

*Digest of Cases Reported*



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**Prohibition  
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**ACCORD AND SATISFACTION.**

**Generally**

An accord and satisfaction is a method of settling a cause of action arising from either contract or tort by substituting for such cause of action an agreement for the satisfaction thereof and of the execution of the substituted agreement, and it is essentially the same as a compromise and settlement, any distinction between the two being unimportant. *Robi v. Trust Territory*, 7 T.T.R. 281.

**Affirmative Defense—Pleading**

Being an affirmative defense, accord and satisfaction must be pleaded specially in the absence of circumstances indicating a waiver of such requirement. *Robi v. Trust Territory*, 7 T.T.R. 281.

**Elements**

The elements of an accord and satisfaction are proper subject matter, competent parties, consent or meeting of the minds of the parties, and consideration consisting of a new promise, which is the accord, and the performance of the new promise, which is the satisfaction. *Robi v. Trust Territory*, 7 T.T.R. 281.

**Offer and Acceptance**

When an accord and satisfaction is in effect, the old obligation remains in force until the new contract is performed by satisfaction, that is, when the new consideration is accepted. *Robi v. Trust Territory*, 7 T.T.R. 281.

**Question of Fact**

Whether an agreement amounts to an accord and satisfaction is a question of the parties' intent and hence a fact question. *Robi v. Trust Territory*, 7 T.T.R. 281.

**Particular Cases**

An accord and satisfaction was agreed upon and executed, barring plaintiffs' suit against the government, where government employee was involved in collision with plaintiffs' truck, plaintiffs and government agreed that the government would repair the damage to the truck in return for a promise not to make any claim against the government, the damage was repaired, and plaintiffs did not complain of insufficient or faulty repair. *Robi v. Trust Territory*, 7 T.T.R. 281.

**ACTIONS.**

**Standing**

Where statutes created a situation whereby territorial government provided substantial subsidies to district government while retaining

## **ACTIONS**

supervision and control over their subsequent disbursement, the territorial government could maintain an action to recover misappropriated funds and motion to dismiss on ground that the district legislature was the proper party to maintain the action would be denied. (3 TTC § 58) *Trust Territory v. Santos*, 7 T.T.R. 22.

### **Defenses—Lack of License To Do Business**

Lack of a license to do business in the Trust Territory is an affirmative defense to a suit to collect for merchandise sold and delivered and must be raised by evidence at trial as well as by pleading, and where it was pled but no evidence was put forth, the defense would not be considered on appeal and as the case was not exceptional the appellate court would not take judicial notice of the lack of a license. (33 TTC § 3) *Bhanabhai & Co. v. Falawaath*, 7 T.T.R. 589.

## **ACTIONS ON ACCOUNT.**

### **Limitation of Actions**

Where there were several debts between parties extending over period of years and only two of the debts were barred by statute of limitations, defendants' answer to complaint that it was true that defendants owed some sum of money but that the sum stated in complaint was not true or correct as of the dates stated, did not revive those debts barred by statute, since there were several debts and it could not be determined from this acknowledgement which debt was referred to. (6 TTC § 307) *Techong v. Peleliu Club*, 7 T.T.R. 364.

## **ADMINISTRATIVE LAW.**

### **Judicial Review—Standards**

Although High Court may review the determinations and orders of nonjudicial public boards and officials, at the instance of the government as well as private citizens, judicial relief calls for the exercise of an extraordinary remedy in the face of equally extraordinary circumstances and an order or determination will not be set aside unless an abuse of discretion by way of arbitrary, capricious or fraudulent action is pleaded and proved and it is shown that the one seeking review is aggrieved thereby. *In re Nuokus*, 7 T.T.R. 63.

### **—Discretionary Matters**

An administrative agency created and authorized to exercise its judgment and discretion to protect the public interest in its area of concern is to remain free from the intrusion of judicial action unless the public interest cannot otherwise be protected and upheld. *In re Nuokus*, 7 T.T.R. 63.

Government was not entitled to review of Trust Territory Personnel

## ALIENS AND IMMIGRATION

Board decision where it was essentially challenging the exercise of judgment legally and prudently administered. In re Nuokus, 7 T.T.R. 63.

### Land Title Determination—Appeal

Where Land Management Regulations provided for one year for interested persons to appeal determination of District Land Title Officer, action 23 years later, attacking decision for government and against plaintiffs' ancestor and seeking damages for the value of the land, or the land itself, was barred; and allegation that action was late because the alleged error of the District Land Title Officer could not be proved was not sufficient to allow waiver of the one year period for appeal. Santos v. Trust Territory, 7 T.T.R. 615.

## ADOPTION.

### Evidence

Defendant would be found to be adoptive son of deceased, and plaintiff would not be found to be adoptive daughter, where "Family Relation Book" which was a public record, and believable, trustworthy oral testimony, supported defendant's claim, and oral testimony and written statement supporting plaintiff's claim were not persuasive. Long v. Susumu, 7 T.T.R. 286.

## AGENCY.

### Rights of Third Party

If a constructive trust arises out of exchange of private land, through a person acting for the owners, for government land, and the trust runs in favor of the private landowners, the private landowners cannot have rescission if they are guilty of laches or ratified the exchange by acceptance and use of the government's land. Cepeda Crisostimo v. Trust Territory, 7 T.T.R. 34.

### Liability of Principal

Where truck driver who caused accident in which plaintiff was injured was negligent, his negligence was the proximate cause of the accident and injuries, he was an agent of a part of the territorial government, and he was acting within the scope and course of the agency, truck driver's liability was imputed to the department for which he worked and to the government. Songer v. Jack, 7 T.T.R. 289.

## ALIENS AND IMMIGRATION.

### Deportation—Hearing

In deportation proceeding, where no criminal charges were filed and no fine or other criminal sanction was sought, statute did not require an executive administrative hearing before application for deportation was made. (53 TTC § 62) Trust Territory v. Arce, 7 T.T.R. 357.

## APPEAL AND ERROR

### APPEAL AND ERROR.

#### Generally

In appeals from the District Court to the Trial Division of the High Court, the latter may review facts as well as the law, but it will make every reasonable presumption in favor of the trial court. *Ngiratulmau v. Merei*, 7 T.T.R. 129.

An appellate court deals primarily with questions of law, does not weigh conflicting evidence and will not disturb a trial court's judgment if there is reasonable evidence to support it. *Keith v. Trust Territory*, 7 T.T.R. 199.

On appeal, the Appellate Division of the High Court will make every reasonable presumption in favor of correctness of the lower court's decision and the burden is on the appellant to affirmatively show error; and the court's function is to determine whether there is any evidence supporting the judgment. *Jabwe v. Henos*, 7 T.T.R. 227.

Where notice of appeal filed with clerk of court stated only that an appeal was taken from judgment entered by trial division, notice did not comply with rule which requires that notice of appeal set forth "a concise statement of the grounds on which he appeals". (Rules Civil Procedure, Rule 21) *Yirig v. Trust Territory*, 7 T.T.R. 432.

Appellant had burden of enumerating alleged errors, specifically showing wherein the action complained of was erroneous, and showing that the errors substantially prejudiced his rights. *Basilio v. Metsifista*, 7 T.T.R. 247.

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#### Right to Appeal

The right to appeal is a purely statutory conferred right. (5 TTC § 54) *Trust Territory v. Elias*, 7 T.T.R. 493.

Procedural due process does not require appellate review. *Abrams v. Trust Terr. H.C. Discip. Panel*, 7 T.T.R. 517.

#### Notice and Filing of Appeal

The right of appeal is neither inherent nor a requirement of substantial justice, but is granted and governed by the statutes. *Abrams v. Johnston*, 7 T.T.R. 341.

Where appeal was neither briefed nor argued, the court would not search the record to ascertain whether there was a valid appeal, and would dismiss the appeal for lack of prosecution. (Rules Crim. Proc. 31(c), 32(h)(2)) *Western Caroline Trading Co. v. Ikeda*, 7 T.T.R. 246.

Name and address of appellants' counsel, in notice of appeal, was sufficient compliance with rule, and the names and addresses of the appellants were not required. (Rules Crim. Proc. 31(a)) *Trust Territory v. Skiadopoulos*, 7 T.T.R. 239.

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Where no notice of appeal was filed for one of four consolidated criminal appeals, but all parties, attorneys and judicial personnel, and all documents regarding the consolidated appeal, treated it as part of the appeal, the appeal of that case would not be dismissed due to attorney's oversight. *Trust Territory v. Skiadopulus*, 7 T.T.R. 239.

Where appellant did not file a brief, appeal would be dismissed for failure to prosecute it. (5 TTC § 52; Rules Crim. Proc. 32(d), (h)(2)) *Trust Territory v. Bermudes*, 7 T.T.R. 230.

Where appellant failed to pay balance due on transcript and did not ask the court to waive the amount due, appeal would be taken as abandoned and dismissed. *Hamrick v. Hamrick*, 7 T.T.R. 221.

Where notice of appeal did not, as required by rule, make a concise statement of the judgment or part thereof appealed from and a concise statement of the grounds on which the appeal was made, and no attempt to obtain a transcript was made, the appeal would be dismissed. (Rules Civil Proc. 21) *Muller v. Makroro*, 7 T.T.R. 219.

Unperfected appeal would be dismissed. *Fenei v. Pinengin*, 7 T.T.R. 218.

Where notice of appeal did not, as required by rule, make a concise statement of the grounds for appeal, and brief had not been filed despite grant of various extensions to file it, appeal would be dismissed. (Rules Crim. Proc. 31, 32(d)) *Ngiraked v. Trust Territory*, 7 T.T.R. 205.

### —Late Filing

Where appeal was to be filed within thirty days after the entry of judgment and was not filed for eighty-seven days, it would be dismissed. (6 TTC § 352) *Abrams v. Johnston*, 7 T.T.R. 341.

### —Relief

The only circumstance recognized by high court as entitling one to relief from requirement of timely filing of appeal is failure to timely file due to some default on the part of an officer of the court. (6 TTC § 352) *Abrams v. Johnston*, 7 T.T.R. 341.

### Late Appeal

Claim that Land Title Officer's determination of ownership erroneously found the land to contain less area than it actually did would not be considered where time for appeal from the determination had passed. *Cepeda Crisostimo v. Trust Territory*, 7 T.T.R. 34.

### Applicable Law

Where defense of laches was urged below and found to exist, for defendant to state that it was not an issue on appeal was statement which appellate court must and would ignore. *Crisostimo v. Trust Territory*, 7 T.T.R. 375.

