. (T.T.C., Sec. 464(d)(2)» Trust Territory v. Sokau, 4 T.T.R. 434.

-Illegal Custody

A statement made within 24 hours of the time of arrest may be considered voluntarily made, assuming the accused is fully apprised of his rights. (T.T.C., Sec. (64) Trust Territory v. Kaneshima, 4 T.T.R. 340.

A statement made after more than 24 hours' detention without charge is suspect, is prima facie obtained by coercion, subject, always, however, to the entitlement of the prosecutor to negative coercion by an appropriate showing. (T.T.C., Sec. (64) Trust Territory v. Kaneshima, 4 T.T.R. 340.

The lawfulness, or unlawfulness, of the detention of an accused person beyond a 24-hour period without a formal complaint before a court may be one of the circumstances bearing on the admissibility of any incriminating statement the accused may have made during his detention. (T.T.C., Sec. 464) Trust Territory v. Kaneshima, 4 T.T.R. 340.

Where accused's incriminating statement was made within 24 hours of his arrest the detention beyond that period did not constitute coercion sufficient to create an involuntary, and therefore inadmissible statement. (T.T.C., Sec. 464) Trust Territory v. Kaneshima, 4 T.T.R. 340.

Corroborating Evidence

The criminal agency of the defendant need not be shown independently of the confession. Trust Territory v. Sokau, 4 T.T.R. 434.

A confession without more is insufficient, there must be corroboration; some other evidence tending to show a crime has been committed is required. Trust Territory v. Sokau, 4 T.T.R. 434.

Failure of eye-witnesses to identify accused as the assailant did not constitute a failure of the necessary corroboration to accused's confession. Trust Territory v. Sokau, 4 T.T.R. 434.

CONSTITUTIONAL LAW.

Due Process

The mere fact that a person is unsuccessful in a court in a matter involving life, liberty, or property does not show that there has been a violation of due process of law guaranty. Figir v. Trust Territory, 4 T.T.R. 368.

CONTRACTS

CONTRACTS.

Generally

There is a distinction between contracts that are illegal merely because of some improper provision therein relating to compensation, and contracts that are illegal because services rendered thereunder are, in their nature, intrinsically illegal, improper or against public policy, and in the first kind mentioned a recovery is allowed on a quantum meruit for the reasonable value of the services. *Palting v. Guerrero*, 4 T.T.R. 160.

Construction

The court will not amend or revise a written contract. *Tmetuchl v. Western Carolines Trading Co.*, 4 T.T.R. 395.

Even though contract payment provisions were poorly drafted, the court cannot rewrite the contract for the parties. *Mongami v. Melekeok Municipality*, 4 T.T.R. 217.

If the language of a contract is plain and the meaning clear, the language alone governs the intent and some other meaning or intent may not be construed out of the plain and ordinary meaning of the words used. *Mongami v. Melekeok Municipality*, 4 T.T.R. 217.

If the language of a contract is uncertain or unclear then the court must decide on the meaning and intent of the parties. *Mongami v. Melekeok Municipality*, 4 T.T.R. 217.

Public Policy

A contract is said to be against public policy if it is injurious to the interests of the public, contravenes some established interest of society, violates some public statute, is against good morals, tends to interfere with some public welfare or safety, or, if it is at war with the interests of society and is in conflict with the morals of the time. *Mongami v. Melekeok Municipality*, 4 T.T.R. 217.

Contract in question was a contract contravening public policy and would not be enforced by the court. *Mongami v. Melekeok Municipality*, 4 T.T.R. 217:

Enforcement

The courts will not enforce contracts which contravene public policy. *Mongami v. Melekeok Municipality*, 4 T.T.R. 217.

Performance--Payment

Where all the claims person performing the contract had arising from performance of the contract had been satisfied, he was not entitled to further payment. *Mongami v. Melekeok Municipality*, 4 T.T.R. 217.

-Destruction Before Completion

One who contracts to do something possible to be done must make his promise good. *Ikeda v. Western Caroline Trading Co.*, 4 T.T.R. 439.

CONTRACTS

Generally, destruction of the subject matter is no legal justification for nonperformance of a contract unless the contractor stipulates in the agreement that he shall not be responsible for losses occasioned in such manner. *Ikeda v. Western Caroline Trading Co.*, 4 T.T.R. 439.

One who contracts absolutely and unqualifiedly to erect a structure for a stipulated price, in other words, enters into an entire or indivisible contract to complete such work, must bear the loss occasioned by the accidental destruction of the building before completion. *Ikeda v. Western Caroline Trading Co.*, 4 T.T.R. 439.

Specific Performance

Where contract was illegal and thus an unenforceable contract a request for specific performance must be denied. *Romolor v. Igisaiar*, 4 T.T.R. 105.

Breach--Defenses

One of the defenses for nonperformance of a contract is that the other party prevented performance. *Ikeda v. Western Caroline Trading Co.*, 4 T.T.R. 439.

The fact the delay in completion required an entire new start did not warrant a finding that the plaintiff prevented completion of the contract. *Ikeda v. Western Caroline Trading Co.*, 4 T.T.R. 439.

--Damages

Normally, a plaintiff sues a contractor for damages for failure to perform. *Ikeda v. Western Caroline Trading Co.*, 4 T.T.R. 439.

In the absence of a strong showing of damage, all the court can do for the parties is to restore them as nearly as possible to their condition before the contract. *Ikeda v. Western Caroline Trading Co.*, 4 T.T.R. 439.

Rescission

Party's attempt to rescind contract, coming two years after entering into it, came too late to effectively rescind the contract. *Tmetuchl v. Western Carolines Trading Co.*, 4 T.T.R. 395.

Cancellation--Generally

The court may, upon a proper showing, cancel or set aside a contract due to mutual mistake or upon a showing of fraudulent inducement or for other lawful reason. *Tmetuchl v. Western Carolines Trading Co.*, 4 T.T.R. 395.

--Mutual Mistake

Where both parties were aware of a mutual mistake as to ownership of property and both intentionally proceeded with the contract, court would not cancel contract on grounds of mutual mistake. *Tmetuchl v. Western Carolines Trading Co.*, 4 T.T.R. 395.

Indivisible Contracts

A lump-sum payment for the entire contract is the test of an entire or indivisible contract. *Ikeda v. Western Carpline Trading Co.*, 4 T.T.R. 439.

CONTRACTS

Void Contracts--Restitution

In many situations a party to an illegal contract which does not involve serious moral turpitude on his part, is allowed to rescind the contract and recover the net amount he has expended under it. *Romolor v. Igisaiar*, 4 T.T.R. 105.

Where the contract in question was not essentially immoral, but was illegal simply because the law prohibited it as against public policy, the court, under all the circumstances, considered that public policy and justice would best be served by requiring restitution by the defendant. *Romolor v. Igisaiar*, 4 T.T.R. 105.

Where plaintiff's labor in maintaining a farm, the subject of an illegal contract between himself and defendant, and his loss of use of money expended, was considered to be roughly offset by the value of the use and occupation of the land which he had enjoyed, he was allowed no allowance in restitution for his years of work on the property. *Romolor v. Igisaiar*, 4 T.T.R. 105.

CORPORATIONS.

Regulation-Doing Business

A corporation has no physical body, it acts wholly through individuals so whether it is engaged in a business activity within the Trust Territory depends on the authorized activities of the corporation's representatives. *Trust Territory v. Traid Corporation*, 4 T.T.R. 300.

Where corporation's representative solicited orders, demonstrated the product, signed the contracts, forwarded the contracts and also accepted down payments on the product, clearly the corporation through such person was engaged in business activity within the Trust Territory. (Public Law 4-22) *Trust Territory v. Traid Corporation*, 4 T.T.R. 300.

Ultra Vires

Where purported cancellation of stock by corporation was not in accord with the procedure on the face of the stock, it was ultra vires the corporate authority and not effective. *Tmetuchl v. Western Carolines Trading Co.*, 4 T.T.R. 395.

COURTS.

Generally

It is not within the judicial power to strike down something resting within legislative discretion, even though the court will not hesitate to review the manner in which the authority granted by the legislature has been exercised. *Ngiralois v. Trust Territory*, 4 T.T.R. 517.

High Court

Triai Division of the High Court is bound by decisions of the Appellate Division. *Elechus v. Kdesau*, 4 T.T.R. 444.

Section 123 of the Trust Territory Code accords to the High Court jurisdiction in admiralty and maritime matters. (T.T.C., Sec. 123) *Lakemba v. Milne*, 4 T.T.R. 44.

CRIMINAL LAW

Section 123 of the Trust Territory Code which gives admiralty jurisdiction to the High Court is somewhat similar to that of Article 3, Section 2. of the Constitution of the United States. (T.T.C., Sec. 123) *Lakemba v. Milne*, 4 T.T.R. 44.

Jurisdiction

The status of sovereignty, being a political question, is not one for the courts to declare. *Calvo v. Trust Territory*, 4 T.T.R. 506.

Judges-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. (T.T.C., Sec. 125) *Helgenberger v. Trust Territory*, 4 T.T.R. 530.

Under Section 125 of the Trust Territory Code, 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. (T.T.C., Sec. 125) *Helgenberger v. Trust Territory*, 4 T.T.R. 530.

Judicial Notice

The court can take judicial notice of the contents of its own records. *Mendiola v. Quitugua*, 4 T.T.R. 314.

CRIMINAL LAW.

Generally

The law presumes a defendant to be innocent of crime and this is the strongest presumption known to criminal law. *Trust Territory v. Mick*, 4 T.T.R. 147.

Unless and until outweighed by evidence in the case to the contrary, the law presumes that a person is innocent of a crime or a wrong. *Trust Territory v. Mick*, 4 T.T.R. 147.

Corpus Delicti

Corpus delicti is more than proof of cause of death. *Debesol v. Trust Territory*, 4 T.T.R. 556.

The corpus delicti in a homicide consists of two elements, the first of which, the fact of death, is to be shown as a result of the second, that is, the criminal, agency of another, and it must be shown beyond a reasonable doubt. *Helgenberger v. Trust Territory*, 4 T.T.R. 630; *Debesol v. Trust Territory*, 4 T.T.R. 656.

In proving the fact and manner of death, it is not necessary that a witness state with absolute certainty that death did result in the manner alleged by the Government, rather it is sufficient if the medical testimony establishes that a condition existed which could have resulted in death as alleged. *Helgenberger v. Trust Territory*, 4 T.T.R. 530; *Debesol v. Trust Territory*, 4 T.T.R. 556.

Corpus Delicti, see, also, Homicide-Corpus Delicti

CRIMINAL LAW

Custom

Yapese custom which calls for certain methods of revenge as asserted, if it ever did prevail, does not make any of the crimes committed in revenge lawful. *Figir v. Trust Territory*, 4 T.T.R. 368.

Forfeiture and Penalty-Generally

Provision for forfeiture of a vessel together with her apparel, tackle, furnishings and equipment is found in Section 883, Trust Territory Code. (T.T.C., Sec. 883) *Trust Territory v. Kaneshima*, 4 T.T.R. 340.

-Forfeiture

Forfeiture is defined as "divesture of property without compensation" by means of an action against the property itself. (T.T.C., Sec. 883) *Trust Territory v. Kaneshima*, 4 T.T.R. 340.

-Penalty

A "penalty" as distinguished from forfeiture, is defined as a punishment by way of a pecuniary exaction from the offender imposed and enforced by the state for a crime against its laws. *Trust Territory v. Kaneshima*, 4 T.T.R. 340.

-Confiscation

Normally, confiscation of contraband or the instruments employed in criminal activity is governed by statute. *Trust Territory v. Kaneshima*, 4 T.T.R. 340.

Confiscation of cargo as an incident to criminal conviction is not within either the definition of or statutory provision for forfeiture. (T.T.C., Sec. 883) *Trust Territory v. Kaneshima*, 4 T.T.R. 340.

-Recovery of Property

Forfeiture is the rule and release therefrom the exception, so that the burden of proof is upon the claimant of the property seized to establish his right to it under statutory conditions. (T.T.C., Sec. 883) *Trust Territory v. Kyoshin Maru No. 23*, 4 T.T.R. 452.

Under the Trust Territory seizure and condemnation statute, the owner or person entitled to possession is relieved of responsibility for the unlawful use of a vessel if he did not know of the intended use or was not wilfully negligent in failing to prevent the intended use. (T.T.C., Sec. 883) *Trust Territory v. Kyoshin Maru No. 23*, 4 T.T.R. 452.

Claimant did not demonstrate by convincing proof that he did not know the destination of seized vessel and, if in fact he did not know, the evidence was such he should have known and that he was at fault in failing to learn its destination after it had been decided. *Trust Territory v. Kyoshin Maru No. 23*, 4 T.T.R. 452.

Where evidence demonstrated that claimant knew or should have known the unlawful destination of his vessel, it followed he was wilfully negligent in failing to stop the voyage and that negligence offset the claimant's right to recover the seized vessel. (T.T.C., Sec. 883) *Trust Territory v. Kyoshin Maru No. 23*, 4 T.T.R. 452.

Intent

Motive, no matter how compelling, does not make that act lawful which is declared by statute to be a crime. *Figir v. Trust Territory*, 4 T.T.R. 368.

Motive does not make the criminal statute inapplicable to the person who acted under compelling motive. *Figir v. Trust Territory*, 4 T.T.R. 368.

Motive may be shown as a defense in mitigation of the punishment. *Figir v. Trust Territory*, 4 T.T.R. 368.