### —Stipulation of Parties

Reviewing court is not bound to accept concessions of parties as establishing the law applicable to a case, and where a particular legal

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conclusion follows from a given state of facts no stipulation of counsel can prevent court from so declaring. *Crisostimo v. Trust Territory*, 7 T.T.R. 375.

### Standards and Tests

Appellate courts are required to make every inference in favor of the correctness of a trial court decision. *Basilio v. Metsifista*, 7 T.T.R. 247. Appellate courts are required to make every inference in favor of the correctness of a trial court decision. *Bwanus v. Margarita*, 7 T.T.R. 248.

### Final Judgment

Orders regarding preliminary injunctions do not finally dispose of the issues of a case and by their nature provide interlocutory relief and thus do not constitute a final judgment or order and are not appealable. *Trust Territory v. Konou*, 7 T.T.R. 331.

### Final Judgment or Order

It is not the function of the Appellate Division to ascertain whether the evidence below supports one side or the other; its function is to determine whether there is any evidence supporting the judgment. *Ngirumexgang v. Watanabe*, 7 T.T.R. 260.

### Reviewability of Issues—Issues Not Briefed

Appellate review is generally limited to matters complained of or points raised in the appeal, but appellate court may take up point of law on its own motion if there is a basis for it in record. *Crisostimo v. Trust Territory*, 7 T.T.R. 375.

Grounds for appeal not raised at the trial of criminal case, neither of which, even if there were error, was so prejudicial as to result in a denial of due process, would not be considered on appeal. *Trust Territory v. Engel*, 7 T.T.R. 251.

Issues not raised would not be resolved on appeal. *Madrainglai v. School of the Pacific*, 7 T.T.R. 107.

### —Moot Questions

Where defendant had voluntarily left Trust Territory and defendant's counsel could not represent if defendant had any intention of returning, government's appeal of trial court's order dismissing deportation complaint would be dismissed as being moot. *Trust Territory v. Arce*, 7 T.T.R. 357.

### Briefs—Unbriefed Errors

Assignments of error not briefed by person appealing conviction of voluntary manslaughter were waived. *Trust Territory v. Enngel*, 7 T.T.R. 251.

### —Opponent's Copy

Where appellant's brief was due to be filed on June 28, 1977, and a 10-day extension was granted, and the brief was filed on July 28, 1977,

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and a copy was not served upon appellee until July 25, 1978, the delay was obviously prejudicial to appellee's interests and provided ample grounds for dismissal. *Jawo v. Batin*, 7 T.T.R. 625.

### —Late Filing

Where appellant's attorney received extension of time for filing brief on appeal and did not file until some 50 days after that time the appeal would be dismissed for failure to diligently prosecute it. (TT Rules App. Proc., R. 20) *Rimirch v. Udui*, 7 T.T.R. 619.

Where for third time in past two appellate sessions the Attorney General's Office failed to observe the rules on appeal, the Attorney General having filed brief just two weeks before oral argument was scheduled, the brief would be stricken from the record and no oral argument by the Attorney General's representative would be allowed. *Trust Territory v. Este*, 7 T.T.R. 568.

### Abandoning Appeal—Absence From Jurisdiction

Where appellant diligently prosecuted his appeal and appeared by counsel, the appeal would not be dismissed on the ground he was not in the territory. *Trust Territory v. Skiadopulus*, 7 T.T.R. 239.

### New Trial

Where the court reporter at trial, the transcript and the trial judge were not available on appeal, court would remand for a new trial. *Korok v. Lota*, 7 T.T.R. 220.

### De Novo Review

The Trial Division of the High Court will not try a case over again unless it is satisfied that no other just solution of the matter is practicable. *Ngiratulmau v. Merei*, 7 T.T.R. 129.

### Oral Argument

Request for oral argument by appellant would be denied where he failed to file a timely brief and had previously been notified of the court's intent to proceed to review the matters on the record. *Trust Territory v. Enngel*, 7 T.T.R. 251.

### Record on Review—Lost Records and Files

Where the very limited record on appeal from conviction indicated notice of appeal was filed and all records in trial and appellate divisions had been lost, the appeal must be allowed and the conviction would be set aside. *Trust Territory v. Gilmar*, 7 T.T.R. 627.

### Burden of Proof

Appellant has burden of affirmatively showing error. *Olper v. Damarlane*, 7 T.T.R. 496.

Where title to land was taken in wife's name, divorce occurred, husband claimed he had paid for the land and title was taken in wife to keep land from husband's relatives, who might have tried to get land should

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husband have predeceased wife, and daughter of the two claimed that mother had paid for the land and that she inherited it upon her mother's death, court of appeal would presume that decision of lower court in daughter's favor was correct and note the fact that appellant-husband failed to carry his burden of showing error. *Olper v. Damarlane*, 7 T.T.R. 496.

### Evidence—Weight

Reweighting of the evidence is not a proper function of an appellate court. *Sato v. Bedul*, 7 T.T.R. 600.

It is not the function of the appellate division to reweigh evidence on appeal and trial court's findings will not be set aside unless there is manifest error or findings are clearly erroneous. *Trust Territory v. Lopez*, 7 T.T.R. 449.

It is not the function of the appellate division to weigh evidence anew when trial court's findings are supported by substantial credible evidence. *Laubon v. Monna X*, 7 T.T.R. 439.

Court to which rape conviction was appealed would not reweigh the evidence. *Ona v. Trust Territory*, 7 T.T.R. 206.

Trial Division of the High Court would conclude defendant was the owner of Paluan money where the testimony for his side was more consistent and clear than that for plaintiff. *Ngiratulmau v. Merei*, 7 T.T.R. 129.

Where notice of appeal and brief merely repeated assertions made below, court would not re-weigh evidence on appeal or set aside findings of fact made below, and, there being nothing to demonstrate that the findings were erroneous, judgment would be affirmed. In the Matter of the Estate of Bulele, 7 T.T.R. 500.

### —Supporting Evidence<sup>1</sup>

Appellate function is to determine whether there is any evidence supporting the judgment, not to decide what appellate court would hold under the evidence. *Connell Bros. Co., Ltd. v. Manglona*, 7 T.T.R. 574.

### —Conflicting

It is usually the duty of the trial judge to weigh conflicting evidence and to resolve conflicts in the evidence. *Alik v. Alik*, 7 T.T.R. 395.

It is the function of the trial court, not the appellate court, to resolve any conflicts in evidence. *Rabauliman v. Matagolai*, 7 T.T.R. 424.

Where there was some conflict in testimony as to whether government was aware of at least one heir's pre-exchange objection to land exchange made pursuant to exchange agreement entered into by government and land trustee appointed by land title officer, it was for trial court, not appellate, to resolve such conflict, and trial court's findings would not be set aside unless clearly erroneous. (6 TTC § 355(2)) *Crisostimo v. Trust Territory*, 7 T.T.R. 375.

## APPEAL AND ERROR

### —Sufficiency

Appellate court may not consider the sufficiency of the evidence as it relates to the weight or probative values of conflicting evidence. *Olper v. Damarlane*, 7 T.T.R. 496.

In a criminal prosecution, testimony of single witness worthy of belief is sufficient in any case where corroboration is not required by statute. *Trust Territory v. Macaranas*, 7 T.T.R. 350.

### —Reweighing

Duty of appellate court is not to reweigh the evidence; in fact, it has duty not to do so. *Alik v. Alik*, 7 T.T.R. 395.

Appellate division shall not set aside findings of fact of Trial Division of High Court unless findings are clearly erroneous and Appellate Division cannot reweigh evidence and decide whether in its opinion it should reach same or different conclusion as trial judge did as to facts. (6 TTC § 355(2)) *Ilisari v. Taroliman*, 7 T.T.R. 391.

### —Res Gestae

Question whether given evidence comes within res gestae rule is left to discretion of trial judge and will not be disturbed unless a clear abuse of discretion is shown. *Trust Territory v. Techur*, 7 T.T.R. 412.

In prosecution for murder of defendant's wife, wife's statement that "My husband had thrown a knife and hurt my head", made within approximately one hour after incident, at hospital to which she had been taken by her mother, and in response to nurse's question during examination for medical treatment, was admissible under res gestae rule. *Trust Territory v. Techur*, 7 T.T.R. 412.

In prosecution for murder of defendant's wife, wife's statements that "I have been hurt with a cut in the back of my head" and "Singeru [defendant] did it", made in response to her mother's inquiry as to what was wrong, when mother was sitting outside of house, heard someone shout "Singeru, you have hurted me" or "I am hurt", immediately went inside, and defendant asked her to get a taxi to take her daughter to hospital and acknowledged that he was one who "hurt" her, were admissible under res gestae rule. *Trust Territory v. Techur*, 7 T.T.R. 412.

### Instructions—Non-Jury Cases

Any erroneous oral interpretation of rape statute by court at trial before the judge without a jury was cured where it was corrected in the later written opinion. *Ona v. Trust Territory*, 7 T.T.R. 206.

### Findings and Conclusions—Tests

Appellate court is prohibited from setting aside a finding of fact of a trial court unless it is clearly erroneous. (6 TTC § 355) *Sato v. Bedul*, 7 T.T.R. 600.

Trial court's findings will not be set aside unless clearly erroneous. *Esuroi Clan v. Trust Territory*, 7 T.T.R. 538.

## APPEAL AND ERROR

Determination of trial court would not be set aside where it was not clearly erroneous. (6 TTC § 355(2)) In re Estate of Igisaiar, 7 T.T.R. 602.

Where party opposing, on appeal, lower court's finding that there was no *partida* by decedent, made no showing that finding was erroneous, finding would not be disturbed on appeal. Coleman v. Palacios, 7 T.T.R. 583.

### —Supporting Evidence

Trial court findings will not be disturbed when supported or sustained by competent evidence, especially where evidence is conflicting or where different inferences can be reasonably drawn from it. Alik v. Alik, 7 T.T.R. 395.

Any determination concerning whether prosecution has met its heavy burden of demonstrating a knowing and intelligent waiver of defendant's rights must be made from totality of circumstances from whole record. Trust Territory v. Techur, 7 T.T.R. 412.

Where the evidence produced at the trial supported trial court's decisions, findings would not be disturbed on appeal. Loeak v. Bulele, 7 T.T.R. 504.

Criminal conviction supported by testimony of witness who had not been discredited and whose testimony was not inherently improbable would be affirmed even though witness testified falsely in part. Trust Territory v. Macaranas, 7 T.T.R. 350.

In dispute over *alab* interest in land, where defendant, descendant from oldest *bwij* and daughter of last recognized *alab*, now deceased, claimed that three sisters created three separate *bwij*s and three separate rights, and one witness testified that last recognized *alab* owned his *wato* separately, and trial court found this not to be so, but found that plaintiff, oldest descendant in matrilineal line, even though descendant from a smaller, younger *bwij*, was entitled to *alab* interest in land, and record on review was devoid of any evidence to substantiate such separation and further revealed that defendant, in a prior proceeding, claimed the property in a manner which defeated theory that a separation occurred, appellate court would not disturb trial court's finding. Motlok v. Lebeiu, 7 T.T.R. 359.

### —Substantial Evidence

Where there is any substantial evidence that supports the judgment of trial court, the Appellate Division cannot disturb that judgment as being contrary to the evidence, and that is the rule regardless of whether case was tried to court or to a jury. Alik v. Alik, 7 T.T.R. 395.

### —Determination

It is the function of the trial court, not the appellate court, to make determinations of fact dependent upon conflicting evidence; and the appellate court must make every reasonable presumption in favor of the determinations of the trial court. Olper v. Damarlane, 7 T.T.R. 496.

## ARREST

### **-Clearly Erroneous**

Finding of Trial Court will not be set aside unless clearly erroneous. *Techong v. Peleliu Club*, 7 T.T.R. 364.

Reweighting evidence is not a function of the Appellate Division, and finding below would not be disturbed where it was not clearly erroneous. (6 TCC § 355(2)) *Emuar v. Santier*, 7 T.T.R. 544.

Where defendant debtors' answer to complaint was a general denial of plaintiffs' claims, and defendants offered proof that during a period in which one of plaintiffs was in control of defendants' finances, income greatly exceeded expenses, and that money was not properly accounted for and should be set off against that plaintiff's claim, trial court did not err in excluding evidence of such counterclaim, since "set off" did not arise out of same transaction or occurrence or complaint and was more in nature of a permissible counterclaim which should have been affirmatively pleaded. *Techong v. Peleliu Club*, 7 T.T.R. 364.

### **Affirmance—Grounds**

Trial court judgment would be affirmed where record revealed no basis for declaring its findings erroneous. *Kapileo v. Kaipat*, 7 T.T.R. 626.

### **Reversal—Insufficient Evidence**

Embezzlement convictions would be reversed where the record, viewed in a light most favorable to the government, was totally lacking in evidence sufficient to support the elements of embezzlement. *Kabua v. Trust Territory*, 7 T.T.R. 541.

## ARBITRATION.

### **Trials**

In the absence of a statutory prohibition, arbitration may, as a matter of common law, be used to decide a disputed issue of fact at a trial, provided the parties so agree. "Iroij Lablab" *Jitiam v. Acme Importers*, 7 T.T.R. 95. †

### **Arbitration Contracts**

An arbitration agreement is a contract and subject to the same rules of law as to interpretation and enforcement as any other contract, and the mere fact that litigants orally agree to submit a question to arbitration does not make the contract any less enforceable. "Iroij Lablab" *Jitiam v. Acme Importers*, 7 T.T.R. 95.

## ARREST.

### **Arrest Without Warrant—Probable Cause**

Probable cause to arrest without a warrant existed where officer indicated an informant had advised him arrestee was involved in a break-in three days before the arrest. (12 TTC § 61) *In re Santos*, 7 T.T.R. 604.

## ARREST

### Detention Prior to Charge—Time

Statute providing that an arrested person must be charged within 24 hours or released did not apply where complaint had been filed before arrest. (12 TTC § 68) *Trust Territory v. Monu*, 7 T.T.R. 620.

### Advice of Rights—Particular Cases

Where it was not certain how appellant came to conclusion that wording of advice of arrested person's rights form did not make it clear the person was advised of right to counsel before answering questions, finding that appellant had been advised of his rights and understood them would not be overturned on appeal. (12 TTC § 68) *Trust Territory v. Monu*, 7 T.T.R. 620.

## ASSAULT AND BATTERY.

### Liability of Third Person

Allegation that superiors of police officers who allegedly handcuffed plaintiff in a cruel manner causing injury knew of the handcuffing because one of them, the police chief, was told of it at a meeting with plaintiff's counsel, was insufficient to sustain the complaint against the superiors other than the chief. *Santa v. Johnston*, 7 T.T.R. 133.

## ATTORNEY AND CLIENT.

### Adequacy of Representation

Appellate Division of High Court will not allow slipshod methods of counsel to stand without sanctions. *Edwards v. Trust Territory*, 7 T.T.R. 507.

### —Grounds for Nonpayment

Attorney who, on appeal, twice requested and was granted extension of time to file brief, the time being extended some two months, and who filed three months after deadline, and whose brief was stricken and oral argument denied, was not entitled to any payment for services related to the appeal. *In re Transpacific Lines, Inc.*, 7 T.T.R. 547.

### Disciplinary Proceedings—Nature and Purpose

Disciplinary proceedings against an attorney are not civil or criminal, but rather, are special proceedings, sui generis, in the nature of an inquiry concerning an attorney's conduct as it relates to his fitness to practice; and the purpose of the proceedings is not punishment, but rather, protection of the court and public from persons unfit to practice a profession imbued with public trust. (5 TTC § 2(2)) *Abrams v. Trust Terr. H.C. Discip. Panel*, 7 T.T.R. 517.

### —High Court

The High Court has inherent power to discipline attorneys. *Abrams v. Trust Terr. H.C. Discip. Panel*, 7 T.T.R. 517.

## BURGLARY

Under statute providing that "the High Court may admit qualified persons as attorneys at law to practice in all courts of the Trust Territory and may for cause discipline them" the High Court has the power and authority to discipline attorneys. (5 TTC § 2(2)) Abrams v. Trust Terr. H.C. Discip. Panel, 7 T.T.R. 517.

High Court's power to admit and discipline attorneys rests with its highest division, the Appellate Division. (5 TTC § 2(2)) Abrams v. Trust Terr. H.C. Discip. Panel, 7 T.T.R. 517.

Implicit in High Court's power to admit and discipline attorneys is the authority to adopt procedures for carrying out that power. Abrams v. Trust Terr. H.C. Discip. Panel, 7 T.T.R. 517.

Disciplinary panel before which attorney appeared, composed of Chief Justice of the High Court and two associate justices of that court, was acting as the Appellate Division of the High Court, not in an administrative capacity, when it disciplined attorney; therefore, it could not be said that the panel was an administrative body illegally exercising a judicial function. (5 TTC § 2(2)) Abrams v. Trust Terr. H.C. Discip. Panel, 7 T.T.R. 517.

### -Due Process and Equal Protection

An attorney undergoing disciplinary proceedings is entitled to procedural due process. Abrams v. Trust Terr. H.C. Discip. Panel, 7 T.T.R. 517.

### -Appeals

There was no provision for or right to appeal from decision of disciplinary panel of Appellate Division of High Court, which disciplined attorney, and appeal to Appellate Division would be dismissed. (5 TTC § 2(2)) Abrams v. Trust Terr. H.C. Discip. Panel, 7 T.T.R. 517.

### Regulation of Attorneys—High Court

High Court has an obligation and duty to regulate attorneys practicing within its jurisdiction. Abrams v. Trust Terr. H.C. Discip. Panel, 7 T.T.R. 517.

## B

### BURGLARY.

#### Evidence—Inventory

In trial for burglary and grand larceny, inventory of employee and supervisors of establishment broken into was relevant and material and properly admitted. In re Santos, 7 T.T.R. 604.

#### Principal—Evidence

In prosecution for burglary, testimony of witness that appellant moved into driver's seat and moved car to less conspicuous position after its driver and another companion alighted from car and broke lock and entered into snack bar and returned to car with food and drink which

## **BURGLARY**

appellant and witness helped to consume, was sufficient to justify trial court's finding that appellant was a principal to crime of burglary and appellate court would not reweigh evidence, even in light of testimony by appellant that it was the witness not he who drove car to less conspicuous position. (11 TTC § 2) *Trust Territory v. Macaranas*, 7 T.T.R. 350.

## **C**

### **CHAMORRO CUSTOM.**

#### **Partida—Particular Cases**

Titleholder of land did not perform a partida under Chamorro custom, designating the division of the land among his children by his first and second wives, where he at most spoke with some children of the second marriage, purportedly saying one of them would hold the land for the children of the second marriage, no meeting was held, no division was made, no children of the first marriage were advised of any division, and it was not such an important event as to settle in everyone's mind that a partida had occurred. *Muna v. Muna*, 7 T.T.R. 632.

### **CITIZENS.**

#### **Nature of Citizenship**

A citizen of the territory is a citizen for all purposes, not just for some purposes at the whim of the congress; citizenship is neither divisible nor separable and is not capable of subclassification. *Whipps v. Morris*, 7 T.T.R. 269.

### **CIVIL PROCEDURE.**

#### **Federal Rules**

Federal procedural rules are followed in the Trust Territory only in the absence of any Trust Territory procedural requirement touching upon the point. *People of Roi-Namur v. Miyamoto*, 7 T.T.R. 3.

Federal procedural rules are not applicable in the Trust Territory when they conflict with territorial rules. *Cepeda Crisostimo v. Trust Territory*, 7 T.T.R. 34.

#### **Captions**

Labels given to pleadings and legal principles are not controlling as against their substance and meaning. *People of Roi-Namur v. Miyamoto*, 7 T.T.R. 8.

#### **Complaint**

Claim for damages must fail where facts upon which the claim could be based were not alleged. *Sonoda v. Burnett*, 7 T.T.R. 156.

Complaint containing conclusions and opinions without facts upon which to base them and incorporating by reference an exhibit of complainant,

## CIVIL PROCEDURE

was poor pleading but would not be dismissed on motion if the court could sort out a short and plain statement of a claim upon which relief could be granted. (Rules Civil Proc. 8c(1)) *Sonoda v. Burnett*, 7 T.T.R. 156.

### —Amendment

In effort to obtain files of prior attorney for plaintiffs, where it was alleged that a certain District Attorney was the prior attorney and his files were sought, motion to amend complaint, made orally at argument on defendants' motion to dismiss, to allow reference to files of defendant Attorney General, was too late and would not be granted, but where parties stipulated for dismissal, with prejudice, of the case against the District Attorney, a new complaint could be brought against the Attorney General. *People of Roi-Namur v. Miyamoto*, 7 T.T.R. 8.

### Depositions and Discovery—Request for Court Order

Request for production of documents should not be granted where it does not comply with court rule requiring a court order. (Rules of Civil Proc., Rule 13) *People of Roi-Namur v. Miyamoto*, 7 T.T.R. 3.