-Specific Intent

Evidence that there was no concealment or secrecy on the part of the defendant and no active subterfuge, lack of proof that he received any personal or private gain from his misappropriation and evidence that he offered to make complete restitution of all materials are facts to be taken into consideration in determining whether or not the necessary criminal intent is present to prove embezzlement or grand larceny. *Trust Territory v. Mick*, 4 T.T.R. 147.

Arrest for Examination-Charge

The statutory provision requiring that a person arrested shall be charged or released within 24 hours of his arrest means that he shall be informed of the nature of the formal criminal complaint to be brought against him "within reasonable time", such time being as soon as circumstances permit making a formal written complaint and bringing the accused before a committing judge or official. (T.T.C., Sec. 464) *Trust Territory v. Kaneshima*, 4 T.T.R. 340.

The meaning of "charge" in Section 464, Trust Territory Code, is interpreted in the sense that the accused is informed of the accusation to be made against him and not that a complaint or formal written information has been filed with the court. (T.T.C., Sec. 464) *Trust Territory v. Kaneshima*, 4 T.T.R. 340.

The charge brought against the accused in question, informing him he would be accused in a formal proceeding with violation of two sections of the Code, was sufficient compliance with Section 464 under the circumstances even though it was not a literal compliance with the statute. (T.T.C., Sec. 464) *Trust Territory v. Kaneshima*, 4 T.T.R. 340.

Discretion to Prosecute

Where the government has valid reason for electing not to proceed with the prosecution of an action, the government's motion to dismiss should be granted. (T.T.C., Sec. 491) *Kap v. Trust Territory*, 4 T.T.R. 336.

A motion to dismiss an indictment made by the Attorney General is addressed to the sound judicial discretion of the court, bearing in mind the purpose and intent of the statute and in exercising that discretion the court should take care that it does not infringe upon the proper exercise of executive discretion. (T.T.C., Sec. 491) *Kap v. Trust Territory*, 4 T.T.R. 336.

CRIMINAL LAW

It should be the function of the court, in determining whether leave to dismiss would be granted, to assure itself that the prosecutor has a valid reason for choosing not to proceed and that his motion to dismiss is not a part of a course of conduct designed to harass the defendant. (T.T.C., Sec. 491) *Kap v. Trust Territory*, 4 T.T.R. 336.

Section 491 of the Trust Territory Code relating to dismissal by Attorney General or District Attorney, was adopted from Rule 48(a), Federal Rules of Criminal Procedure, and thus court may be guided in its interpretation by the decisions of the Federal Courts. (Fed. Rules of Crim. Proc., Rule 12; T.T.C., Sec. 491) *Kap v. Trust Territory*, 4 T.T.R. 336.

The purpose of the Rule allowing the Attorney General or District Attorney, by leave of court, to file a dismissal of an indictment, is to prevent harassment of a defendant by charging, dismissing and re-charging without placing a defendant in jeopardy. (T.T.C., Sec. 491) *Kap v. Trust Territory*, 4 T.T.R. 336.

A dismissal under Section 492 of the Trust Territory Code, would be a dismissal with prejudice, would prohibit any refile of the same charge, and thus fulfill the intent of Section 491. (Fed. Rules of Crim. Proc., Rules 48(b), 48(a); T.T.C., Sees. 492, 491) *Kap v. Trust Territory*, 4 T.T.R. 336.

A dismissal under Section 491 is the equivalent of the nolle prosequi under common law, since the defendant has not been placed in jeopardy, and does not prohibit the prosecution from filing another information at a later date. (T.T.C., Sec. 491) *Kap v. Trust Territory*, 4 T.T.R. 336.

Pre-Trial Procedure-Discovery

Rule 7, Rules of Criminal Procedure, provides that the court may order inspection of papers, books and objects "obtained or belonging to the accused, or obtained from others by seizure or by process" and requires "a showing that the items sought may be material to the preparation of his defense", and where such items were neither obtained by seizure or process nor a showing of materiality made such inspection may not be had. (Rules of Crim. Proc., Rule 7) *Debesol v. Trust Territory*, 4 T.T.R.556.

Rights of Accused-Counsel

Neither the cases nor the statute obligate the police to persuade an accused that he needs counsel. (T.T.C., Sec. 464(d)(2)» *Trust Territory v. Sokau*, 4 T.T.R. 434.

Situations to which *Miranda* applies are governed not by the general test of voluntariness but rather by the more precise test of whether the constitutionally required warning was given and, if given, whether the rights set out by that warning were knowingly, intelligently, and voluntarily waived. (T.T.C., Sec. 464(d)(2)» *Trust Territory v. Sokau*, 4 T.T.R. 434.

CRIMINAL LAW

Where there is a request for an attorney prior to any questioning, a finding of knowing and intelligent waiver of the right to an attorney is impossible. (T.T.C., Sec. 464(d)(2)» Trust Territory v. Sokau, 4 T.T.R. 434.

Trial Procedure-Triers of Fact

Both the corpus delicti and the ultimate fact of the liability of the accused are for the triers of fact. Helgenberger v. Trust Territory, 4 T.T.R. 530.

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 Section 125 of the Trust Territory Code. (T.T.C., Sec. 125) Helgenberger v. Trust Territory, 4 T.T.R. 530.

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. (T.T.C., Sec. 125) Helgenberger v. Trust Territory, 4 T.T.R. 530.

-Objections

It is the duty of counsel to make objection at the time improper remarks or comments are made by the trial judge, the purpose of this being to promptly inform the trial judge of possible errors so that he may reconsider and make any changes deemed desirable. Debesol v. Trust Territory, 4 T.T.R. 556.

Objection made by the government does not inure to the benefit of the accused. Debesol v. Trust Territory, 4 T.T.R. 556.

When objection is not made in the trial, the matter may not be raised upon appeal unless it is such prejudicial error as to result in failure to provide a fair trial amounting to a denial of due' process. Debesol v. Trust Territory, 4 T.T.R. 556.

Burden of Proof

In order for one to be convicted of embezzlement or grand larceny, it is necessary that the government prove beyond a reasonable doubt all of the essential elements of such crimes. Trust Territory v. Mick, 4 T.T.R.147.

-Reasonable Doubt

A defendant, although accused, begins the trial with a clean slate with no evidence against him, and the presumption of innocence alone is sufficient to acquit a defendant unless the court is satisfied beyond a reasonable doubt of the defendant's guilt from all the evidence in the case, Trust Territory v. Mick, 4 T.T.R. 147.

The fine line between "conclusive" proof and proof beyond a "reasonable doubt" is not for a trial court to determine; the obligation upon the court or jury is that proof be sufficient to "reasonably" rather

CRIMINAL LAW

than "conclusively" remove doubt of guilt. *Trust Territory v. Minor*, 4 T.T.R.324.

The prosecution is not obliged to negative beyond a reasonable doubt a defense not raised in the trial. *Figir v. Trust Territory*, 4 T.T.R. 368.

Evidence-Prior Written Statements

Prior written statements, not made under oath and without opportunity for cross-examination, are inadmissible hearsay. *Debesol v. Trust Territory*, 4 T.T.R. 556.

-Witnesses' Statements

It is the obligation of the triers of fact to accept or reject all or parts of a witness' testimony. *Trust Territory v. Minor*, 4 T.T.R. 324.

-Transcript of Testimony

There is no question as to the admissibility of testimony taken at a prior proceeding, providing a proper predicate is laid. *Helgenberger v. Trust Territory*, 4 T.T.R. 530.

Testimony taken at a prior proceeding may be used for purposes of impeaching contradictory testimony of an adverse or hostile witness; refreshing the recollection of a witness, or it may be received as substantive evidence, if the party offering such testimony establishes to the satisfaction of the court that the witness is unavailable, whether by reason of death, absence from the jurisdiction, infirmity, or a present claim by privilege. *Helgenberger v. Trust Territory*, 4 T.T.R. 530.

To permit the admission in evidence of stenographic notes or transcript thereof or other record to prove the testimony of a witness at a former trial or preliminary hearing, assuming that they are otherwise admissible, it is necessary that a proper foundation be laid for their admission by proof as to their correctness and accuracy in reproducing the evidence given at the former trial, and in absence of such proof the stenographic notes or the transcript thereof are not competent to prove the former evidence. *Helgenberger v. Trust Territory*, 4 T.T.R. 530.

Witnesses--Refreshing Witness' Recollection

It is not possible to fill in memory gaps of a witness by reading his former statement to him aloud. *Helgenberger v. Trust Territory*, 4 T.T.R. 530.

To read a witness's statement aloud for refreshing recollection to the witness, hostile or not, is patent error. *Helgenberger v. Trust Territory*, 4 T.T.R. 530.

When the court is satisfied that a memorandum on its face reflects the witness's statement or one the witness acknowledges, and in his discretion the court is further satisfied that it may be of help in refreshing the person's memory, the witness should be allowed to refer to the document and it then becomes proper to have the witness, if it is a fact, to say that his memory is refreshed and, independent of the

CRIMINAL LAW

exhibit, testify what his present recollection is. Helgenberger v. Trust Territory, 4 T.T.R. 530.

-Impeachment of Testimony

A party may not impeach nor contradict his own witness. Debesol v. Trust Territory, 4 T.T.R. 556.

Prior written statements may be introduced for impeaching purposes when the witness has denied making the inconsistent statement. Debesol v. Trust Territory, 4 T.T.R. 556.

Where the witness asserted only that he did not remember, there was no testimony which was subject to impeachment. Helgenberger v. Trust Territory, 4 T.T.R. 530.

Out-of-court statements used to impeach testimony of witness could not be used as substantive evidence and it was error to give them probative effect. Debesol v. Trust Territory, 4 T.T.R. 556.

If the witness admits he has made prior statements, inconsistent to his testimony, the impeachment of the witness has been accomplished and it is unnecessary to put into the record the prior statement since its only purpose is for impeachment and it is without probative value. Debesol v. Trust Territory, 4 T.T.R. 556.

Out-of-court statements to the police by two defense witnesses, being contrary to the testimony given at trial by such witnesses, were admissible for impeachment only. Debesol v. Trust Territory, 4 T.T.R. 556.

Admission of prior out-of-court testimony of witness, which conflicted with that given at trial, at the request of counsel "as a statement made about the truth in the matter", for such purpose, was plain error. Debesol v. Trust Territory, 4 T.T.R. 556.

Sentence--Banishment

The power of banishment, even though it may be for only a limited time, can be of very serious consequences and in the United States it is generally held that banishment of a person convicted of a crime is generally beyond the jurisdiction of state or local courts. (T.T.C., Sec. 170) Tinteru v. Trust Territory, 4 T.T.R. 361.

Only the High Court has the power of banishment. (T.T.C., Sec. 170) Tinteru v. Trust Territory, 4 T.T.R. 361.

It was not the intention of the Code to permit banishment by the Community Courts or the District Courts either under Section 170 or Section 174 of the Code. (T.T.C., Secs. 170, 174) Tinteru v. Trust Territory, 4 T.T.R. 361.

-Modification

The suspension or reduction of a sentence on condition that the convicted person leave the state or county is void. (T.T.C., Sec. 170) Tinteru v. Trust Territory, 4 T.T.R. 361.

CRIMINAL LAW

When a valid judgment and sentence has been rendered in a criminal case, the court has no jurisdiction after the sentence has been executed in whole or in part to set it aside and impose a new sentence or modify the sentence which has been imposed. *Trust Territory v. Yamashiro*, 4 T.T.R.95.

Appeals-Scope of Review

In criminal appeal, court is under obligation of Trust Territory Code and general principles of law to consider evidence in light most favorable to the government. (T.T.C., Sec. 200) *Debesol v. Trust Territory*, 4 T.T.R. 556.

All the appellate court is obliged to do when an appeal is taken upon the grounds of the insufficiency of the evidence is to determine whether or not there is any reasonable evidence to support the verdict of guilty. *Markungael v. Trust Territory*, 4 T.T.R. 432.

—Prejudicial Error

In exceptional circumstances, especially in criminal cases, appellate courts, in the public interest, may, of their own motion, notice errors to which no exception has been taken, **if** the errors are obvious, or **if** they otherwise seriously affect the fairness, integrity or public reputation of judicial proceedings. *Helgenberger v. Trust Territory*, 4 T.T.R. 530.

Pardon and Parole

Under Section 435 of the Trust Territory Code any person convicted of a crime in the Trust Territory may be pardoned or paroled by the High Commissioner upon such terms and conditions as he shall deem best. (T.T.C., Sec. (35) *Trust Territory v. Yamashiro*, 4 T.T.R. 95.

CUSTOM.

Applicability

Delving into the past of a culture with unrecorded history requires reliance upon legend and lore handed down from one generation to another and interpreted in accordance with the predilections of interested parties and such hearsay has probative value only as to the broad outlines over which there is very little dispute. *Oneitam v. Suain*, 4 T.T.R.62.

The High Court, although accepting legend and lore as a sometime unavoidable necessity, nevertheless, has consistently refused to reach into a distant past to correct any injustices which may have existed. *Oneitam v. Suain*, 4 T.T.R. 62.

Burden of Proof

Where there is a dispute as to existence or effect of local custom, custom becomes a mixed question of law and fact and party relying upon it must prove it to the satisfaction of the court. *Bulele v. Loeak*, 4 T.T.R. 5.

DOMESTIC RELATIONS

D

DECEDENTS' ESTATES.

Settlement Without Administration

In a proper case a small estate can be distributed under Section 343 of the Trust Territory Code or the general powers of the High Court if it is clearly shown that all debts have been paid and it has been agreed between the possible heirs as to how the estate should be distributed. (T.T.C., Sec. 343) *Nenjir v. Rilan*, 4 T.T.R. 277.