### —Process

Subpoena issued to person whose deposition was to be taken, admonishing the deponent that he would be deemed in contempt of court if he failed to attend and would be liable for all damages sustained by the aggrieved parties due to the failure to attend and would forfeit a certain amount of dollars in addition thereto would be vacated where the territorial practice called for a witness summons, not a subpoena, and where the subpoena amounted to a denial of due process by deeming the deponent in contempt of court for failure to attend. (Rules of Civil Proc., Rule 23) *People of Roi-Namur v. Miyamoto*, 7 T.T.R. 3.

### Motion To Dismiss

The purpose of a motion to dismiss is to pierce the pleadings and assess the proof in order to see whether there is a genuine need for a trial. *Sonoda v. Burnett*, 7 T.T.R. 156.

### —Continuance

Motion to continue hearing of defendants' motion to dismiss, made ten minutes after the scheduled time for the hearing, was not timely and would not be considered where extreme circumstances were not shown. *People of Roi-Namur v. Miyamoto*, 7 T.T.R. 8.

### —Treatment as Other Motion

Defendants' motion for dismissal on the ground that the relief prayed for in the complaint had been given and that the justiciable issue was thus moot would be treated as a motion for summary judgment on the pleadings and the entire record. (Fed. R. Civ. P. 56) *People of Roi-Namur v. Miyamoto*, 7 T.T.R. 8.

## CIVIL PROCEDURE

### —Tests

On a motion to dismiss, the court is limited to the matters appearing on the face of the complaint. *Muna v. Trust Territory*, 7 T.T.R. 531.

Upon a motion to dismiss, the complaint must be construed in the light most favorable to the plaintiff, the allegations being treated as facts, and there should be no dismissal if it is reasonably conceivable that at the trial the plaintiff might establish a cause of action. *Sonoda v. Burnett*, 7 T.T.R. 156.

### Trial—Fact Questions

Negligence is generally a question of fact and for the trier of fact to decide. *Kihleng v. Lucios*, 7 T.T.R. 168.

Proximate cause is generally a question of fact. *Kihleng v. Lucios*, 7 T.T.R. 168.

### Admiralty Rules—Restricted Appearance

Maritime claims rule that an appearance to defend against an admiralty and maritime claim with respect to which there has issued process in rem or process of attachment and garnishment may be expressly restricted to the defense of such claim does not prohibit a counterclaim arising out of the original transaction or occurrence. (Supplemental Rules for Certain Maritime Claims, Rule E(8), Federal Rules of Civil Procedure) *Marine Terminals Corp. v. M/S "Lotte Reith"*, 7 T.T.R. 145.

### —Counterclaims

In actions under the Supplemental Rules for Certain Maritime Claims, Federal Rules of Civil Procedure, a counterclaim must arise out of the same transaction or occurrence as the original claim, and a counterclaim for abuse of process, malicious or otherwise, does not arise out of the same transaction or occurrence as the original claim and is thus barred. *Marine Terminals Corp. v. M/S "Lotte Reith"*, 7 T.T.R. 145.

## CONFESSIONS.

### Admissibility—Waiver of Right

Statement which person taken to police station directly after his arrest made after being advised of his rights was properly admitted in evidence at his trial. *Trust Territory v. Monu*, 7 T.T.R. 620.

Defendant who, following arrest, signed a statement and a standard notice that he had been advised of his rights, and who did not show at trial that he had been unfavorably imposed upon and that as a result his signature was not voluntary, was not entitled to have statement suppressed at trial, and verbatim translation of statement was also admissible. *In re Santos*, 7 T.T.R. 604.

## CONGRESS OF MICRONESIA.

### Apportionment—One Man, One Vote

Territorial public law reapportioning the Congress of Micronesia House

## CONSTITUTIONAL LAW

of Representatives is, with respect to the Palau District, invalid, in that it establishes three representative districts having 22 percent, 26 percent and 52 percent of the population of the Palau District, thus violating Department of the Interior Secretarial Order providing that when reapportioned the Palau District shall have three representative districts of approximately equal population, and also violating the Trust Territory Bill of Rights and exceeding the permissible limits of the one man, one vote rule. (P.L. 6-88) *Bedor v. Remengesau*, 7 T.T.R. 317.

### —Judicial Implementation

Where Congress of Micronesia failed in its task of reapportioning the Palau District, for purposes of representation in the House of Representatives, into three districts of approximately equal population, and the congress would not be meeting until after approaching election of representatives, High Court must accept the task of preparing and implementing a reapportionment plan upon finding the plan of the congress to be invalid, and would apportion the Palau District along the lines of the prior apportionment, which provided for three representative districts of 35, 32 and 33 percent of the population respectively of the Palau District, and would make such necessary orders as allowing a reopening of the time for filing petitions for candidacy and delaying the election for five weeks. *Bedor v. Remengesau*, 7 T.T.R. 317.

## CONSTITUTIONAL LAW.

### Applicable Law

The United States Constitution and its Full Faith and Credit Clause are not applicable to the Trust Territory. *Overby v. Olsen*, 7 T.T.R. 49.

### Right to Counsel

One of the most fundamental rights guaranteed to any individual charged with a crime under Trust Territory system of law is the right to assistance of counsel. *Trust Territory v. Waayan*, 7 T.T.R. 560.

### —Preparation of Case

No set formula is available to establish the reasonableness of the time allowed defense counsel to prepare for a criminal trial; rather, reasonableness of the time allowed must be determined by the facts and circumstances of each particular case. *Trust Territory v. Waayan*, 7 T.T.R. 560.

Right of one charged with a crime to assistance of counsel goes beyond mere appointment of counsel and includes allowing reasonable time for counsel to prepare for the trial. *Trust Territory v. Waayan*, 7 T.T.R. 560.

Where defendant was charged with first degree murder, counsel was not appointed for him until over two and one-half years after the acts giving rise to the charge and the filing of the information, and counsel had only eight days to prepare for trial, counsel was not allowed reasonable time to prepare his defense and defendant was denied his right to counsel. *Trust Territory v. Waayan*, 7 T.T.R. 560.

## CONSTITUTIONAL LAW

### Miranda Warnings

Where defendant threw a knife at his small son and knife struck his wife, and after being charged with assault with a deadly weapon was fully advised of his rights and declined to make a statement and requested assistance of counsel, and about four hours later a police officer approached him, admonishing him that he had been previously advised of his rights, showed him a knife taken from defendant's house on day of incident, defendant stated that it was not the knife that he had at time he hurt his wife and that knife he used was stainless and much longer, police went back to defendant's house, obtained two stainless steel knives, showed them to defendant with request that he identify one he used and defendant did so, trial court's finding that appellant's statements were voluntarily made after adequate notice of his rights and therefore admissible was clearly erroneous and statements should have been suppressed. *Trust Territory v. Techur*, 7 T.T.R. 412.

### Double Jeopardy

Where defendant was found guilty of both rape and statutory rape, finding of guilty of the latter charge would be set aside on motion of defendant. (11 TTC § 1302) *Trust Territory v. Loney*, 7 T.T.R. 172.

### Right to Speedy Trial—Attachment of Right

Right to a speedy trial attaches when one is arrested or formally charged with a crime. *Trust Territory v. Waayan*, 7 T.T.R. 560.

### —Assertion and Waiver

Failure to assert right to speedy trial does not necessarily imply waiver of that right. *Trust Territory v. Waayan*, 7 T.T.R. 560.

In absence of statute prescribing exact times by which criminal cases are to be heard, a precise time when the right to a speedy trial must be asserted or waived cannot be set and each case must be analyzed on its own. *Trust Territory v. Este*, 7 T.T.R. 568.

Where conflict in interest between defendant and another charged with same crimes required representation by separate counsel and counsel was appointed for defendant 33 months after filing of complaint and eight days before trial, defendant was not in position to effectively assert or intelligently waive right to speedy trial and thus did not impliedly waive the right through failure to assert it and such failure should not be weighed heavily against him in determining whether right to speedy trial was violated. *Trust Territory v. Waayan*, 7 T.T.R. 560.

### —Burden of Proof

The longer the delay between an arrest or formal charge of commission of a crime and the time of trial, the greater the government's burden of demonstrating justification for the delay which outweighs any prejudice to the defendant. *Trust Territory v. Waayan*, 7 T.T.R. 560.

## CONSTITUTIONAL LAW

### Delay

It is the government's not the defendant's responsibility to bring defendant to trial. *Trust Territory v. Waayan*, 7 T.T.R. 560.

In considering delay of trial for purpose of determining whether right to speedy trial was violated, court must consider district in which case was pending and availability of a court and court personnel to hear the case. *Trust Territory v. Este*, 7 T.T.R. 568.

While there is no specific time lapse after arrest or formally being charged with commission of a crime which establishes a per se violation of right to a speedy trial, there must be some substantial delay before there is any need to consider the other factors involved in determining whether the right has been violated. *Trust Territory v. Waayan*, 7 T.T.R. 560.

Where criminal case was heard in Truk District, where no High Court Justice had been permanently assigned for many years, delay of seventeen months from arrest to trial was not, for purpose of determining whether right to speedy trial was violated, extraordinary. *Trust Territory v. Este*, 7 T.T.R. 568.

### -Right Denied

Although in bringing a criminal defendant to trial, the "government" usually means the courts and prosecution, where the Trust Territory established a Public Defender's Office, such office had equal responsibility with the courts and prosecution to see that defendant's rights were not violated; and where, prior to filing of complaint, prosecution notified Public Defender's Office that defendant and another it was representing, who were to be charged with same crimes, had a potential conflict of interest, and the Public Defender and prosecution did not advise defendant or the court of the conflict until Public Defender's notice to the court two years and two months after prosecution had advised Public Defender of the conflict, and no provision for separate counsel was made during that period, and court did not appoint counsel for defendant until more than five months after court was notified of the conflict, all three government institutions shared responsibility for a delay in trial which amounted to violation of right to speedy trial, and defendant, tried eight days after appointment of counsel, would also be found to have been denied effective assistance of counsel, and conviction would be reversed. *Trust Territory v. Waayan*, 7 T.T.R. 560.

### -Right Not Denied

Where trial was not had until seventeen months after arrest, defendant had not asserted his right to speedy trial, prosecution had not attempted to delay trial and no prejudice to defendant was shown, right to speedy trial was not violated. *Trust Territory v. Este*, 7 T.T.R. 568.

### -Prejudice

Where counsel for defendant claiming denial of right to speedy trial was not appointed until 33 months after filing of murder charge and eight days before trial, and thus defendant could not benefit from investigation

## CONSTITUTIONAL LAW

and preservation of testimony and other evidence during that period, and testimony of crucial on-the-scene witness was no longer available, sufficient prejudice to defendant existed. *Trust Territory v. Waayan*, 7 T.T.R. 560.

### —Tests

In determining whether right to speedy trial has been violated, court must consider length of delay, reason for delay, defendant's assertion, if any, of his right, and prejudice, if any, to defendant. *Trust Territory v. Waayan*, 7 T.T.R. 560.

The four factors to be considered in determining whether speedy trial was denied are length of delay, reason for delay, defendant's assertion of his right, and prejudice resulting from the delay. *Trust Territory v. Este*, 7 T.T.R. 568.

Where trial was held 33 months after filing of complaint, delay was such that close review of the other factors to be considered in determining whether right to speedy trial was violated was mandated. *Trust Territory v. Waayan*, 7 T.T.R. 560.

### Jury Trial

Statute which gives right to trial by jury limits jury trials to cases where jurisdiction lies exclusively with Trial Division of High Court. (5 TTC § 501) *Sonoda v. Trust Territory*, 7 T.T.R. 442.

In determining whether defendant, who made timely request for jury trial which was denied, had been denied of his rights to due process and equal protection of law, reviewing court must be guided by laws in force in Trust Territory unless it finds those laws to be such as to require court to hold them to be invalid. *Sonoda v. Trust Territory*, 7 T.T.R. 442.

### Cruel and Unusual Punishment

The cruel and unusual punishments provisions of the United States Constitution and the Trust Territory Code apply to authorized penalties under some type of sentence or judicial dictate. (1 TTC § 6) *Santa v. Johnston*, 7 T.T.R. 133.

Statutory prohibition against cruel and unusual punishment does not apply to needlessly hurtful manner of handcuffing a person prior to any conviction and sentence. *Santa v. Johnston*, 7 T.T.R. 133.

### Due Process

"Due process" means the same thing in the Trust Territory as it does in the United States. *In re Transpacific Lines, Inc.*, 7 T.T.R. 179.

Statute providing that one who is a Trust Territory citizen married to a non-citizen must have a Foreign Investor Business Permit to obtain a Marine Resources Development Fund loan is in violation of due process of law, and thus invalid, in that the right of citizenship is a vested property right protected by due process and the statute attempts to deny a very important incident of citizenship and in doing so operates to deny the

## CONSTITUTIONAL LAW

totality of citizenship and reduces one to a second class citizen. (33 TTC § 2(2)) Whipps v. Morris, 7 T.T.R. 269.

### Hearing

Due process generally requires both notice and an opportunity to be heard whenever any significant property interest may be substantially affected. In re Transpacific Lines, Inc., 7 T.T.R. 179.

Should respondent under a Uniform Reciprocal Support Act action challenge the validity of the act, the petitioner or obligee under the act would have to be given an opportunity to respond at the hearing, and failure to give such opportunity would be contrary to the principles of due process provided by statute. (39 TTC Ch. 9; 1 TTC § 4) Overby v. Olsen, 7 T.T.R. 49.

That court changed administrative receivership into judicial one and appointed a receiver without notice and hearing in open court was not fatal denial of due process, and court would not vacate the order establishing the receivership, where motion to vacate receivership and hearing on the motion were had immediately after establishment of receivership and there was no prejudice. In re Transpacific Lines, Inc., 7 T.T.R. 179.

### Mistreatment of Prisoners

Mistreatment of a prisoner before sentence, and mistreatment after sentence which arises from acts not carried out pursuant to a judicially invoked sentence, is a violation of due process provision of the Trust Territory Code. (1 TTC § 4) Santa v. Johnston, 7 T.T.R. 133.

### Criminal Offenses

Punishment of up to a year in prison for importation or sale of opium or its derivatives, such as heroin, and of a year in prison and/or a one thousand dollar fine for possession, use or sale of marijuana, exhibits the difference between unrestrained legislative power and that which is within the spirit of constitutional limitations formed to establish justice, and there was an absence of any rational basis for penalizing the marijuana offenses more strongly, and the court could not hold the statutory punishment scheme as being within the limitations of due process. (67 TTC §§ 306, 351, 11 TTC § 1) Trust Territory v. Bermudes, 7 T.T.R. 80.

### Particular Cases

Defendant, convicted of cheating and false pretenses by filing fraudulent document under which he sought and obtained \$144 from government as reimbursement for claimed expenditures for rental of automobile, was not denied right of due process by government's lack of written regulations governing travel voucher payments to guide traveller and point out to him that he was not entitled to reimbursement of funds not actually expended by him. (11 TTC § 853) Sonoda v. Trust Territory, 7 T.T.R. 442.

## CONSTITUTIONAL LAW

### Equal Protection

Statute providing that one who is a Trust Territory citizen married to a non-citizen must have a Foreign Investor Business Permit to obtain a Marine Resources Development Fund loan is in violation of equal protection of the laws in that it penalizes all territorial citizens who marry non-citizens for any reason whatever, and is therefore invalid; and that it was designed to eliminate use of a territorial citizen as a "front" for a non-citizen who wishes to do business in the territory does not make the statute valid. (33 TTC § 2(2)) *Whipps v. Morris*, 7 T.T.R. 269.

### —Classifications

Arbitrary or capricious classifications by congress conflict with equal protection of the law. *Whipps v. Morris*, 7 T.T.R. 269.

Authority of congress to make classifications is not absolute, and a classification must be reasonable to comport with equal protection of the law. *Whipps v. Morris*, 7 T.T.R. 269.

If a congressional classification touches upon a fundamental right its validity must be judged by a strict standard and by whether it promotes a compelling government interest. *Whipps v. Morris*, 7 T.T.R. 269.

A classification by congress must be rationally related to the purpose it is designed to serve in order to comport with equal protection and must rest upon a material difference between the persons included and those excluded and must be based upon substantial distinctions. *Whipps v. Morris*, 7 T.T.R. 269.

### Equality of Representation

The principle of equality of representation lies at the foundation of representative government and requires that no voter shall exercise, in the election of the legislature, a greater voting power than the other voters. *Bedor v. Remengesau*, 7 T.T.R. 317.

### —Apportionment Plan

In formulating an apportionment plan, it is not sufficient, to justify a population disparity between districts, to recognize a "home area rule" based on compelling social or other interests in preserving cultures, languages and dialects, or recognize heterogeneous characteristics, protect insular minorities, secure representation for economic or other group interests, balance urban and rural power in the legislature or insure effective representation for sparsely settled areas, or give effect to historical or traditional factors or geographical considerations. *Bedor v. Remengesau*, 7 T.T.R. 317.

### Basic Rights—Going Into Business

The privilege of going into business is a basic right when the everyday problem of supporting oneself or family is concerned. *Whipps v. Morris*, 7 T.T.R. 269.

**CONTEMPT.**

**Civil—Failure of Attorney To Appear**

Order finding attorney in contempt for not appearing at trial before Trial Division of the High Court would be reversed where Chief Justice of the High Court had ordered attorney to accompany him on court business some 345 miles from site of trial and attorney was with Chief Justice on such business on trial date. *Howell v. Este*, 7 T.T.R. 609.

**CONTRACTS.**

**Void Contracts—Generally**

Void contract is no contract at all and it binds no one as it is a nullity. *Crisostimo v. Trust Territory*, 7 T.T.R. 375.

An agreement which violates a statute or cannot be performed without violating a statute is illegal and void. *Armaluuk v. Mereb*, 7 T.T.R. 459.

**—Particular Contracts**

Where District Public Defender's Representative contracted to handle, for a fee, private person's lawsuit, and his services thereunder were in violation of code section prohibiting a government employee from engaging in outside employment not compatible with the full and proper discharge of the responsibilities of his position, the contract was illegal and void. (61 TTC § 11) *Armaluuk v. Mereb*, 7 T.T.R. 459.

**Voidable Contracts—Generally**

Voidable contract is valid and binding until it is voided by party entitled to avoid it. *Crisostimo v. Trust Territory*, 7 T.T.R. 375.

**—Exceeding Authority to Contract**

If land trustee appointed pursuant to Land Management Regulation sells or exchanges land without consent of all parties having an interest in land, and other party, under facts of the case, cannot rely on his authority to sell or exchange the land, transaction is voidable and not void. (Land Management Regulation No. 1, § 9(a)) *Crisostimo v. Trust Territory*, 7 T.T.R. 375.

There is nothing in Land Management Regulation No. 1 which would make a sale or exchange without full approval of all concerned a void contract. (Land Management Regulation No. 1) *Crisostimo v. Trust Territory*, 7 T.T.R. 375.

**—Particular Cases**

Appellants, heirs to deceased lot owner, not having given their approval to land trustee to exchange lot in question for other lands, owned by government, would have standing to sue to avoid the exchange. (Land Management Regulation No. 1, § 9(a)) *Crisostimo v. Trust Territory*, 7 T.T.R. 375.

## CONTRACTS

### Construction—Signatures

One is presumed to understand and agree to that which he signs. *Armaluuk v. Mereb*, 7 T.T.R. 459.

Where defendant signed instrument under which plaintiff would represent defendant in a lawsuit brought by defendant and under which plaintiff would receive five percent of any amount received by defendant, an express agreement was entered into and would be enforced unless enforcement was prohibited by law, notwithstanding defendant's claim that though he signed the agreement he did not read it or agree to its terms. *Armaluuk v. Mereb*, 7 T.T.R. 459.

### Evidence—Documentary Evidence

"Documentary" evidence was not a necessary prerequisite to proof of contract claim. *Covington v. Chang*, 7 T.T.R. 103.

### Breach—Defenses

Defendant could not avoid liability under contract on ground plaintiff was not licensed to do business in the territory. *Covington v. Chang*, 7 T.T.R. 103.

### —Damages

Where District Public Defender's contract to perform legal services for private party was illegal, void and unenforceable under code section prohibiting a public employee from engaging in outside employment not compatible with his position, and the services had been performed and \$15 or \$20 had been paid it would be unconscionable to allow private party to recover such sum in Public Defender's Representative's action for payment for services, and, the contract being unenforceable, plaintiff could not recover, and court would leave the parties, which were equally at fault, where it found them. (61 TTC § 11) *Armaluuk v. Mereb*, 7 T.T.R. 459.

### Illegal Contracts—Generally

An agreement to do an illegal act is itself illegal. *Armaluuk v. Mereb*, 7 T.T.R. 459.

### —Particular Contracts

That District Public Defender's Representative and person with whom he contracted to handle private lawsuit may not have known about code section making it illegal for the Public Defender's Representative to perform such a service was immaterial with respect to legality of the contract, which the code section made illegal and void. (61 TTC § 11) *Armaluuk v. Mereb*, 7 T.T.R. 459.