Where there are alleged debts or there is no proper and clear agreement between the possible heirs, an estate must be administered and until such administration the estate should not be distributed or disposed of or debts paid by anyone. *Nenjir v. Rilan*, 4 T.T.R. 277.

Claims Against Estate

Administration of an estate will enable settlement of the question of whether there are any debts which were owed by the deceased which should be paid out of his estate, and if such question cannot be settled between alleged creditors and the administrator the question can be settled by an appropriate court action against the administrator. *Nenjir v. Rilan*, 4 T.T.R. 277.

Distribution

The question of whether the widow or other persons are entitled to the assets of the estate can be determined on a request for distribution after a probate administration of the estate of the deceased. *Nenjir v. Rilan*, 4 T.T.R. 277.

DOMESTIC RELATIONS.

Support

Under Section 704 of the Code the court, as to property in which both parties have interests, has jurisdiction to dispose of it "as it deems justice and the best interests of all concerned may require", and this might involve an equal division of the property, or giving it all to the "innocent party", or it might even require that it be given to the "guilty party", the one whose wrong caused the divorce. (T.T.C., Sec. 704) *Nekai v. Nekai*, 4 T.T.R. 388.

-Community Property

Section 704 of the Code was apparently drafted to make the law in the Trust Territory similar to the laws in the "community property states" of the United States. (T.T.C., Sec. 704) *Nekai v. Nekai*, 4 T.T.R. 888.

Section 704 of the Trust Territory Code does not give the court authority to award the separate property of one of the spouses to the other in a divorce proceeding, rather such section permits disposition of only "property in which both have interests". (T.T.C., Sec. 704) *Nekai v. Nekai*, 4 T.T.R. 888.

DOMESTIC RELATIONS

The Carolinian custom in relation to the fact that a house built by a husband on land owned by the wife becomes part of the land belonging to her is similar to the general rule with relation to community property. *Nekai v. Nekai*, 4 T.T.R. 388.

E

EJECTMENT.

Generally

In an action for ejectment, which at common law is a possessory action for land, a plaintiff may only recover on the strength of his title and not on the weakness of his adversary's. *Mendiola v. Cruz*, 4 T.T.R. 499.

EMBEZZLEMENT.

Elements of Offense

The elements of embezzlement are: lawfully obtaining personal property of another; taking and carrying away that personal property without the owner's knowledge or consent; and taking and carrying away of that personal property with the intent to permanently convert it to his own use. *Trust Territory v. Mick*, 4 T.T.R. 147.

EMINENT DOMAIN.

Gener'ally

The power of eminent domain is inherent in government; it is implied without being specified. *Ngiralois v. Trust Territory*, 4 T.T.R. 517, Section 4 of the Bill of Rights which provides that private property shall not be taken for public use without just compensation, should be given only prospective' and not retrospective effect. *Rivera v. Trust Territory*, 4 T.T.R. 140.

The Trust Territory eminent domain statute is not similar to the Federal act, nor need it be as long as it requires that the taking be for a public use and the fair value be paid for the property. (T.T.C., Ch. 20) *Ngiralois v. Trust Territory*, 4 T.T.R. 517.

The use of eminent domain powers is only limited to payment of just compensation and that the taking be for a public use. *Ngiralois v. Trust Territory*, 4 T.T.R. 517.

The two questions in a condemnation case distill down to whether the purpose qualifies as a public purpose and whether there was sufficient legislative authorization. *Ngiralois v. Trust Territory*, 4 T.T.R. 517.

Delegation of Power

There need not be a specific delegation of the right of eminent domain where there has been a delegation of full power of government. *Ngiralois v. Trust Territory*, 4 T.T.R. 517.

The full power of legislation included the right of eminent domain and the right to delegate it, and it was effectively delegated by Congress, by statute, to such person or persons and to be exercised in such manner or through such agencies as the President may direct or authorize. (48 U.S.C. § 1681) *Ngiralois v. Trust Territory*, 4 T.T.R. 517.

ESTOPPEL

Public Use

It is well established that, in considering the application of the Fourteenth Amendment to a case of expropriation of private property, the question of what is a public use is a judicial one. *Ngiralois v. Trust Territory*, 4 T.T.R. 517.

Compensation

Where trial court allowed interest as compensation at the legal rate on the judgment amount from the time of taking, except for the limited interest imposed by statute of three percent on the amount on deposit from the time of the deposit, there was no denial of fair compensation in fact or by statute. (T.T.C., Ch. 20) *Ngiralois v. Trust Territory*, 4 T.T.R. 517.

-Division of Proceeds

The proceeds of the condemnation of certain *wato* have the same character as the original *iroij elap*, *alabs* and *dri jerbals* in the land and those rights cannot be interfered with by an *iroij* unless there has been a neglect of a required duty to the *iroij*. *Bulele v. Loeak*, 4 T.T.R. 5.

EQUITY.

Laches

The doctrine of laches will be applied in the Trust Territory, and judgments have been rendered against plaintiffs who were guilty of laches—the bringing of stale demands. *Baulol K. v. Taidrik L.*, 4 T.T.R. 152. The controlling factors in relation to laches are as to whether, under the circumstances in the particular case, there was an adequate excuse for the delay in bringing suit, whether the delay has injured the other party, and whether the delay was for an unreasonable length of time. *Baulol K. v. Taidrik L.*, 4 T.T.R. 152.

Where there is a long and unexcused delay in bringing an action and such delay causes an unreasonable burden on the defendant, the court will decline to remedy any alleged wrong done to the plaintiff on the ground of laches. *Mwokin v. Sairenios*, 4 T.T.R. 87.

ESTOPPEL.

Waiver

Estoppel and waiver are frequently confused, but they are distinctly different. *Tmetuchl v. Western Carolines Trading Co.*, 4 T.T.R. 395.

By Deed

As against the purchaser of property who knew seller did not own property, the seller was estopped by his deed from rescinding the sale of the property on the grounds he mistakenly represented he owned it. *Tmetuchl v. Western Carolines Trading Co.*, 4 T.T.R. 395.

EVIDENCE

EVIDENCE.

Documents--Translations

Where the German and Ponapean versions of the standard title documents are not identical the German text prevails. *Opispo v. Mesileng*, 4 T.T.R. 80.

EXECUTORS AND ADMINISTRATORS.

Appointment-Petition

A petition for administration can be filed by the surviving spouse or any person having or claiming to have a right in the estate of the deceased. *Nenjir v. Rilan*, 4 T.T.R. 277.

Upon filing of an application for letters of administration an order setting forth the notice of the application will be made by the High Court. *Nenjir v. Rilan*, 4 T.T.R. 277.

F

FISH.

Ownership

Ownership of fish and marine animals is lodged in the people governing or controlling the waters in which the marine life is found. *Trust Territory v. Kaneshima*, 4 T.T.R. 340.

A fisherman who lawfully catches fish acquires title when he reduces them to possession, but one who unlawfully catches fish within three miles of the coast or island reef acquires no title. *Trust Territory v. Kaneshima*, 4 T.T.R. 340.

Defendant, convicted of unlawfully entering Trust Territory waters and for the removal of marine resources obtained his cargo in violation of law and therefore acquired no title to it, rather the title remained in the government of the Trust Territory, held by it in trust for the people of Micronesia. (T.T.C., Sees. 875, 881) *Trust Territory v. Kaneshima*, 4 T.T.R. 340.

Unlawful Operation of Vessel-Penalty

The only pecuniary exaction permitted by the Trust Territory Code for unlawfully operating a fishing vessel in Trust Territory waters are fines not exceeding \$10,000 for each offense. (T.T.C., Sec. 882) *Trust Territory v. Kaneshima*, 4 T.T.R. 340.

There is nothing in the Code authorizing either forfeiture or confiscation as a penalty of the cargo of a fishing vessel unlawfully operating in Trust Territory waters, however, because of the special nature of marine life such statutory authority for confiscation is not necessary. *Trust Territory v. Kaneshima*, 4 T.T.R. 340.

GUARDIAN AND WARD

FORMER ADMINISTRATIONS.

Official Acts

The High Court has consistently held many times that it will recognize the official determinations of the Japanese administration. *Oneitam v. Suain*, 4 T.T.R. 62.

The decisions of the Japanese administration in adjudicating the disputes over the eight parcels of land concerned in the case in issue provided the final and lawful determination of the ownership rights to such lands as of the commencement of the American administration and any claim adverse to such decisions must arise from some subsequent rearrangement of rights during the American administration. *Oneitam v. Suain*, 4 T.T.R. 62.

Redress of Prior Wrongs

The court will not undo the official acts of the Japanese administration, even though wrongful, unless they occurred so near the end of the Japanese regime as to prevent recourse to Japanese courts. *Calvo v. Trust Territory*, 4 T.T.R. 506.

-Exception to Applicable Doctrine

The present Government of the Trust Territory is not required as a matter of right to correct wrongs which the former government may have permitted, except in those cases where the wrong occurred, so near the time of the change of administration that there was no opportunity for it to be corrected through the courts or other administration of the former administration. *Rivera v. Trust Territory*, 4 T.T.R. 140.

Taking of Private Property by Japanese Government-Limitations

Land transfers from non-Japanese private owners to Japanese Government, corporations or nationals since March 27, 1935, are subject to review, but such transfers will be considered valid unless the former owner, or heirs, establishes that the sale was not made of free will and the just compensation was not received and in such cases title will be returned to the former owner upon his paying in to the Trust Territory Government the amount received by him. (Policy Letter P-1, December 29, 1947) *Rivera v. Trust Territory*, 4 T.T.R. 140.

G

'GUARDIAN AND WARD.

Appointment of Guardian-Law Governing

Where no provision was found in the Trust Territory Code for appointment of guardians the common law must be considered to be applicable in accordance with Section 22 of the Code, unless local customary law is applicable. (T.T.C., Sec. 22) *Kumer v. Peter*, 4 T.T.R. 102.

GUARDIAN AND WARD

-Custom

Customary law applies to adoption only, not guardianships. *Kumer v. Peter*, 4 T.T.R. 102.

-Common Law

Guardianship of a natural father or mother in the case of a child born out of wedlock was recognized in the common law and, normally the mother has the legal right to custody, care and control of the child unless the welfare and pennant good of the child require otherwise. *Kumer v. Peter*, 4 T.T.R. 102.

-Consent of Mother

The consent of the natural mother, which nonnally would be required for appointment of a guardian or for an adoption of another, is nullified where the mother has been found not fit to be the guardian of the child. *Kumer v. Peter*, 4 T.T.R. 102.

The mother's consent may not be withheld when the best interests of the child, which have been demonstrated to be jeopardized by the mother's own conduct, require transfer of custody and control to another. *Kumer v. Peter*, 4 T.T.R. 102.

-Natural Mother

Where the natural mother was not a fit and proper person to have custody of her child the best interests of the child require the appointment of another as guardian. *Kumer v. Peter*, 4 T.T.R. 102.

-Natural Father

The natural father of the child is eligible as alternative appointee as guardian where the natural mother has been unfit. *Kumer v. Peter*; 4 T.T.R. 102.

H

HABEAS CORPUS.

Generally

Determination of the guilt or innocence of the prisoner is not the function of habeas corpus. *Figir v. Trust Territory*, 4 T.T.R. 368.

Court will not retry case in a habeas corpus proceeding nor remand petitioner to another trial to permit new strategy to be employed by new counsel. *Figir v. Trust Territory*, 4 T.T.R. 368.

While petitioner's argument that he should have been acquitted because the prosecution failed to meet its obligation to show beyond a reasonable doubt that petitioner's act was in violation of customary law may have been considered on an appeal, it was not appropriate in a habeas corpus proceeding to set aside a finding that petitioner violated, beyond a reasonable doubt, the criminal arson statute. (T.T.C., Sec. 390) *Figir v. Trust Territory*, 4 T.T.R. 368.

HOMESTEADS

Due Process

Only when there has been such a failure in the proceedings that the accused is denied a fair trial can it be said there has been a denial of due process, that the resulting judgment is void and may be set aside on habeas corpus. *Figir v. Trust Territory*, 4 T.T.R. 368.

Jurisdictional Error

Only when the court does not have jurisdiction and is without authority to act, may its judgment be said to be void and therefore subject to be set aside in a habeas corpus proceeding. *Figir v. Trust Territory*, 4 T.T.R. 368.

Habeas corpus attacks the jurisdiction by which a person is imprisoned, not the proceedings themselves. *Figir v. Trust Territory*, 4 T.T.R. 368.

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

A judgment and sentence of a court is ~~w~~ithin the court's jurisdiction if it is authorized to act upon the subject matter and the person is before it. *Figir v. Trust Territory*, 4 T.T.R. 368.

Nature of Proceeding

The petition for the judicial action of issuance of the ~~w~~rit of habeas corpus is the institution of a new suit in the nature of a civil action rather than criminal proceeding. *Figir v. Trust Territory*, 4 T.T.R. 368.

Hearing-Procedure

It is the usual procedure on an application for a writ of habeas corpus under Sections 300-306, Trust Territory Code, for the court to issue the writ and on the return to hear and dispose of the case, however, the court may, without issuing the writ, consider and determine whether the facts alleged, if proved, would warrant discharge of the prisoner. (T.T.C., Sees. 300-306) *Figir v. Trust Territory*, 4 T.T.R. 368.

-Appeal

Denial of the petition for issuance of the writ of habeas corpus is a judicial determination of a case or controversy, reviewable on appeal to the Appellate Division of the High Court. *Figir v. Trust Territory*, 4 T.T.R. 368.