### Unconscionability

In foreclosure case, where appellant's husband initiated request for funds to run store and appellant joined in, purpose of loan was to assist borrowers in acquiring merchandise for their store, loan was granted, the cash paid out, and interest charged at five per cent per annum, and

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there was nothing in record to equate government with a loan shark preying on unsuspecting borrowers, and nothing to indicate that property which secured loan was worth significantly more than the \$3,000 loaned, transaction was not oppressive or unconscionable. *Trust Territory v. Lopez*, 7 T.T.R. 449.

### CORPORATIONS.

#### Stock—Issuance

Stock certificates are “issued”, in the ordinary sense, when officially executed and delivered by the corporation to the stockholders. *South Seas Corp. v. Sablan Construction Co.*, 7 T.T.R. 636.

Lack of a formal meeting with minutes recording the event does not affect the validity of the issuance of stock. *South Seas Corp. v. Sablan Construction Co.*, 7 T.T.R. 636.

#### -Validity of Certificates

That someone other than an officer, incorporator or potential stockholder prepared stock certificates is of no moment to the validity of the certificates. *South Seas Corp. v. Sablan Construction Co.*, 7 T.T.R. 636.

The four basics of a valid issuance of stock in the Trust Territory are: (1) formation of a corporation, (2) a permit to issue stock, (3) subscription to the stock by potential purchasers and payment for the stock pursuant to the permit to issue the stock, (4) execution of the stock certificates accurately reflecting the purchaser by name and number of shares issued, by the proper officials' signing the certificates. *South Seas Corp. v. Sablan Construction Co.*, 7 T.T.R. 636.

#### —Purchase

Until April 1, 1974, there may have been a “policy” against non-American alien investment in the Trust Territory, but it was not “public policy” to the extent that it barred Japanese firm from purchase of stock in Trust Territory corporation. *South Seas Corp. v. Sablan Construction Co.*, 7 T.T.R. 636.

There was no public policy prior to April 1, 1974, prohibiting Japanese firm from purchasing from Trust Territory citizens their stock in Trust Territory corporation. *South Seas Corp. v. Sablan Construction Co.*, 7 T.T.R. 636.

#### —Sale

Shareholders had no right to sell stock they did not own, and where corporate records showed that certain shareholders were each issued 1000 shares, but a Japanese company in fact paid for the stock issued in their names and each of them was to receive 100 shares as a gift for services as a “front man”, and they sold the stock for \$10,000, the sale was valid only as to the 100 shares each owned and each would be held to owe \$9,000 to the buyer for the stock the buyer did not receive. *South Seas Corp. v. Sablan Construction Co.*, 7 T.T.R. 636.

## CORPORATIONS

### Non-Profit Corporations—Cooperative Associations

Cooperative associations which paid dividends to members and extended their services to nonmembers as well as members but gave patronage refunds and dividends only to members could not be classed as nonprofit associations. *Ponape Fed. of Coop. Assns. v. Peterson*, 7 T.T.R. 465.

## COURTS.

### Judges—Appointment

Appellate Division of the High Court will presume that public officials act properly and that the appointment of substitute judges is regular. *Sonoda v. Burnett*, 7 T.T.R. 510.

### Special Judges—Powers

In criminal prosecution, where two special judges were assigned to sit with the high court justice, special judges could question witness just the same as the high court justice. (5 TTC § 204(2)) *Trust Territory v. Minor*, 7 T.T.R. 398.

In prosecution for murder, where it was argued that special judge injected word “osoched” and suggested this to witness as sound made by victim when “stoned”, and record upon review revealed that if there was such suggestion, witness had rejected it and answered that sound was “like it came from the heart”, no prejudice to defendant was shown and questions of special judge were not improper. (5 TTC § 204(2)) *Trust Territory v. Minor*, 7 T.T.R. 398.

### Jurisdiction—High Court

Where statute gave Appellate Division of the High Court jurisdiction to review a decision of the Trial Division of the High Court in a case appealed to the Trial Division from a district court, involving construction or validity of a law or administrative regulation intended to have the force of law, and appellant appealed to Trial Division a case not involving such an issue, further appeal right to Appellate Division was cut off and appeal to Appellate Division would be dismissed. (5 TTC § 54(1)(b)) *Ngertelwang Clan v. Sechelung*, 7 T.T.R. 349.

### High Court—Function of Appellate Division

It is not function of court to legislate and where statutes are clear and unambiguous, it is neither the court's right nor its duty to change them; and fact that Congress of Micronesia has imposed stricter procedural requirements in marriages involving non-citizen than in marriages involving citizens of Trust Territory does not permit court to change statutory requirements. (39 TTC §§ 51-53, 55) *In the Matter of Airam*, 7 T.T.R. 426.

### —Administrative Powers and Duties of Chief Justice

When disqualified from sitting in a case or participating in hearing and determining the case, the Chief Justice of the High Court continues to

## COURTS

have administrative supervision of all courts in the territory, and he may assign a justice to hear the case, and may later reassign the case to another justice. (5 TTC §§ 201(3), 351) *Sonoda v. Burnett*, 7 T.T.R. 510.

### Community Courts—Jurisdiction

Where plaintiff's contract claim was for \$225, he received judgment for \$70 and community court's jurisdiction in civil cases was limited to \$100, judgment could not be successfully challenged on the ground that the claim exceeded the community court's jurisdiction. *Covington v. Chang*, 7 T.T.R. 103.

### Power To Issue Writs

The Appellate Division of the High Court has the power to issue a writ of prohibition. *Sonoda v. Trial Div. of High Court*, 7 T.T.R. 236.

### Jurisdiction—Filing Notice of Appeal

Appellate jurisdiction is dependent upon timely filing of notice of appeal. (6 TTC § 352) *Yirig v. Trust Territory*, 7 T.T.R. 432.

Trial court generally loses its power to act with regard to a matter when notice of appeal is filed. *Trust Territory v. Palacios*, 7 T.T.R. 406.

Where case was tried in Yap District Court, attempted filing of timely notice of appeal with clerk of High Court in Saipan did not meet requirements of statute providing for filing of notice "with the presiding judge of the court from which the appeal is taken, or with the Clerk of the Court for the district in which the court was held". (6 TTC § 352) *Yirig v. Trust Territory*, 7 T.T.R. 432.

Where case was tried in Yap District Court and judgment was entered on May 28, and an attempted improper filing of notice of appeal within time required by statute was made with clerk of High Court in Saipan, and then notice of appeal was properly filed with clerk of Yap District Court on July 9, and filing was not timely, appellate division had no jurisdiction and appeal would be dismissed. (6 TTC § 352) *Yirig v. Trust Territory*, 7 T.T.R. 432.

### Appealed Cases

Filing of appeal in dispute involving land divested trial court of jurisdiction and actions taken by court regarding Motion for Order to Show Cause, finding appellant in contempt, ejectment proceeding filed in the case by plaintiffs, answer to the proceeding, and motions for and orders in aid of judgment, were null and void. *Lanki v. Lanikieo*, 7 T.T.R. 533.

### Legislative Functions

Courts must scrupulously avoid engaging in judicial legislation, any usurpation of legislative powers, or an entry into the legislative field. *Ponape Fed. of Coop. Assns. v. Peterson*, 7 T.T.R. 465.

## COURTS

### —Correction of Clerical Errors

A generally recognized exception to rule that trial court loses its jurisdiction upon filing of notice of appeal is that the court may correct clerical errors. *Trust Territory v. Palacios*, 7 T.T.R. 406.

Test in determining whether error is clerical or judicial is whether error was made in rendering judgment or recording judgment; court possess inherent power to correct errors in record evidencing judgment pronounced by court so as to make it speak the truth and actually reflect that which was in fact done, but court does not have power to correct error by court in rendering judgment it did not intend to render and by such order change judgment actually but erroneously pronounced by court, to one court intended to record. *Trust Territory v. Palacios*, 7 T.T.R. 406.

Where trial court, on September 9, entered written order of contempt of court which stated that court found defense attorneys in contempt and ordered each to pay a fine of \$100 and sentenced each to six months in jail, but suspended jail sentence on condition that fine be paid within three days, and stated that in event that fine was not paid, attorney not paying fine would be committed to jail until fine was paid, there was insufficient support for finding of contempt; and where notice of appeal was filed on September 12, trial court's filing, on September 19, of an amendment of its contempt order, which amendment stated that court certified that it saw the conduct constituting contempt and that it was committed in actual presence of court, and set forth precise facts upon which contempt was found, was not correction of a clerical error and trial court had no jurisdiction to enter amended order, because court lost its power to act when notice of appeal was filed. (Rules Crim. Procedure, Rules 15e, 22(2)) *Trust Territory v. Palacios*, 7 T.T.R. 406.

### Questions Considered

The United States Congress may recognize claims under certain conditions, and a congressional resolution prescribing the rules under which a claim against the government is to be adjusted comes into court under the terms of the resolution and the court is bound by the resolution. *Dingelius v. Singeo*, 7 T.T.R. 304.

Once the United States Congress has decided to recognize a claim as an equitable obligation of the government and has appropriated money for its payment, the judicial branch can rarely, if ever, review the legislative decision. *Dingelius v. Singeo*, 7 T.T.R. 304.

### —Particular Cases

Where, under federal law, award for damage to property was not to be reviewed, and plaintiff claimed he was the owner of the property and that defendant was thus wrongfully awarded the damages, court could not, on that basis, review the award, even though plaintiff may be entitled to judgment that he owned the property. (Micronesian Claims Act of 1971) *Dingelius v. Singeo*, 7 T.T.R. 304.

## CRIMINAL LAW

### Enforcement of Orders

When the court orders agreement of counsel as a condition precedent to some activity, agreement must be sought, and an unreasonable refusal to agree will result in a grant of the appropriate relief upon motions duly filed. *People of Roi-Namur v. Miyamoto*, 7 T.T.R. 8.

## CRIMINAL LAW.

### Generally

The legislature has a large measure of discretion in prescribing criminal procedure. *Trust Territory v. Elias*, 7 T.T.R. 493.

### Rights of Accused—Allocution

Where trial court, in prosecution for murder in second degree, did not allow defendant to exercise his right of allocution as provided in Rules of Criminal Procedure, defendant was entitled to be resentenced, [overruling trial court's holding in *Benemong v. Trust Territory*, 5 T.T.R. 22, 28 (Trial Div. 1970), that loss of right of allocution was sufficient to vacate judgment of guilt]. (Rules Crim. Procedure, Rule 14c(1)) *Trust Territory v. Techur*, 7 T.T.R. 412.