HOMESTEADS.

Restriction Against Alienation

Where defendant agreed to sell plaintiff land held under an unmaturred Agricultural Homestead Permit the agreement to sell was illegal, being in violation of both the terms of the homestead permit and Section 958

HOMESTEADS

of the Trust Territory Code. (T.T.C., Sec. 958) Romolor v. Igisaiar, 4 T.T.R. 105.

Succession

Except where specific statutory provision is made for inheritance and continuation of the homestead, all rights of the settler are lost by his death. Norman v. Eskar, 4 T.T.R. 164.

In the absence of statutory provision there is no descent of, or succession to, private interests in the United States or state lands where such interest is not perfected and a patent issued before the entryman dies. Norman v. Eskar, 4 T.T.R. 164.

There can be no succession where there is clear and unambiguous statutory direction as to the manner in which a homesteader might designate his successor except upon full compliance with that direction. (T.T.C., Sec. 958) Norman v. Eskar, 4 T.T.R. 164.

HOMICIDE.

Generally

One who inflicts an injury on another is deemed by the law to be guilty of homicide if the injury contributes mediately or immediately to the death of such other and the fact that other causes contribute to the death does not relieve the actor of responsibility. Trust Territory v. Minor, 4 T.T.R. 324.

Corpus Delicti

Proof of the corpus delicti requires a showing beyond a reasonable doubt that the killing was the result of a criminal act and that such act was attributable to the accused. Trust Territory v. Minor, 4 T.T.R. 324.

Corpus Delicti, see, also, Criminal Law-Corpus Delicti

Murder in First Degree-Intent

The presence of absence of the required malice or mental condition marks the boundary which separates the two crimes of murder and manslaughter. Trust Territory v. Minoi, 4 T.T.R. 324.

To be murder in the first degree the killing must be premeditated, except when done in perpetration of certain felonies; that is, the unlawful killing must be accompanied with a deliberate and clear intent to take life. (T.T.C., Sec. 385) Trust Territory v. Minor, 4 T.T.R. 324.

Without intent to kill or premeditation a homicide cannot be of the first degree with its mandatory sentence of life imprisonment. Trust Territory v. Minor, 4 T.T.R. 324.

Malice in connection with the crime of killing is but another name for a certain condition of a man's heart or mind; and as no one can look into the heart or mind of another, the only way to decide upon its condition at the time of the killing is to infer it from the sur-

INJUNCTIONS

rounding facts, and that inference is one of fact. Trust Territory v. Minor, 4 T.T.R. 324.

Murder in Second Degree--Intent

In order to support a conviction of murder in the second degree, it is not necessary to find premeditation but it is essential there be a finding, also necessary for sustaining murder in the first degree, that the killing was malicious as well as unlawful and willful. Trust Territory v. Minor, 4 T.T.R. 324.

Voluntary Manslaughter-Element of Offense

A conviction of voluntary manslaughter may not be sustained without evidence that the killing was done upon a sudden quarrel or heat of passion. Debesol v. Trust Territory, 4 T.T.R. 556.

I

ILLEGITIMATE CHILDREN.

Recognition-Ponape

The Ponapean text of the German land code provided that an illegitimate child may be legitimized by the subsequent marriage of its biological parents, however, where no further action is taken by the father an illegitimate child has very low status as an heir. Sehpin v. Atta, 4 T.T.R. 33.

From long established practice on Ponape, an illegitimate child of a man is not to be considered as his child or issue, 'within the meaning of the inheritance laws there, unless such child is either adopted or legitimized by being publicly acknowledged and accepted into his family by the man as his child. Sehpin v. Atta; 4 T.T.R. 33.

Inheritance--Ponape

After an illegitimate son has been legitimized by adoption such son should have the same status and rights to inherit as an adopted child. Sehpin v. Atta, 4 T.T.R. 33.

Ponape District Legislative enactment No. 3-17-59 names as last in order of succession an illegitimate son who is subsequently legitimized by the marriage of the biological parents and places third in order of inheritance, following true sons and daughters, the eldest adopted son, without reference to whether or not that son is an illegitimate child or not. Sehpin v. Atta, 4 T.T.R. 33.

INJUNCTIONS.

Irreparable Injury, Loss or Damage

While a showing that irreparable injury, loss or damage would result to the citizens of the Trust Territory if defendants were not enjoined from violation of law in question might have had to have been made in order to get a restraining order pendente lite, such a showing need not be made at trial where section of Code provided that a violation

INJUNCTIONS

of its provisions may be enjoined. (T.T.C., Sec. 1135) Trust Territory v. Traid Corporation, 4 T.T.R. 300.

INTEREST.

Unliquidated Claims

Where exact amount due was uncertain and hence claim was unliquidated, interest would not be allowed until after a decision as to the amount due. Bulele v. Loak, 4 T.T.R. 5.

J

JUDGES.

Actions Against

Ordinarily, an action or judgment by a judge awarding property to a litigant does not give a person a right to maintain an action against the judge because of his having made a mistake in his decision. Rilometo v. Lanlobar, 4 T.T.R. 172.

JUDGMENTS.

Stare Decisis

A judge sitting in the Trial Division of the High Court is bound to follow decisions of the Appellate Division under the well-known doctrine of stare decisis. Rivera v. Trust Territory, 4 T.T.R. 140.

Collateral Attack

Where a judgment, on its face, purports to apply to land neither owned nor claimed by those to whom it is directed, the court is free to read it in connection with the entire record for the purpose of determining its proper application, and to do so is not to attack the judgment, but to define it. Aten v. Ludwig, 4 T.T.R. 357.

Res Judicata

If it were not for the defense of res judicata, a party who lost a case could simply start a new case and in the new case re-try the matter just decided and so no matter could be finally determined. Rilometo v. Lanlobar, 4 T.T.R. 172.

The doctrine of res judicata, literally translated as "the matter has been adjudged", means quite simply that the court will not permit parties or those in privity with them to relitigate issues which have already been determined by a court of competent jurisdiction. Joseph v. Ludwig, 4 T.T.R. 354.

Where interests claimed were necessarily represented in a prior action the court was without power to question the propriety of the result there obtained. Joseph v. Ludwig, 4 T.T.R. 354.

When speaking of parties and those in privity with them as being bound under the doctrine of res judicata, one means parties claiming under the same title; privity involves one so identified in interest with another that he represents the same legal right. Joseph v. Ludwig, 4 T.T.R. 354.

JUDGMENTS

When one fails to appeal within the time allowed or fails to appeal from a ruling on his motion for relief from such judgment he cannot re-try the case in a new action. *Riloineto v. Lanlobar*, 4 T.T.R. 172.

A proceeding in the District Court to determine whether an accused had violated the provisions of a local ordinance had no bearing on whether such person had violated or helped a corporation violate the provisions of a Public Law. (Public Law 4-22) *Trust Territory v. Traid Corporation*, 4 T.T.R. 300.

The right to intervene cannot subject a person to being bound by the result of an action under the doctrine of res judicata. *Aten v. Ludwig*, 4 T.T.R. 357.

—Consent Judgments

Though titled "Order of dismissal", where the order incorporated the then known terms of the settlement, it was equivalent to a consent judgment and was clearly res judicata. *Phillip v. Carl*, 4 T.T.R. 493.

Action on Judgment—Generally

It is an established rule that to sustain an action on a judgment or decree, the plaintiff must show the defendant to have become bound by a personal judgment for the unconditional payment of a definite sum of money. *Rilometo v. Lanlobar*, 4 T.T.R. 172.

Order in Aid of Judgment

A proceeding under Section 289 of the Trust Territory Code is one to determine a judgment debtor's ability to pay after a court has made a finding for the payment of money by one party to another. (T.T.C., Sec. 289) *Rilometo v. Lanlobar*, 4 T.T.R. 172.

Consent Judgment Generally

A consent decree represents an agreement by the parties which the court cannot expand or contract. *Phillip v. Carl*, 4 T.T.R. 493.

—Modification

It is a general rule that in a case where a consent judgment may be set aside for cause, it must be set aside in its entirety. *Phillip v. Carl*, 4 T.T.R. 493.

A Party cannot attack provisions of a consent decree unfavorable to him and successfully contend that those in his favor should be allowed to stand, and the court has no power to make a ruling to this effect. *Phillip v. Carl*, 4 T.T.R. 493.

Judgments of Acquittal

An acquittal in a criminal prosecution does not constitute evidence of innocence in a subsequent civil action based upon the alleged criminal act, and is not admissible in favor of the accused in a civil action to prove that he was not guilty of the crime with which he was charged. *Uchel v. Owen*, 4 T.T.R. 132.

JUDGMENTS

Relief From Judgment

Civil Rule 18e, taken from Rule 60(b), Federal Rules of Civil Procedure, is to be liberally construed so that judgments will reflect the true merits of a case. Phillip v. Carl, 4 T.T.R. 493.

Summary Judgment

Where there is no disputed material fact, summary judgment in accordance with applicable law is appropriate. Julios v. Amusten, 4 T.T.R. 25.

Summary judgment is available when there is no disputed issue of material fact and the party moving for it is entitled to judgment upon the law. Diopulos v. Osaias, 4 T.T.R. 29.

Summary judgment may be given only where there is no disputed material issue and the party filing the motion is entitled to judgment as a matter of law. Julios v. Amusten, 4 T.T.R. 25.

Where factual admission, made by the pleadings and at pre-trial conference, leave no genuine issue as to material fact, the court may properly proceed to determine the issues of law and enter summary judgment thereon. Likidimus v. Likidimus, 4 T.T.R. 331.

It is proper to enter a judgment based on the claims at a pre-trial conference if on the claims stated at the pre-trial conference it is clear that a party cannot recover. Rilometo v. Lanlobar, 4 T.T.R. 172.

Where evidence was required on a disputed issue upon which a party's entitlement to a judgment vesting title in him depended, summary judgment could not be granted. Diopulos v. Osaias, 4 T.T.R. 29.

L

LANDLORD AND TENANT.

Generally

The landlord-tenant relationship is created by a contract called a lease. Mendiola v. Cruz, 4 T.T.R. 499.

Where there was no lease there was, as a matter of law, no landlord-tenant relationship. Mendiola v. Cruz, 4 T.T.R. 499.

A landlord cannot create any greater interest in the tenant than he himself has. Mendiola v. Cruz, 4 T.T.R. 499.

A lessee has no greater right of possession than his lessor. Mendiola v. Cruz, 4 T.T.R. 499.

Leases--Generally

The lease is a conveyance of the landlord's interest to his tenant and whether a contract has been created is tested by the normal rules of contract law. Mendiola v. Cruz, 4 T.T.R. 499.

Estoppel

Estoppel is not only applicable only when the landlord-tenant relationship exists but also only as long as the tenant is in possession. Mendiola v. Cruz, 4 T.T.R. 499.

MARIANAS CUSTOM

To give rise to the estoppel of a tenant to deny his landlord's title, it must first be shown that the relation of landlord and tenant in fact existed between the parties as regards the land in question. *Mendiola v. Cruz*, 4 T.T.R. 499.

LARCENY.

Grand Larceny-Elements of Offense

The crime of grand larceny requires the stealing, taking and carrying away of the personal property of another, of the value of \$50 or more, without the owner's knowledge or consent with the intent to permanently convert that property to his own use. *Trust Territory v. Mick*, 4 T.T.R. 147.

LEGISLATIVE POWER.

Municipal Ordinances

A municipal ordinance cannot in effect repeal an act of the Congress of Micronesia or do away with the necessity of compliance with its provisions. *Trust Territory v. Traid Corporation*, 4 T.T.R. 300.

LICENSES AND PERMITS.

Failure to Obtain License or Permit

The general rule is that the purpose of the legislature in enacting a licensing statute, that is, as to the enactment of a revenue measure or a police regulation, is controlling in determining whether or not failure to procure a license renders contracts illegal and unenforceable. *Mendiola v. Quitugua*, 4 T.T.R. 388.

Failure to get a license under a mere revenue producing licensing law should not cause a seller of goods or service to lose the amounts due him. *Mendiola v. Quitugua*, 4 T.T.R. 383.

Where a statute merely prescribes a license fee for the following of a designated vocation, and contains neither a penalty nor a prohibition, such statute does not invalidate a contract made by an unlicensed person, assuming, of course, that the statute does not expressly invalidate such contracts. *Mendiola v. Quitugua*, 4 T.T.R. 383.

M

MARIANAS CUSTOM.

"Manadalag";

Plaintiff's actions, while considered a community aid, *manadalag*, such as one might do for anyone with no expectation of repayment, furnished some element of gratitude which among other things resulted in gifts by the defendant. *Mendiola v. Quitugua*, 4 T.T.R. 314.

MARIANAS LAND LAW

MARIANAS LAND LAW.

Generally

Among the Carolinians ownership of land is largely in the women. *Nekai v. Nekai*, 4 T.T.R. 388.

Trusts

Where deceased agreed with his brother, having no sister, that he would hold certain lands for the benefit of all their mother's descendants, upon his death the land passed to the surviving brother subject to the trust assumed by the deceased. In *Re Estate of Faisao*, 4 T.T.R. 92.

MARSHALLS CUSTOM.

Succession to Titles--Generally

Under Marshallese custom those designated as successors by the title-holders have the best right to succeed to such titles. *Wena v. Maddison*, 4 T.T.R. 194.