### Probable Cause—Charge

Purpose of preliminary hearing statute is to determine whether or not probable cause exists, and if it does not, to assure prompt dismissal of charges against accused person. (12 TTC § 67(2)) *Sonoda v. Trust Territory*, 7 T.T.R. 442.

### Hearing

Where a justice of the High Court is physically present at place of trial, statutory preliminary hearing is not a matter of right, but a matter of discretion that rests with Trial Division of High Court. (12 TTC § 67(2)) *Sonoda v. Trust Territory*, 7 T.T.R. 442.

Where no justice of the High Court is present at place of trial and an accused is detained or otherwise in a position where his liberty is substantially restrained, accused is entitled to prompt determination as to whether or not there is probable cause that he is guilty of crime with which he is charged, which is accomplished by statutory preliminary hearing. (12 TTC § 67(2)) *Sonoda v. Trust Territory*, 7 T.T.R. 442.

Where defendant had not been detained, and at all times pertinent a justice of High Court was present and available to hear matters properly before the court and to rule upon them, and in exercise of his sound discretion justice deemed that defendant's motion for preliminary hearing should be denied, Appellate Division would not interfere with trial court's exercise of its discretionary powers. (12 TTC § 67(2)) *Sonoda v. Trust Territory*, 7 T.T.R. 442.

### Information—Sufficiency

Information which showed that time of homicide was alleged to have been on or about November 24, 1968, at Koror, Palau District, and

## CRIMINAL LAW

specified subject matter of alleged offense as well as Code section alleged to have been violated, was sufficient to meet requirements of Rules of Criminal Procedure. (Rules Crim. Procedure, Rule 6d) *Trust Territory v. Minor*, 7 T.T.R. 398.

Prosecution's confession of error and request for remand, in answer to appeal claiming that information charging involuntary manslaughter was defective in that it did not contain sufficient allegations of fact to permit preparation of a defense, was not binding on Appellate Division, but reversal and remand would be granted where it was concluded that the information was in fact defective. *Trust Territory v. Alberttar*, 7 T.T.R. 529.

Motion for stay of sentence of defendant convicted of two counts of involuntary manslaughter, one count of driving at an unsafe speed and one count of obstructing view of driver, on ground that counts of information charging involuntary manslaughter did not specify what acts, not amounting to a felony, were basis for such counts, would be denied where reading of the information as a whole showed there could be no doubt as to the ". . . unlawful act not amounting to a felony . . ." which was the basis for the involuntary manslaughter charges. *Trust Territory v. Alberttar*, 7 T.T.R. 435.

### **Trial Procedure—Nolo Plea**

Where appellants waived any defects in their "no contest" plea, which was a plea not authorized by the law, they could not complain on appeal. (Rules Crim. Proc. 10) *Trust Territory v. Skiadopulus*, 7 T.T.R. 239.

### **Defenses—Selective Prosecution**

Fact that other persons obtained money from government by false pretenses but were not prosecuted for their misdeeds was no defense for defendant convicted of seeking and obtaining \$144 from government by filing fraudulent document for claimed expenditures for rental of automobile. *Sonoda v. Trust Territory*, 7 T.T.R. 442.

### **Confessions or Statements—Admissibility**

In criminal prosecution, mere fact that defendant has previously invoked his right to remain silent and consult with counsel does not necessarily render any subsequent statement or confession inadmissible, as long as he is aware of his rights and voluntarily proceeds to answer questions. *Trust Territory v. Techur*, 7 T.T.R. 412.

### **Evidence—Prior Commission of Crime**

Generally, evidence that accused is guilty of other crimes is inadmissible for the purpose of showing the commission of the crime charged, but it may be admitted to show intent in the crime charged, or to establish a common plan, design or scheme embracing a series of crimes, including the crime charged, so related to each other that proof of one tends to prove the others. *Lizama v. Trust Territory*, 7 T.T.R. 256.

## CRIMINAL LAW

In deciding whether to admit evidence of crimes other than that charged to show intent or a common design, plan or scheme, the court must consider the character, the surrounding circumstances and the remoteness in time of the alleged offenses. *Lizama v. Trust Territory*, 7 T.T.R. 256.

### Witnesses—Impeachment of Testimony

Trial judge must be satisfied as to inconsistency between witness' testimony at trial and his prior statement when ruling on introduction of extrinsic evidence as to a witness' credibility. (Rules Evidence, Rule 22(2)) *Trust Territory v. Minor*, 7 T.T.R. 398.

When witness whose credibility is being tested is testifying against accused, proper foundation is laid, all other requirements of admissibility are met, and no claim of privilege is raised against it, prior inconsistent written statement should be admitted, especially in criminal case. (Rules Evidence, Rule 22(2)) *Trust Territory v. Minor*, 7 T.T.R. 398.

In prosecution for murder, where witness testified as to what he had seen on night of homicide, and defense counsel, on cross examination, confronted witness with a written statement signed by witness prior to his testimony in court, which statement was furnished to defense by prosecution and with respect to which witness readily stated during trial that it was not true, and trial court refused defense's offer to admit statement into evidence for purpose of impeaching witness' credibility, it would not have been error to admit statement. (Rules Evidence, Rule 22(2)) *Trust Territory v. Minor*, 7 T.T.R. 398.

In prosecution for murder, where prosecution gave defense witness' signed inconsistent statement made before his testimony at trial in which he testified against accused, and witness readily admitted that statement was not true, and witness' testimony was substantially corroborated by another government witness, and defendant was able to unequivocally demonstrate to trier of fact that witness had made a prior inconsistent statement, it was harmless error for trial court to refuse defense's offer to admit witness' inconsistent statement in record. (Rules Evidence, Rule 22(2)) *Trust Territory v. Minor*, 7 T.T.R. 398.

That portion of *Debesol v. Trust Territory*, 4 T.T.R. 556, 569 (App. Div. 1969) which held that "it is unnecessary to put into the record the prior [inconsistent] statement since its only purpose is for impeachment and it is without probative value", is overruled. (Rules Evidence, Rule 22(2)) *Trust Territory v. Minor*, 7 T.T.R. 398.

### Sentence—Modification

Imposition of sentence of 15 years imprisonment with suspension of last 10 years on conditions following conviction of second degree murder, where trial court made it clear that at time of sentencing, the five years imprisonment was imposed on defendant because trial court considered it to be a mandatory minimum under the penalty statute and therefore not subject to suspension, was in error, and trial court would be given an

## CRIMINAL LAW

opportunity to consider whether any of the five years of imprisonment should be suspended, since trial court has authority to suspend a mandatory term of imprisonment provided by statute unless there is legislative intent to contrary and no contrary legislative intent was found. (11 TTC § 752) *Trust Territory v. Techur*, 7 T.T.R. 412.

### —Persons Not Defendants

In criminal action, persons not made defendants could not be ordered to apply up to \$5000 to a use benefiting others, for a fine must be on a specific person, who is a defendant, and must be paid into the territorial treasury. (6 TTC § 451) *Trust Territory v. Skiadopulus*, 7 T.T.R. 239.

### Appeals—Filing Requirements

It is clear that rule which must be applied in appeals from District Court to Trial Division of the High Court does not require a concise statement of the grounds for appeal unless demand therefor is made by appellee; and dismissal for failure to include statement would be vacated where appellee made no demand. (TT Rules Crim. Proc., R. 31) *In re Santos*, 7 T.T.R. 501.

### Due Process and Equal Protection

There was no denial of equal protection where prosecutor could prosecute in the District Court, in which case appeal would be to a single judge sitting in the Trial Division of the High Court, or could alternatively prosecute in the Trial Division of the High Court, in which case appeal would be to a three-judge panel of the Appellate Division of the High Court. (5 TTC § 54) *Trust Territory v. Elias*, 7 T.T.R. 493.

### —Waiver

Any waiver of appeal in a criminal case should be carefully scrutinized, and the right to appeal should not be considered waived or abandoned unless it is clearly shown. *Trust Territory v. Skiadopulus*, 7 T.T.R. 239.

### —Scope of Review

In criminal appeals in which it is claimed the evidence was inadequate to support finding of guilty, paramount interest of Appellate Division of High Court is to assure that all efforts are made to consider any basis upon which appellant may have a valid claim for reversal, even when counsel has come dangerously close to abandoning his client. *Edwards v. Trust Territory*, 7 T.T.R. 507.

### —Findings

When, on appeal from conviction of a criminal offense, it is claimed that the evidence was insufficient to support a finding of guilt, the appellate court must determine whether or not there is any reasonable evidence to support the verdict. *Lizama v. Trust Territory*, 7 T.T.R. 256.

**CUSTOM.**

**Generally**

Public policy may forbid the enforcement of a custom. *Ngiraroro v. Martin*, 7 T.T.R. 310.

Custom is a law established by long usage and is by common consent and uniform practice, so that it becomes the law of the place or the subject matter to which it relates. *Ngirmekur v. Municipality of Airai*, 7 T.T.R. 477.

**Burden of Proof**

When there is a dispute as to the existence or effect of a local custom, the party relying upon it must prove it by evidence satisfactory to the court. *Ngirmekur v. Municipality of Airai*, 7 T.T.R. 477.

**Judicial Notice**

It is only when a local custom is firmly established and widely known that the High Court will take judicial notice of it, and a new way of doing things does not become established and legally binding or accepted custom until it has existed long enough to have become generally known and peacefully and fairly uniformly acquiesced in by those whose rights would naturally be affected by it. *Ngirmekur v. Municipality of Airai*, 7 T.T.R. 477.

Where alleged community custom for eviction from land was infrequently used, there being testimony that it had been used once in Japanese times and twice in German times, there was no evidence that any other community used the custom, and community used a modern, somewhat different version of the custom to evict plaintiff, it could not be concluded that the custom was firmly established so that the court could take judicial notice of it. *Ngirmekur v. Municipality of Airai*, 7 T.T.R. 477.

**Equal Protection**

Customary law must comply with the Trust Territory equal protection provision, even though the customary law is not a legislative enactment, for the equal protection provision provides that "No law shall be enacted . . . which discriminates . . . ; nor shall equal protection of the laws be denied", and since the provision uses the term "laws" it is all inclusive and the Trust Territory Code makes it clear that customary law is part of all the laws of the Trust Territory so long as it does not conflict with certain laws. (1 TTC §§ 7, 101, 102) *Ngiraroro v. Martin*, 7 T.T.R. 310.

**—Particular Cases**

Trust Territory equal protection clause providing that "No law shall be enacted in the Trust Territory which discriminates against any person on account of sex . . . ; nor shall equal protection of the laws be denied", does not bar the application of the Palauan customary law which eliminates any liability of a husband for child support when a divorce is obtained on ground of adultery by the wife, for the customary law passes

## CUSTOM

the "reasonable classification" test in that it is intended to deter and punish adultery and provide for stable marriages, and since the matrilineal line is, under customary law, required to support the child in such instances, the child is not deprived of an essential right. (1 TTC § 7) *Ngiraroro v. Martin*, 7 T.T.R. 310.