On the general question of inheritance under the custom as it existed in the Marshall Islands on December 1, 1941, it must be found that there was no automatic succession to the office or rights of an *iroij lablab*, no inflexible or undeviated rule or pattern that must be followed on the death of an *iroij lablab*. *Labina v. Lainej*, 4 T.T.R. 234.

Action in appointing person out of normal line of succession- to *leroj lablab* in effect extinguished idea of succession according to the ordinary pattern of inheritance. *Labina v. Lainej*, 4 T.T.R. 234.

The manner of succession as to *alabs* applies to the pattern followed in the succession to the *iroij lablabs* and *iroij eriks* among the nobility class in the Marshall Islands. *Labina v. Laihej*, 4 T.T.R. 234.

- "Kajur"

Under Marshallese custom it is widely held that a member of the commoner class- a *Kajur*- cannot succeed to the office of *iroij lablab* or *iroij erik*, *Labinav. Lainej*, 4 T.T.R. 234.

Public Meetings

Under Marshallese custom, questions of magnitude to the community, for example involving payment for the indefinite use rights to two *watos* from whence approximately 100 people had been removed, should be settled in public meeting. *Bulele v. Loeak*, 4 T.T.R. 5.

"Iroij Lablab"-Succession

The position of *iroij lablab* is primarily one of trust and responsibility, the succession to which depends upon a combination of birth and recognized ability, and it is not a merely personal right which can be given away or abolished at will by one holding it. *Jetnil v. Budnmar*, 4 T.T.R. 420.

The expressed wishes of one *iroij lablab* as to the selection of his or her successor may have great influence with his people, but it cannot

MARSHALLS LAND LAW'

bind them in such a way as to relieve them from obligations assumed after his or her death. *Jetnil v. Budnmar*, 4 T.T.R. 420.

-Approval of Wills

Even if will offered was approved by the *iroij erik* it was invalid and of no legal effect as it was not approved by the *iroij lablab* concerned. *Jekron v. Saul*, 4 T.T.R. 128.

"Iroij Elap"-Powers

Before foreign supervision the principal limitation on the powers of an *iroij elap* appears to have been the practical necessity of retaining the loyalty of enough of his subordinates so that they would effectively support him in power by force of arms and, so long as he could maintain control by force or threat of force, his personal decision was final. *Bulele v. Loeak*, 4 T.T.R. 5.

Prior to foreign supervision an *iroij elap* was required to wage war offensively or defensively for the protection of his lands and the economic well-being of the people subject to him. *Bulele v. Loeak*, 4 T.T.R. 5.

"Kitre"

Under Marshallese custom it is proper for *kitre* land to pass to the *bwij* of the recipient. *Wena v. Maddison*, 4 T.T.R. 194.

MARSHALLS LAND LAW.

Generally

Land rights in the Marshalls had become sufficiently firm by the time the American administration took over so that rights were firmly and clearly established and recognized and could not be cut off except for good cause arising after their establishment. *Langjo v. Neimoro*, 4 T.T.R. 115.

All the different levels of owners have rights which the courts will recognize, but they also have obligations to each other, thus there is a duty of loyalty all the way up the line *dri jerbak*, to *alab*, to *iroij erik*, to *iroij lablab*, a corresponding duty of protection of the welfare of subordinates running down the line, and a strong obligation of cooperation running both ways. *Jetnil v. Buonmar*, 4 T.T.R. 420.

Marshallese Commoners have relatively less in land rights than their fellow citizens of the other Districts of the Trust Territory because of the feudalistic social structure in the Marshalls whereby various members of the *Iroij* class own interests in most of the individual parcels throughout the District. *Bulele v. Loeak*, 4 T.T.R. 5.

As members of the same *bwij*, plaintiff and defendants had certain obligations with respect to each other, probably the stronger obligation being that of the defendants to look after the welfare of their father's sister, the plaintiff. *Jetnil v. Buonmar*, 4 T.T.R. 420.

An *iroij* often owns rights in many *watos* on different atolls. *Bulele v. Loeak*, 4 T.T.R. 5.

MARSHALLS LAND LAW

"Iroi; Lablab"—Powers

Determinations made by an *iroij labiab*, and the female equivalent, a *leroi; lablab*, with regard to his lands are entitled to great weight and it is to be presumed that they are reasonable and proper unless it is clearly shown they are not. *Langjo v. Neimoro*, 4 T.T.R. 115.

Succession to permanent *iroi; erik, alab* and *dr̄i; erbal* rights must be ordinarily approved by the *iroi; lablab* in accordance with the law of Marshallese custom. *Wena v. Maddison*, 4 T.T.R. 194.

-Limitation of Powers

Most of the former functions of *iroi; lablab* in relation to the protection and welfare of the people have been taken over by the government under the German and Japanese administrations and also under the American administration. *Labina v. Lainej*, 4 T.T.R. 234.

The powers of the *iroi; lablabs* in relation to land tenure have been held to be limited or circumscribed; they are subject to the review of the courts as to whether they are reasonable and just. *Labina v. Lainej*, 4 T.T.R. 234.

An *iroi; lablab* has the right to settle a dispute as to who is entitled to the *alab* rights to a piece of land but, that right of the *iroi;* is not an absolute right to grant one person or another the *alab* rights rather the determination must be reasonable and proper and if it is, not, a court may overturn that decision. *Rilometo v. Lanlobar*, 4 T.T.R. 172.

There is no indication that *iroi; lablab* had rights under law in effect to change *alab* rights at will. *Likinono v. Nako*, 4 T.T.R. 483.

-Succession

Court will not establish an *iroi; lablab* where no definite choice has been made of the *iroi; lablab* by the people concerned. *Labina v. Lainej*, 4 T.T.R. 234.

Even in a case where a person by birth and blood is unquestionably entitled to the office of *iroi; lablab*, if there is substantial opposition by the persons owning rights in the lands in the Territory where there has occurred a vacancy in the office of *iroi; lablab*, the High Court should not by order or decree establish the person as *iroij lablab*. *Labina v. Lainej*, 4 T.T.R. 234.

Where there was a reasonable uncertainty as to the rightful successor or whether there was any successor at all to the position or office of *iroi; lablab* in respect to certain lands as to make substantial numbers of owners or interested parties hesitate before declaring their recognition, the individual claiming such office in addition to proving that he is entitled by birth and blood to succeed to that office, must also show that the persons having rights in such lands have recognized the claimant, either by words or conduct, in such fashion as to evince an unmistakable choice. *Labina v. Lainej*, 4 T.T.R. 234.

—Actions Against

When a determination of a dispute has been made by an *iroij lablab* that does not give rise to an action against the *iroij* for damages. *Rilometo v. Lanlobar*, 4 T.T.R. 172.

“Iroij Elap”—Powers

Determinations by an *iroij elap*, with regards to his lands are entitled to great weight and it is to be supposed that they are reasonable unless it is clear they are not. *Anjetob v. Taklob*, 4 T.T.R. 120.

Where the law leaves land matters to an *iroij elap's* judgment, he must act reasonably as a responsible official and not simply to satisfy his own personal wishes. *Bulele v. Loeak*, 4 T.T.R. 5.

Presently, in order for an *iroij elap's* decision to have legal effect in land matters, the *iroij* must act within the limits of the law, including the law of Marshallese custom so far as it has not been changed by higher authority. *Bulele v. Loeak*, 4 T.T.R. 5.

An *iroij elap* has the duty of making a correct division of any monies received on behalf of the *alabs* and *dri jerbals* under him and he has the duty of ascertaining whether there was agreement as to the acreages of the *watos* for which payment was about to be made. *Bulele v. Loeak*, 4 T.T.R. 5.

Under Marshallese custom, if there had been agreement at an open meeting between the *iroij elap*, the *alab* and the senior *dri jerbals* of the *watos* being sold, or their representatives, without undue pressure being placed upon the *alab* and *dri jerbals*, then a division of money received for such *watos* would be final. *Bulele v. Loeak*, 4 T.T.R. 5.

Where so many years had passed since an *iroij's* decision as to succession to certain land the presumption that his determination was reasonable and proper was reinforced by a presumption analogous to the “presumption of grant” or “doctrine of lost grant”. *Anjetob v. Taklob*, 4 T.T.R. 120.

“Iroij Erik”

If an alleged will of *iroij erik* rights was made after the gift of such rights by *kitre*, the donor had no authority to include such rights where he did not reserve such power at the time of the *kitre*. *Wena v. Maddison*, 4 T.T.R. 194.

—Establishment

Once an *iroij erik* has been established under the Marshallese system of land tenure, and the establishment has apparently been accepted by those concerned at the time, it cannot be upset years later on the basis of facts which were in existence at the time of the establishment. *Wena v. Maddison*, 4 T.T.R. 194.

A person's long-term exercise of *iroij erik* rights to *wato* in question raised a presumption of her ownership, as did the failure of persons to

MARSHALLS LAND LAW

challenge her rights during her lifetime and the presumed acquiescence of the Japanese Government in the arrangements. *Wena v. Maddison*, 4 T.T.R. 194.

"Alab"-Establishment

If a party does not wish to follow the determination of an *iroij lablab* as to who is entitled to exercise *alab* powers on a piece of land, he may file an action in the High Court and have the Court decide if the action of the *iroij* was proper. *Rilometo v. Lanlobar*, 4 T.T.R. 172.

It is not proper for a litigant who has just had a trial, an opportunity to prove his right to act as *alab*, and who has lost, to be allowed to maintain a new action against the *iroij lablab* and in effect try his case over again; under those circumstances the principles of *res judicata* apply. *Rilometo v. Lanlobar*, 4 T.T.R. 172.

-Powers

Clearly established *alab* rights exercised over a long period of years could not properly or reasonably be cut off by a *leroi* because of any error there may have been in their establishment or recognition. *Langjo v. Neimoro*, 4 T.T.R. 115.

-Succession

Under Marshallese customary law the nearest relative in the female line succeeds as *alab* as against a person not related to the former *alab* in the female line. *Jekron v. Saul*, 4 T.T.R. 128.

If appellee was the successor *alab* in accordance with Marshallese custom, then the recognition given to another by the *leroi lablab* exceeded her authority. *Likinono v. Nako*, 4 T.T.R. 483.

An adopted child possesses much the same rights as the biological children except that he may only become *alab* of land of the lineage into which he has been adopted upon the extinction of all lineage relatives. *Labina v. Lainej*, 4 T.T.R. 234.

An *alab*, after the death of an *alab* who had "separated" the *bwij* from a *woto*, had the power to appoint a successor to such *alab*. *Makroro v. Benjamin*, 4 T.T.R. 366.

... Where there has been a separation of ownership between a *bwij* and a "younger" *bwij* when the *bwij* dies out in the female line its *alab* rights pass to the senior of the descendants of the male members of the *bwij*. *Liwaika v. Bilimon*, 4 T.T.R. 123.

"Dri Jerbal"-Withdrawal From Land

A *dri jermal* who decides to withdraw from the land does not have a right to compensation for improvements he made to the land, rather the right to receive part of its products should be considered to have been compensation for the improvements where the withdrawal is based on the decision of the *dri jermal*. *Rilometo v. Lanlobar*, 4 T.T.R. 172.

MOTOR VEHICLES

"Jebrik's side" of Majuro

Approval for succession to rights in land on "Jebrik's side" of Majuro Atoll must be by the *iroij eriks* and *droulul* or by the Trust Territory Government, and the High Court may accord the approval by the Trust Territory. *Wena v. Maddison*, 4 T.T.R. 194.

"Kitre"

Kitre is the general term for presents of food, clothing and other things of value, given by a man to a woman before and/or after he marries her. *Wena v. Maddison*, 4 T.T.R. 194.

Even if a will had been made of *iroij erik* rights and the will had been approved by Japanese authorities prior to the gift of *iroij erik* rights by *kitre*, the will could still be changed in accordance with the law of Marshallese custom because of the changed circumstances. *Wena v. Maddison*, 4 T.T.R. 194.

Use Rights

There is no Marshallese law of custom which specifically determines the division of proceeds from condemnation of indefinite use rights and the amount of each share of such proceeds must be based upon the Marshallese custom for the type of apportionment which is most clearly related. *Bulele v. Loeak*, 4 T.T.R. 5.

It would be contrary to current marshallese customary law for an *iroij* acting alone and without the consent of his *kajur* to make a division of the proceeds from condemnation of indefinite use rights. *Bulele v. Loeak*, 4 T.T.R. 5.

MOTOR VEHICLES.

Operation Without Owner's Consent

Ownership of the vehicle and lack of consent of the owner are essential elements which must be proved in order to support a conviction for violation of the statute relating to driving a vehicle without the owner's consent or proper authorization. (T.T.C., Sec. 815(e) Tudela v. Trust Territory, 4 T.T.R. 271.

Title of specific ownership of a wrongfully taken automobile was not made an essential factor in the prima facie establishment of the joy-riding offense, and it is sufficient to show that the automobile taken did not belong to the proprietor but was intentionally taken from and without the permission of the person entitled to possession. (T.T.C., Sec. 815(e) Tudela v. Trust Territory, 4 T.T.R. 271.

Although the testimony showed that appellant was not the original taker of the vehicle, under the circumstances surrounding the event, it was permissible for the trial court to draw the inference that the appellant knew he was operating a motor vehicle not his own and without the owner's consent. (T.T.C., Sec. 815(e) Tudela v. Trust Territory, 4 T.T.R. 271.

PALAU CUSTOM

P

PALAU CUSTOM.

Generally

That a custom may be subject to certain exceptions is not unusual in application of Palauan custom to a specific set of facts. *Elechus v. Kdesau*, 4 T.T.R. 444.

Clans—Membership

Under Palau custom clan members should have assumed responsibility for debts incurred by clan member. *Johanes v. Mechol*, 4 T.T.R. 201.

Under the Palau system of society mere absence of a member of a clan, no matter how long continued, does not work as a forfeiture of either his clan membership or his rights to share in and use the clan's assets. *Metecherang v. Sisang*, 4 T.T.R. 469.

- "Rdiaul"

The *Rdiaul* is the second highest of the Airai titles, and is outranked by either the *Ngiraked* or the *Ngirkiklang*, depending on the particular situation. *Airai Municipality v. Rebluud*, 4 T.T.R. 75.

— "Ochel"

Under Palauan custom true *ochel* descendants are the strongest members of a clan followed in order of authority by *ulechel* members, by adoptive members and finally, members by "drifting" or sometimes called "through the floor", or "some other way". *Risong v. Iderrech*, 4 T.T.R. 459.

By traditional custom the senior *ochel* member of the clan has authority which is greater than all others and her exercise of that authority, when approved, is not to be set aside. *Risong v. Iderrech*, 4 T.T.R. 459.

An *ochel* adopted from his or her clan to another clan remains an *ochel* member of the original clan, but his or her authority is not as great in the original clan as an *ochel* member remaining in the clan. *Elechus v. Kdesau*, 4 T.T.R. 444.

When clan membership is not separate and distinct, the senior *ochel* of the total group comprising the two clans has the power to appoint the male title bearer, subject to approval by the senior membership and village counsel. *Risong v. Iderrech*, 4 T.T.R. 459.

When a group in authority no longer exists or the membership in it is too young to exercise authority, the next succeeding group exercises control over clan affairs and properties in lieu of the true *ochel* or *ulechellines*. *Risong v. Iderrech*, 4 T.T.R. 459.

Members of clan who were not strong members nearly 30 years ago, now may be regarded as strong members having equal authority with any other adult *ochel* member and superior authority to any *ulechel* members concerning clan affairs and clan land control. *Elechus v. Kdesau*, 4 T.T.R. 444.

- "Ulechel"

A *ulechel* member who bears the principal title in a clan has authority, subject to approval and in the absence of senior *ochel* members, to appoint the male title bearer in the clan. *Risong v. Iderrech*, 4 T.T.R. 469.

Family Obligations--Father Under the Custom

The question of what damages should be allowed for a breach of manners toward a father under the custom is a matter for determination with the custom and the court will not decide the question. *Tmetuchlv. Western Carolines Trading Co.*, 4 T.T.R. 395.

Coconut Trees

Traditional custom recognizes separate ownership of bearing coconut trees from ownership of the land. *Basilio v. Metsifista*, 4 T.T.R. 407.

PALAU LAND LAW.

Generally

Palau custom is not the sole criterion to be considered concerning title to and transfer of land. *Elechus v. Kdesau*, 4 T.T.R. 444.

The customary land law on Tobi Island is similar to the customary law of Koror and Babelthaup Islands. *Bwanus v. Metsifista*, 4 T.T.R. 404.

Clan Ownership-Use Rights

The assignment of clan or family land to an individual to use is commonly made under Palau custom for the remainder of that individual's life, and the mere fact that such an individual lives a long time and consequently enjoys the use of the land for a long period raises no presumption of ownership of anything more than the use rights assigned. *Oucherechar Clan v. Termeteet*, 4 T.T.R. 285.

Appellee lost the privilege of remaining in his house, built on clan land, by his conduct and refusal to meet with or cooperate with the clan members. *Adelbai v. Ngirchoteot*, 4 T.T.R. 417.

-Income Distribution

Money paid from the Mining Trust Agreement is paid for the benefit of the clan, all members, not just the titleholder or his immediate family or friends and if there is any failure in that respect the clan may petition for an accounting and such orders for equitable distribution as may be appropriate. *Risong v. Iderrech*, 4 T.T.R. 469.

Other than the mandate to pay funds to the male titleholder, there is no specific provision for distribution to the clan members in the Mining Trust Agreement. *Risong v. Iderrech*, 4 T.T.R. 469.

-Transfer

An individual may not transfer his land, which is a part of clan holdings, without first obtaining consent of the clan members. *Johanes v. Mechol*, 4 T.T.R. 201.

Where clans made no complaint or objection either to use of land for school purposes or for the payment to title bearer of damages for

PALAU LAND LAW

cutting trees thereon any claim they may have had was waived' by their prolonged failure to assert their interests. *Oucherechar Clan v. Termeteet*, 4 T.T.R. 286.

Lineage-Ownership-Administration

Who should become administrator of lineage land is a lineage and clan problem to be settled by them. *Metecherang v. Sisang*, 4 T.T.R. 469.

Failure to administer lineage land for the benefit of the lineage is sufficient to warrant removal of the administrator by the lineage. *Metecherang v. Sisang*, 4 T.T.R. 469.

Long absence from the land is sufficient grounds for removal of the administrator of lineage land. *Metecherang v. Sisang*, 4 T.T.R. 469.

-Transfer

Under Palauan custom ownership of land by a lineage or family requires unanimous consent of the senior family members before it may be transferred. *Armaluuk v. Orrukem*, 4 T.T.R. 474.

-Use Rights

Person who was not administrator of lineage land had no authority to permit a stranger to the lineage to occupy and use the land without payment of fair rental for the benefit of the membership. *Metecherang v. Sisang*, 4 T.T.R. 469.

Where person on land was not the owner, the land being lineage land, he was obliged to administer the land for the benefit of and in the best interests of the lineage membership. *Metecherang v. Sisang*, 4 T.T.R. 469.

Village Land

Where preponderance of evidence showed that land in question in Airai was registered in the *Daichio* in the name of the *Ngiraked*, it indicated that the land was then village land. *Airai Municipality v. Rebluud*, 4 T.T.R. 75.

-Sale

Prior to the Japanese Land Survey, 1938-1941, the consent of the then highest title in the village' was required for sale of any village land. *Airai Municipality v. Rebluud*, 4 T.T.R. 75.

Where land in question was frequently used by the people of *Airai* prior to an attempted sale, defendant's investments were consistent with his right and obligation to administer the property as *Ngirkiklang* and did not in themselves prove a -type of long-term attitude of ownership. *Airai Municipality v. Rebluud*, 4 T.T.R. 75.

In view of defendant's authority as representative of the *Rdiaul*, the lack of proof that he held himself out as owner during Japanese times and the lack of proof of any recognition of his claim during Japanese times, the case did not come within the doctrine of acquiescence and recognition of rights. *Airai Municipality v. Rebluud*, 4 T.T.R. 75.

PAYMENT

Individual Ownership

Purpose of introducing the concept of individual land ownership was to get away from the complications and limitations of the matrilineal clan and the lineage system as to such individually owned land. *Elechus v. Kdesau*, 4 T.T.R. 444.

Japanese Survey-Presumptions

Whether the *Tochi Daicho* listing of ownership of land was erroneous or not, a land buyer is entitled to the benefit of the presumption that the listing correctly showed the status of the title. *Johanes v. Mechol*, 4 T.T.R. 201.

However parties themselves regarded Palauan custom as governing control over land in question, court was bound by the effect of the *Tochi Daicho* listing that it was transferred to defendant as his individual land and such action cut off the interests of the clan and lineage members. *Elechus v. Kdesau*, 4 T.T.R. 444.

—Rebuttal

In order to overcome the presumption of the correctness of the *Tochi Daicho* listing there must be a clear showing that the determination is wrong. *Elechus v. Kdesau*, 4 T.T.R. 444.

Boundaries marked after a Japanese hearing on the subject would control over listing in *Tochi Daicho*. *Oucherechar Clan v. Termeteet*, 4 T.T.R. 285.

-Tobi Island

The Japanese, during their administration, did not make a land survey on Tobi Island. *Bwanus v. Metsifista*, 4 T.T.R. 404.

Transfers---Specific Performance

Specific performance of transfer of interests in land is not a part of Palauan custom since "equivalent" land may be substituted. *Elechus v. Kdesau*, 4 T.T.R. 444.

Use Rights

Land may not be held by a clan *ulechel* member as against *ochel* members or at least without the consent of all *ochel* members of the clan, if it is clan land, or of the lineage, if it is lineage land. *Elechus v. Kdesau*, 4 T.T.R. 444.

Where *ochel* holds lands received to replace other lands for the benefit of and to transfer to certain persons at her death, she could not transfer such lands without the consent of all the *ochel* members as such would be an invalid transfer which could not be sustained under the custom. *Elechus v. Kdesau*, 4 T.T.R. 444.

PAYMENT.

Burden of Proof

The plea of payment tenders an affirmative issue and the burden of proof must be assumed by the party interposing the plea. *Bulele v. Loeak*, 4 T.T.R. 5.

PONAPE CUSTOM

PONAPE CUSTOM.

Adoption

There was no requirement in paragraph 3 of the German Title Document that adoption of a female be approved by the *Nanmwarki* or the Governor, and there was no such requirement in the law of Ponape Custom. *Opispo v. Mesileng*, 4 T.T.R. 80.

Where defendant was adopted prior to issuance of the German Land Document in 1912 confirmation of the adoption by the *Nanmwarki* and Governor was not required. *Opispo v. Mesileng*, 4 T.T.R. 80.

Pingehip--Inheritance

According to Pingelap custom, a child may inherit land from his or her father even though the mother of the child has left the father, provided that the child remains and works with the father. *Mwokin v. Sairenios*, 4 T.T.R. 87.

According to Pingelap custom, if a child leaves the father and goes to live with the mother who has left the father, he does not inherit land from the father in the absence of clear evidence of a contrary intent. *Mwokin v. Sairenios*, 4 T.T.R. 87.

~~Adoption~~

Under Pingelap custom an adoption is valid where there is consent by both the real and adopting parents, and registration of the adoption is not essential to its validity. *Mwokin v. Sairenios*, 4 T.T.R. 87.

German Land Title--Approval of Transfer

Provisions of the German land law permit disposition of land during the lifetime of the owner with the consent of the *Nanmarki* and of the Governor. *Welliem v. Welliem*, 4 T.T.R. 210.

Approval by either the *nanmarki* or the Governor were specifically required by paragraph 4 of the German land law to permit any transfer to be made out of the ordinary line of inheritance. *Benjamin v. Olmos*, 4 T.T.R. 185.

Failure of evidence to show all approvals required by German land law of: any transfers made outside of the ordinary line of inheritance is not a defect of which anyone having a lesser right may. take advantage. *Malarme v. Ligor*, 4 T.T.R. 204.

-Presumption of Ownership

While a disposition of land, held under German land law, outside of normal lines of inheritance may be made, one claiming such a transfer has the burden of establishing conclusively that that was in fact the intention of the owner. *Welliem v. Welliem*, 4 T.T.R. 210.

-Use Rights

The German system of land ownership on Ponape Island was intended to provide for male relatives of the titleholder who had no property, and

PONAPE CUSTOM

for unmarried female relatives for so long as the property remained within the family. *Opispo v. Mesileng*, 4 T.T.& 80.

The rights held by unpropertied males and unmarried females under German land title documents are equitable interests in land and as such are protected by the provisions of Section 4, Trust Territory Code, and thus insofar as Ponape District Order No. 3-61 purports to deprive such persons of property rights it is in conflict with such section of the Code and void. (T.T.C., Sec. 4; Ponape District Order No. 3-61) *Opispo v. Mesileng*, 4 T.T.R. 80.

Adopted daughter, presently a widow, of former owner of land was an "unmarried female relative" of present owner, who was former owner's nephew, and thus entitled to live on and use the property along with the owner. *Opispo v. Mesileng*, 4 T.T.R. 80.

-Women's Rights

Under the law set forth in the standard form of German title document a female was prohibited from inheriting land by hereditary succession or by testamentary gift. *Opispo v. Mesileng*, 4 T.T.R. 80.

Transfers of land to women were not recognized by Japanese officials prior to 1941, and the 1941 change in the basic law was not intended to be a retroactive change. *Opispo v. Mesileng*, 4 T.T.& 80.

Women had no right of inheritance prior to Ponape District Order No.8-57, entered February 1, 1957. (Ponape District Order No.8-57) *Likidimus v. Likidimus*, 4 T.T.& 331.

The law of succession and inheritance to land under German land title was not changed until enactment of Ponape District Order No.8-57 and Ponape District Law 3-17-59 and neither of those laws purported to affect things that happened before they were adopted and to try to adapt either to inheritances that had taken place years before would be improper. (Ponape District Order No.8-57, Ponape District Law 3-17-59) *Opispo v. Mesileng*, 4 T.T.R. 80.

-Succession

A will of land was contrary to the express prohibition against testamentary disposition contained in the German land code. *Shoniber v. Shoniber*, 4 T.T.R. 333.

Section 2 of the German land code specifically prohibited testamentary disposition and provided that the land should pass undivided to the oldest surviving son of the owner. *Likidimus v. Likidimus*, 4 T.T.& 331.

Passage of land through brothers and sisters was contrary to the system of land tenure contained in the German land code. *Shoniber v. Shoniber*, 4 T.T.& 333.

The adoption of a natural child into some other family does not prevent the child from inheriting land held under one of the German title documents. *Shoniber v. Shoniber*, 4 T.T.R. 333.

PONAPE CUSTOM

Where holder under German land title had no children, adopted son of defendant's true older brother succeeded to the ownership of land in question, *Opispo v. Mesileng*, 4 T.T.R. 80.

Where person was the oldest surviving brother of holder of land under German Land Deed he was in the proper line of inheritance. *Benjamin v. Olmos*, 4 T.T.R. 185.

While document captioned "Deed of Inheritance" bearing signature of *nanmarki* and secretary of municipality did not constitute a deed, it did constitute strong evidence that defendant, named therein, made early claim to the right of succession, which right was confirmed by appropriate municipal authorities. *Benjamin v. Olmos*, 4 T.T.R. 185.

-Wills

The German land law, which remains in effect except to the extent it may have been modified in some particulars by succeeding administrations, specifically prohibits testamentary disposition of land and no change in that respect was effected in Ponape District until adoption of Ponape District Order No.9-57, effective April 1, 1957. (*Ponape District Order No. 9-57*) *Welliem v. Welliem*, 4 T.T.R. 210.

There could not be any disposition by will prior to Ponape District Order No.9-57, effective April 1, 1957. (*Ponape District Order No.9-57*) *Likidimus v. Likidimus*, 4 T.T.R. 331.

German land law specifically prohibited testamentary disposition of land and the disposition of such land by will could not be made prior to the effective date of Ponape District Order No.9-57, April 1, 1957. (*Ponape District Order No.9-57*) *Santos v. Lipai*, 4 T.T.R. 190.

Land registered under a German Land Deed, was not subject to disposition by will until adoption of Ponape District Order No.9-57 which became law in 1957. (*Ponape District Order No.9-57*) *Benjamin v. Olmos*, 4 T.T.R. 185.

Certain transfers were permitted by the Japanese administration, when approved by or on behalf of the *nanmarki* and the Head of the Ponape Branch Office, that cut off the possibility of inheritance by the grantor's heir, although they did not affect the possession until after the death of the grantor, and have been loosely referred to at times as wills, but these were in effect present transfers of a remainder interest after a life-estate reserved to the grantor and were not wills in the ordinary American sense. *Santos v. Lipai*, 4 T.T.R. 190.

Japanese Supervised Lease—Succession

The rights of a lessor under a Japanese lease are lost upon death and cannot be inherited. *Norman v. Eskar*, 4 T.T.R. 164.

Japanese Survey

[It is presumed that determinations made in the official Japanese survey are correct. *Malame v. Ligor*; 4 T.T.R. 204.

PONAPE CUSTOM

Where person from whom plaintiff claimed was not shown on Japanese survey to have any interest in land evidence compelled conclusion that such person acquired only a life interest in the land in question. *Benjamin v. Olmos*, 4 T.T.R. 185.

Use Rights

Where person was given only use rights to land in question, she could not transfer that land to another. *Palsis v. Daniel*, 4 T.T.R. 213.

Inheritance

Under the land law set forth in the standard form of German title document used on Ponape a daughter could not inherit land, and although the Japanese permitted land to be transferred to women during the latter part of their administration, they made no change authorizing daughters to inherit as a matter of right; no such change was made by the American Administration until Ponape District Order No.8-57 was issued February 1, 1957. *Diopulos v. Osaias*, 4 T.T.R. 29.

The land law prevailing in Ponape in 1944 denied the right of inheritance to a daughter, natural or adopted. *Diopulos v. Osaias*, 4 T.T.R. 29.

Under the land law prevailing on Ponape in 1957 the oldest adopted son was entitled to inherit all of the lands of the adoptive father. *Sehpin v. Atta*, 4 T.T.R. 33.

In accordance with Ponape District Law, the eldest adopted daughter who is living inherits all of the adoptive father's land if there are no natural children or adopted sons of the landowner. Ponape District Law 3-17-59. *Julios v. Amusten*, 4 T.T.R. 25.

Pingelap-Law Governing

Although the land law on Pingelap is unique, the principles controlling rights established and persisting during a former administration are of Trust Territory-wide application, thus private rights in land which were clear under the Japanese administration should be equally clear under the present administration unless something very specific has happened to change them since the end of the Japanese administration. *Mwokin v. Sairenios*, 4 T.T.R. 87.

-Transfers of Property

There is no reason under Pingelapese custom why an adoptive mother could not transfer ownership of land to her adopted son. *Mwokin v. Sairenios*, 4 T.T.R. 87.

Crops

Where persons harvested food from another's land for their subsistence for seven or eight years that benefit sufficiently compensated them for the long term crops which they had planted on such land. *Julios v. Amusten*, 4 T.T.R. 25.

As to short-term crops persons who had planted such crops on another's land had the right, upon notifying the owner, to harvest any such

PONAPE CUSTOM

crops they may have planted and to plant additional crops upon obtaining the owner's permission. *Julios v. Amusten*, 4 T.T.R. 25.

PUBLIC LANDS.

Leases

The failure of plaintiff to have a lease on the property on which his business was situated, which property was owned by the Trust Territory Government, would not afford a good defense to an action by him for services rendered by such business. *Mendiola v. Quitugua*, 4 T.T.R. 383.

Use Rights-Generally

Patents which are signed by the proper officers and in due form to convey the title of the state to the patentees are not subject of collateral or individual attack, but can be set aside only in judicial proceedings instituted on behalf of the state. *Mendiola v. Cruz*, 4 T.T.R. 499.

PUBLIC OFFICERS.

Powers-Destruction of Property

A public official who destroys property under an unconstitutional statute or who destroys property by willfully acting in excess of his authority under the circumstances, can be held liable as an individual for the destruction of the property illegally destroyed. *Uchel v. Owen*, 4 T.T.R. 132.

Under the circumstances presented the public officer involved was justified in ordering the destruction of the property in question under Section 733 of the Code. (T.T.C., Sec. 733) *Uebel v. Owen*, 4 T.T.R. 132.

R

REAL PROPERTY.

Adjudication of Ownership

At no time during the American administration have local magistrates had the authority to adjudicate interests in land except to order temporary possession pending suit in a court, now the High Court, having jurisdiction. *Oneitam v. Suain*, 4 T.T.R. 62.

Boundaries

Normally, area of land conveyed is the least reliable method of locating boundary lines. *Silvester v. Muebucheu*, 4 T.T.R. 226.

In locating boundary lines monuments control courses and distances, and courses and distances control quantity; but where there is uncertainty in specific description the quantity named may be of decisive weight, and necessarily so if the intention to convey only so much and no more is plain. *Silvester v. Muchucheu*, 4 T.T.R. 226.

Having failed to remove the uncertainty as to the location of a missing monument, defendant was bound to accept the surveyor's depiction of

REAL PROPERTY

the boundary based upon the computation of area. *Silvester v. Muchucheu* 4 T.T.R. 226.

Quiet Title-Presumption of Ownership

An owner of real property may be deprived of his interests because he had not exercised proper diligence in protecting his rights in court. *Oneitam v. Suain*, 4 T.T.R. 62.

Occupancy and use, long continued undisturbed, raises a presumption of ownership. *Oucherechar Clan v. Termeteet*, 4 T.T.R. 285.

Long continued peaceful possession under claim of right is a strong indication of ownership. *Oneitam v. Suain*, 4 T.T.R. 62.

Presumptive rights in land arising from long possession and use, together with delay on the part of the lawful owner in asserting his title, have often been found to be sufficient grounds for taking title from a legal owner and granting it to the user. *Oneitam v. Suain*, 4 T.T.R. 62.

Consent to use and occupancy of land prevents the occupants from acquiring a vested interest in the land no matter how long occupancy continues. *Giyal v. Guot*, 4 T.T.R. 294.

-Laches

Trust Territory courts in handling actions to quiet title to land are expected to aid those who have been reasonably active in pressing their claims, but to refuse relief to those who have not made proper efforts to press their claims. *Malarme v. Ligor*, 4 T.T.R. 204.

The doctrine of stale demand is based on the theory that if a person of sound mind stands by for 20 years or more and lets someone else openly and actively use or publicly claim ownership of land, the person who so stands by will ordinarily be held to have lost whatever rights he may previously have had in the land and the courts will not, and should not, assist him in regaining such rights. *Armaluuk v. Orrukem*, 4 T.T.R. 474.

Sales

If parties had agreed that one would receive real property, pursuant to an exchange upon that party's receiving right to such property as the result of a successful court action, only following date of entry of judgment would any rights accrue to the person receiving the real property in the exchange. *Salmon v. Norman*, 4 T.T.R. 274.

-Bona Fide Purchaser

As between two innocent persons, the party whose inaction made it possible for the loss to occur bears the loss. *Armaluuk v. Orrukem*, 4 T.T.R. 474.

Where purchaser testified that District Land Management Office records and seller's assurances caused her to believe land could legally be sold to her she became an innocent purchaser without notice of plaintiff's claim; plaintiff's suit not being filed until six months after purchase. *Armaluuk v. Orrukem*, 4 T.T.R. 474.

RECKLESS DRIVING

RECKLESS DRIVING.

Generally

On appeal from a criminal conviction of reckless driving the appeal must turn on whether there is sufficient evidence to support the charge of driving "recklessly or with gross, wilful or wanton disregard of the lives or safety of the public". (T.T.C., Sec. 815(b)(2)» Joseph v. Trust Territory, 4 T.T.R. 412.

Negligence

Where evidence showed that driver was travelling within the speed limit and that person injured had dashed out into the road there was no evidence of negligence on the part of the driver and no violation of the Code section relating to negligent driving. (T.T.C., Sec. 815(b)» Nedlec v. Trust Territory, 4 T.T.R. 222.

Appellant's speeding on a road utterly inadequate to permit fast driving, his application of his brakes resulting in an uncontrolled skid and failure to avoid accident by driving to the center or other side of the road demonstrated his own reckless and wanton disregard of the safety of any other user of the highway. (T.T.C., Sec. 815) Joseph v. Trust Territory, 4 T.T.R. 412.

Mutual Fault

On appeal from conviction of reckless driving court is not concerned with any ill-advised maneuver of the complaining witness as such a prosecution is not a Civil action for damages in which defendant raises the question of contributory negligence of the plaintiff. (T.T.C., Sec. 815) Joseph v. Trust Territory, 4 T.T.R. 412.

Burden of Proof

Under the reckless driving statute it is the obligation of the prosecution to prove how the accident occurred in order to sustain proof beyond a reasonable doubt. (T.T.C. Sec. 815) Markungael v. Trust Territory; 4 T.T.R. 432.

Proof as to the cause of the accident, i.e., that it was due to recklessness, must be drawn from the circumstance surrounding the event, in the absence of an eye-witness willing to testify as to the facts leading up to the accident. (T.T.C., Sec. 815) Markungael v. Trust Territory, 4 T.T.R. 432.

The circumstantial evidence of the case created inferences of fact, excessive speed on a dangerously rough road, sufficient to warrant a conclusion the vehicle was operated in wanton disregard of the lives and safety of the public, and the mere fact that the evidence in support of the trial court's verdict was circumstantial did not warrant a finding there was insufficient evidence to sustain the verdict. (T.T.C., Sec. 815) Markungael v. Trust Territory, 4 T.T.R. 432.

S

SEARCH AND SEIZURE.

Generally

Section 460, Trust Territory Code, authorizes searches in connection with an arrest and seizure of the "fruits" and "evidences of the criminal offense". Trust Territory v. Kaneshima, 4 T.T.R. 340.

Search and Seizure Incident to Arrest

Code provisions justified admission of exhibits which by themselves, as distinguished from corroboration of the admission of the accused, were sufficient to warrant guilty verdicts on the information. (T.T.C., Sees. 457,460) Trust Territory v. Kaneshima, 4 T.T.R. 340.

STATUTES.

Construction

The interpretation of any statute requires ascertainment of a meaning that will produce a reasonable result, when that is possible, rather than an absurd or strained result. Trust Territory v. Kaneshima, 4 T.T.R. 340.

A statute adopted from another jurisdiction carries with it the construction placed upon it by the courts of that jurisdiction. Kap v. Trust Territory, 4 T.T.R. 336.

T

TORTS.

Negligence-Contributory Negligence

A person whose reckless disregard caused an injury is liable regardless of contributory negligence on the part of the injured party. Falewaath v. RUBelukan, 4 T.T.R. 527.

Amount recoverable by plaintiff who was contributorily negligent should be the amount of damage suffered less that amount which is found attributable to his neglect. Falewaath v. Rubelukan, 4 T.T.R. 527.

Dantages-Generally

In civil suits for damages as the result of a burglary the courts in a few cases have allowed additional damages to compensatory damages where the conduct of the actor has been wanton, malicious or oppressive and such damages are known as punitive damages. Yinug v. Googag, 4 T.T.R. 156.

If goods are taken in what amounts to a burglary in a proper case in a civil suit for damages the victim might recover damages for the goods lost and also for the cost of repairing a broken building and other destruction during the burglary and in addition, in a proper case, if the victim has been made sick because of the violence of the burglary he might be entitled to damages for his illness. Yinug v. Googag, 4 T.T.R. 156.

TORTS

-Pain and Suffering

Compensation for pain and **suffering** is an element of damage which is not capable of precise calculation. *Falewaath v. Rubelukan*, 4 T.T.&. 527.

A determination of damages for pain and suffering is within the province of the trial court and cannot be disturbed on appeal unless clearly unreasonable or plainly excessive. *Falewaath v. Rubelukan*, 4 T.T.&. 527.

The fact that the amount of damages for pain and suffering which the court found to be reasonable is the same amount for which a **plaintiff** made claim is not in itself grounds for holding the determination erroneous. *Falewaath v. Rubelukan*, 4 T.T.R. 627.

TREATIES.

Generally

A United States treaty is a living law, operating upon and binding the judicial tribunals, state and Federal; and those tribunals are under the same obligation to note it and give it effect as they are to notice and enforce the Constitution and laws of Congress made in pursuance thereof. *Calvo v. Trust Territory*, 4 T.T.R. 606•

Section 20, Trust Territory Code, imposes the same obligation upon the High Court to "note and give effect" to United States treaties, including the Trusteeship Agreement, as is imposed upon state and federal courts in the United States. (T.T.C., Sec. 20) *Calvo v. Trust Territory*, 4 T.T.R. 606.

TRESPASS.

Damages

Where entry onto quarry was mistakenly wrongful, rather than wilfully tortious, owner was not entitled to either punitive damages or to damages measured by the value of the quarried rock after severance. *Ngiralois v. Trust Territory*, 4 T.T.R. 617.

Damages

The normal measure of damages, the value of the land or quarry stone in place, was the proper value when there had not been a tortious taking and entry upon the quarry in question. *Ngiralois v. Trust Territory*, 4 T.T.R.617.

TRUK CUSTOM.

Repurchase of Land

Taking lands as spoils of war and the subsequent repurchase by the losers was common enough under ancient Trukese custom. *Oneitam v. Suain*, 4 T.T.&. 62.

Repurchase of village lands taken as spoils of war returned the lands to clan or lineage rather than to an individual. *Oneitam v. Suain*, 4 T.T.R.62.

TRUK LAND LAW.

Generally

The official position of the Japanese Government prohibited the purchase of land by non-natives. *Aten v. Ludwig*, 4 T.T.R. 357.

Evidence of Ownership

A continuous and unopposed possession of land covering a long period of time presents a strong presumption of ownership. *Nisio v. Ouka*, 4 T.T.R. 38.

Lineage Ownership

Ordinarily lineage land remains in the lineage after the holder's death rather than passing to his children. *Yoichi v. Amas*, 4 T.T.R. 59.

-Sales

Where those under whom defendants claimed had occupied and used the land in question only as members of the lineage and not in their own right, possession was in the lineage and the land could not be sold by such individuals. *Titer v. Teifis*, 4 T.T.R. 283.

—Transfers

A certain amount of use of lineage land by *afokur* with the consent of the lineage is to be expected and is in accord with custom, but their rights are strictly dependent on the permission of the lineage and where the lineage members were actively using the land with the *afokur*, the evidence was insufficient to show any transfer of title to the lands. *Oneitam v. Suain*, 4 T.T.R. 62.

Where there was no objection at the time a holder of lineage land gave half of such land to his children, or within a reasonable time thereafter, by the adult members of the lineage, the gift was valid. *Yoichi v. Amas*, 4 T.T.R. 59.

Where lineage lands were placed by the lineage under the control of individuals and worked under their authority, upon their death, there being no surviving members of the lineage, that land passed to the survivors of those placed in charge. *Konang v. Angken*, 4 T.T.R. 232.

-Use Rights

Presentation of "first fruits" by an *afokur* and his children is indicative of "basic rights" in the lineage and possessory and use rights only in the *afokur* and his children. *Oneitam v. Suain*, 4 T.T.R. 62.

Individual Ownership-Care of Owner During Last Illness

Evidence that a person had taken care of former titleholder most of his life and evidence that such person had also taken care of such person's parent for a long period of time showed good reason for the gift of land to such person. *Nisio v. Ouka*, 4 T.T.R. 38.

German Title Document

A German land document is not necessarily evidence of individual ownership as the German administration on Truk in issuing such land

TRUK LAND LAW

documents did not distinguish between individually-owned land and land controlled by a person as head of a group. *Oneitam v. Suain*, 4 T.T.R. 62.

TRUSTEESHIP.

Administering Authority-Sovereignty

Sovereignty, to be effective, need not be specifically delegated. *Calvo v. Trust Territory*, 4 T.T.R. 506.

The power to govern carries with it by inference such necessary powers of government as to permit the exercise of the authority delegated. *Calvo v. Trust Territory*, 4 T.T.R. 506.

-Powers

The Government of the Trust Territory has been created with full power delegated to it to execute governmental functions through legislative, administrative and judicial branches. *Ngiralois v. Trust Territory*, 4 T.T.R. 517.

The delegation of authority relating to the Trust Territory by the President of the United States, as authorized by Congress, is within the constitutional power of Congress and the President over foreign affairs. *Calvo v. Trust Territory*, 4 T.T.R. 506.

The right to exercise all necessary powers of government over the territory was provided in the Trusteeship Agreement and delegated by the United States. Congress to the President who designated the Secretary of the Department of the Interior, who in turn established the governmental organization by a series of Secretarial Orders commencing in 1951 and continuing to the present day. (Trusteeship Agreement, Arts. 3, 6; Enabling Act, 48 U.S.C. § 1681 et seq.; Secretarial Order Nos. 2658, 2882, 2918) *Calvo v. Trust Territory*, 4 T.T.R. 506.

TRUST TERRITORY.

Generally

Prior to adoption of the Trust Territory Code Section 15 in 1965, the flag of the United States was also the flag of the Trust Territory. (T.T.C., Sec.15) *Lakemba v. Milne*, 4 T.T.R. 44.

Administering Authority-Sovereignty

Sovereignty has been defined as the right to govern. *Calvo v. Trust Territory*, 4 T.T.R. 506.

-Obligations

The "qualified sovereignty" of the Trust Territory Government carries with it the inherent power of government to condemn private property for a public use, to settle property rights, to exercise the police power generally and to exercise such other powers as are appropriate legislative subjects. *Calvo v. Trust Territory*, 4 T.T.R. 506.

Applicable Law

Although it has been held that some fundamental laws of the United States Constitution apply to territories, it is well settled that not all

TRUST TERRITORY

constitutional provisions are applicable to territories which are not a part of the United States. *Trust Territory v. Traid Corporation*, 4 T.T.R.300.

Section 22 of the Trust Territory Code incorporates the rules of the common law of the United States into the substantive law of the Trust Territory. (T.T.C., Sec. 22) *Lakemba v. Milne*, 4 T.T.R. 44.

The Restatement of Law was adopted into the substantive law of the Trust Territory by the Trust Territory Code. *Lakemba v. Milne*, 4 T.T.R. 44.

Suits Against

Although the Trust Territory Code now allows the maintenance of actions against the Trust Territory and its agents for claims arising after the effective date of Public Law No. 3-21, enacted in 1967, there is no longer any provision of law allowing actions arising from claims originating during the Japanese administration. *Rivera v. Trust Territory*, 4 T.T.R. 140.

Where Trust Territory Government had not consented to suit, and as the Government is immune from suit without its consent, Government's motion for dismissal would be granted. *Malarme v. Ligor*, 4 T.T.R. 204.

Where plaintiff brought Government and the Alien Property Custodian into court without their consent, there was no basis for denying such defendants their rights to set up their immunity from the particular suit in question. *Rivera v. Trust Territory*, 4 T.T.R. 140.

Land Law-Adverse Possession

A route often used to bar an action to recover real property is the doctrine of adverse possession, however, Section 316 of the Trust Territory Code, which established a twenty year statute of limitations on land matters will not go into effect until 1971 because Section 324 of the Code accrued all prior causes of action as of May 28, 1951. (T.T.C., Sees. 316, 324) *Oneitam v. Suain*, 4 T.T.R. 62.

The Trust Territory 20-year statute of limitations for adverse possession of land does not become operative until 1971 because Section 316 of the Code did not go into effect until May 28, 1951. (T.T.C., Sec. 316) *Armaluuk v. Orrukem*, 4 T.T.R. 474.

Although the statute establishing a twenty year statute of limitations on land matters may not be applied, the High Court in effect has substituted for it the common-law principles of adverse possession. *Oneitam v. Suain*, 4 T.T.R. 62.

Normally, one who has been in adverse possession of land, but not for a sufficient period to deprive the true owner of his interests, is entitled to compensation for improvements made on the property when he is forced to yield possession to the true owner; the amount of compensation to be measured by the value of the land before and after the improvements have been made. *Oneitam v. Suain*, 4 T.T.R. 62.

TRUST TERRITORY

If a person of full age and sound mind stands by, or he and his predecessors in interest together have stood by, for twenty years or more and let someone else openly and actively use land under claim of ownership for that period or more, the person who so stood by will ordinarily be held to have lost whatever rights he may previously have had in the land and the courts will not, and should not, assist him in regaining such rights. *Oneitam v. Suain*, 4 T.T.R. 62.

If a person who believes he owns certain land stands by for many years and raises no objection to someone else using it on the theory that such other person is using it for the person who believes he owns it, the person claiming the ownership should at least obtain some clear and definite acknowledgment of his ownership by word or acts of the user at intervals of less than twenty years and, if he cannot obtain such an acknowledgment, he should bring the matter to the court for determination before the use has continued for more than twenty years either from the time it began or from the time of the last such acknowledgment, *Oneitam v. Suain*, 4 T.T.R. 62.

~~Ownership~~ Disqualification

Pursuant to the Trust Territory Code only citizens of the Trust Territory may hold title to land in the Trust Territory. (T.T.C., Sec. 900) *Palting v. Guerrero*, 4 T.T.R; 160.

U

UNITED STATES.

Suits Against

The High Court does not have jurisdiction over Peace Corps, an agency of the United States, nor over its officers in Micronesia. *Schulz v. United States Peace Corps*, 4 T.T.R. 428.

W

WAIVER.

Generally

A waiver is a voluntary and intentional abandonment or relinquishment of a known right and it may be inferred from conduct. *Tmetuchl v. Western Carolines Trading Co.*, 4 T.T.R. 395.

Conduct

That true owner waived his right to assert his ownership against purchaser was evidenced by the contract of sale between third party seller and purchaser, which true owner read before it was executed, and which asserted erroneously that the seller was the owner of the Property. *Tmetuchl v. Western Carolines Trading Co.*, 4 T.T.R. 395.

WASTE.

Generally

Where person claimed right to cut certain trees on land in spite of court's judgment declaring that he had no interest in the land, he would be liable to owner in damages for waste committed. *Rechemang v. Dulei*, 4 T.T.R. 402.

WILLS.

Oral-Evidence

The testimony of an interested party that he or she has heard about an oral will from the beneficiary of that will, which was allegedly made in the absence of witnesses, is, without other evidence, insufficient as a matter of law to meet the burden of establishing the existence of a will. *Mwokin v. Sairenios*, 4 T.T.R. 87.

Construction

The primary function of the court is to determine, and give effect to, the intent of the testator. *Santos v. Lipai*, 4 T.T.R. 190.

In determining the testator's intent the court may receive such evidence as will enable it to place itself in the position of the testator and thus find the meaning of the language employed. *Santos v. Lipai*, 4 T.T.R.190.

Y

YAP CUSTOM.

Married Women

Where wife did not perform her traditional obligations to her husband, to the land and to the family group of which her husband was a member, after her husband's death, by her prior conduct of forfeiture, she lost all claim to any interest in the lands. *Giyal v. Guot*, 4 T.T.R. 294.

Widows-Remarriage

Ordinarily under Yapese custom when a widow marries she goes to live with her new husband and her rights in the lands of her former husband's family cease, however, this may be modified by agreement with the family group. *Kugutnam v. Falocha*, 4 T.T.R. 109.

Revenge

Whether old custom permitted a murder victim's family to retaliate by murder, by arson, or by larceny, is now immaterial because custom has been abrogated by the statutory punishment for murder, thus the old custom is no longer the law, only the statutes are applicable in such situation. *Figir v. Trust Territory*, 4 T.T.R. 368.

Since the adoption of the Trust Territory Code in 1952, traditional Yapese custom has been superseded by the written law with respect to retaliation by a family member for the killing of the head of the

YAP CUSTOM

family; the written law now provides punishment. *Figir v. Trust Territory*, 4 T.T.R. 368.

YAP LAND LAW.

Generally

Causes of action which are derived from American land law are not able to cope with the problems arising from the transfer and inheritance of the complex family or *tabinaw* interests in land found in Yapese custom. *Giyal v. Guot*, 4 T.T.R. 294.

Sometimes land practices are settled between individuals or between family groups without regard to fixed, continuing Yapese custom. *Giyal v. Guot*, 4 T.T.&. 294.

Neither Yapese nor American land custom or law permits a vesting of interest in land merely to avoid hardship upon a claimant against the person or group having superior interests in the land. *Giyal v. Guot*, 4 T.T.&. 294.

Patrilineal Ownership-Supervision

The male head of the extended family group is the one normally expected to speak for the group and control its land rights, but in the exercise of such control he is expected to act in accordance with the wishes of the group and with due regard for its previous commitments. *Kugutnam v. Falocha*, 4 T.T.R. 109.

In land matters, the male head of the extended family group must give special weight to the desires of one who stands under the custom in the position of a daughter of the former male head of such group. *Kugutnam v. Falocha*, 4 T.T.R. 109.

—Succession

Under Yapese customary law the expressed desire of the male head of the extended family group that his wife succeed him in the control of the lands gave her no absolute right of control, rather it is for his extended family to decide whether to give effect to his wishes and whatever control the wife would be allowed to exercise would remain subject to the wishes of the family group. *Kugutnam v. Falocha*, 4 T.T.R. 109.

"Mafen" Rights

Under the custom *mafen* rights and authority over land is limited to a reversionary interest only without present use rights. *Giyal v. Guot*, 4 T.T.R. 294.

The *mafen's* right to dispossess a lineage of its land may be exercised only for compelling cause involving a most serious breach of custom. *Giyal v. Guot*, 4 T.T.R. 294.