### Conflict With Law

Public policy forbids the enforcement of those customs which are inherently disruptive of law and order, and if the carrying out of a custom breaches the peace and fails to maintain law and order, the government shall provide a solution. *Ngirmekur v. Municipality of Airai*, 7 T.T.R. 477.

### Crimes

A criminal cannot use custom as a shield from prosecution. *Ngirmekur v. Municipality of Airai*, 7 T.T.R. 477.

## D

## DECEDENTS' ESTATES.

### Distribution

Land decedent held in fee simple at time of his death intestate passed according to statute providing for the distribution of the land in such cases, not under Palauan custom. *Lekeok v. Ilangelang*, 7 T.T.R. 27.

Where decedent died intestate, leaving money his estate received for his wrongful death, the money was to be distributed one-half to decedent's two adopted daughters, to share equally in the half, and one half to be paid to his mother, to be divided by her among the members of the *bwij*, which was comprised of decedent's full and half brothers and sisters. *In re Estate Juaro*, 7 T.T.R. 113.

Where decedent died intestate, leaving money his estate received for his wrongful death, and was survived by a mother, brothers, and sisters and two adopted daughters, person who was either the cousin or a younger brother of decedent's father, who had raised decedent and considered him his son under the custom, was not entitled to share in the distribution of the money. *In re Estate Juaro*, 7 T.T.R. 113.

## DEEDS.

### Japanese Confirmation

Trust Territory Government was entitled to rely upon Japanese administration's 1934 confirmation of German deeds. *Hadley v. Hadley*, 7 T.T.R. 164.

## DOMESTIC RELATIONS.

### Marriage—Validity

Requirement that there be solemnization of marriage between a citizen and non-citizen of Trust Territory by a person mentioned in statute in

## DRUGS

order to constitute a valid marriage is a mandatory condition. (39 TTC § 53) In the Matter of Airam, 7 T.T.R. 426.

Congress of Micronesia intended to make marriages by custom valid only between Trust Territory citizens, and as to marriages in Trust Territory involving a citizen and a non-citizen, it exercised its power to regulate and require certain procedures and forms in celebration of marriages. (39 TTC §§ 51-53, 55) In the Matter of Airam, 7 T.T.R. 426.

Citizen's argument on appeal, that her marriage to non-citizen outside statutorily prescribed procedure was solemnized by a feast and was consummated, that a child was born of the union, that the two lived together, and that therefore the spirit of the law, though not letter of the law, was met, and there was thus a valid marriage, could not be accepted. (39 TTR §§ 51-53; 55) In the Matter of Airam, 7 T.T.R. 426.

### Uniform or Reciprocal Statutes—Foreign Judgments and Orders

Under the Uniform Reciprocal Support Act, a foreign judgment will be enforced as a result of the mandate of the act and not under the Full Faith and Credit Clause of the United States Constitution, which does not apply to the Trust Territory. (39 TTC Ch. 9) Overby v. Olsen, 7 T.T.R. 49.

### —Modification of Orders

Where respondent under Uniform Reciprocal Support Act action asked that support payments be reduced, but neither alleged nor showed at hearing that there were changed circumstances warranting the modification, court did not have to resort to section of the act allowing continuance at request of either party to allow submission of evidence by both parties, as modification was not in order. (39 TTC Ch. 9) Overby v. Olsen, 7 T.T.R. 49.

### —Prior Orders

In action under Massachusetts Uniform Reciprocal Enforcement of Support Act, Trust Territory court could not enter a support order where neither the Massachusetts court nor the court in the state in which the divorce was granted, North Carolina, had entered a support order, and where there was no showing as to the needs of the children and the ability of the parents to meet those needs. Wolfe v. Wolfe, 7 T.T.R. 99.

## DRUGS.

### Marijuana

Marijuana cannot properly be classified as a narcotic. Trust Territory v. Bermudes, 7 T.T.R. 80.

Whatever the state of current medical knowledge, it is a matter for judicial notice that the harm inherent in the possession, use and transfer of marijuana is not greater than that of opium or heroin, and while

## **DRUGS**

the debilitating and addictive effects of using the former are strongly discounted, those of the latter have been conclusively proven and universally recognized. *Trust Territory v. Bermudes*, 7 T.T.R. 80.

Trust Territory police powers allow for the controlling, or prohibiting the use, of marijuana. *Trust Territory v. Bermudes*, 7 T.T.R. 80.

## **DYNAMITING FISH.**

### **Complaint—Amendment**

In prosecution for fishing with explosives, it was not error for court to allow an amendment to the complaint at the beginning of the trial, changing the place of the incident from Moen Island to Ruo Island, both being in the Truk Lagoon, for no new offense was charged and there was no showing of prejudice. (TT Rules Crim. Proc., R. 6i) *Trust Territory v. Monu*, 7 T.T.R. 620.

### **Evidence—Particular Cases**

Where witness with failing eyesight, who knew three persons charged with fishing with explosives, testified at length as to their involvement, his observation of the crime, and his reservations against testifying against the defendants, and he was only able to make an in-court identification of one of the defendants, and his testimony was corroborated by another witness, the conclusion that the three persons in court were the same three that witness saw while observing the crime was adequately supported. *Trust Territory v. Monu*, 7 T.T.R. 620.

## **E**

## **EMINENT DOMAIN.**

### **Compensation—Purpose and Nature**

The award in a condemnation proceeding is to give just compensation to the landowner and in effect replace the land rights taken with money. *Loeak v. Bulele*, 7 T.T.R. 504.

## **EQUITY.**

### **Benefits From One's Own Wrong**

A party may not take advantage of his own wrong. *Iisari v. Taroliman*, 7 T.T.R. 71.

## **ESTOPPEL.**

### **Generally**

Estoppel precludes a person from denying or asserting anything to the contrary of that which has, in contemplation of law, been established as the truth by the person's acts, deeds or representations, either express or implied. *Sonoda v. Burnett*, 7 T.T.R. 156.

## EVIDENCE

### Against Government

Where both the administrative and legislative powers rested in the High Commissioner at time he conveyed land to noncitizen corporate body, any restriction upon alienation of land to noncitizens was imposed by the same authority as that which conveyed the land and the government was estopped from later contesting the title. *Bishop of Guam, In re Ownership Claim*, 7 T.T.R. 98.

### EVIDENCE.

#### Prior Inconsistent Statements

Prior inconsistent statements can serve only to impeach. *Keith v. Trust Territory*, 7 T.T.R. 199.

Prior inconsistent statements cannot be considered as substantive evidence for the truth of the matters stated, and admitting them for such a purpose is unconstitutional in a criminal action. *Keith v. Trust Territory*, 7 T.T.R. 199.

#### Statements of Counsel

Statements of counsel, standing alone, do not constitute and cannot be considered as evidence. *South Seas Corp. v. Sablan Construction Co.*, 7 T.T.R. 577.

#### Preponderance

A party who asserts the affirmative of an issue has the burden of proving it by a preponderance of the evidence, which is that evidence which, when weighed against that opposed to it, has more convincing force, from which it results that the greater probability of truth lies therein. *Sandbargen v. Gushi*, 7 T.T.R. 471.

#### Weight

In weighing conflicting evidence, court must be guided by the principle that a judgment cannot rest upon conjecture, speculation or guess. *Sandbargen v. Gushi*, 7 T.T.R. 471.

#### Depositions—Admissibility

Purported deposition sought to be introduced in evidence during argument after the parties had rested their cases, the file containing no motion for any discovery, no order permitting discovery and a pre-trial order silent on the matter, was not admissible. *Long v. Susumu*, 7 T.T.R. 286.

#### Identification of Persons—Supportive Evidence

Evidence of identification of a person may be inferred from all the facts and circumstances in evidence. *Trust Territory v. Monu*, 7 T.T.R. 620.

#### Hearsay—Res Gestae

Statement comes within res gestae rule when made immediately before, during or following event to which it relates and under such circum-

## **EVIDENCE**

stances that it is a product of event and not of declarant's deliberation; and amount of time lapsed between event and statement together with distance travelled by declarant are factors to be considered in determining if statement should be admitted as part of *res gestae*, though there is no specific combination of the two which is determinative. *Trust Territory v. Techur*, 7 T.T.R. 412.

## **EXECUTORS AND ADMINISTRATORS.**

### **Transfer of Assets—Rights of Transferee**

Territorial government had right to assume that trustee of decedent's property would comply with the law and obtain the consent of the heirs to the land to the exchange of the land, with the government, for land owned by the government, as desired by the government. *Cepeda Crisostimo v. Trust Territory*, 7 T.T.R. 34.

## **F**

## **FORMER ADMINISTRATIONS.**

### **Redress of Prior Wrongs**

The present government is entitled to rely upon the official acts of the Japanese administration regarding property rights and need not correct wrongs by that administration except 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 agencies of the Japanese administration; the grant of relief in other instances is a matter of discretion of the government. *Sandbargen v. Gushi*, 7 T.T.R. 471.

## **FRAUD.**

### **Elements**

False representation of a material fact is one of the elements of fraud. *Cepeda Crisostimo v. Trust Territory*, 7 T.T.R. 34.

## **G**

## **GIFTS.**

### **Land**

Where father of plaintiffs and defendants owned a single tract of land traversed by a road and for over 20 years defendants lived on portion of land north of road, upon which they had built a house with father's permission, and for approximately same period of time plaintiffs had lived on portion of land south of road, upon which they had also built a house, and their father had moved back and forth, living in both houses, until he died, evidence was sufficiently competent and substantial to support trial court's judgment that prior to their father's death he had effectively conveyed portion north of road to defendants and portion south

## HABEAS CORPUS

of road to plaintiffs, so that at time of his death father did not own land and could not dispose of it by will. *Alik v. Alik*, 7 T.T.R. 395.

### -Evidence

In view of lack of Statute of Frauds in the Trust Territory, to sustain a gift of land *inter vivos* or *causa mortis* there must be clear and convincing evidence, and use of a preponderance of the evidence test was error. *Welter v. Obet*, 7 T.T.R. 611.

### -Elements of Gift

To effect an *inter vivos* gift of property there must be a present intent to transfer the property with a delivery of the property, that is, the gift must be completely executed with no reservations, limitations or conditions. *Welter v. Obet*, 7 T.T.R. 611.

## H

### HABEAS CORPUS.

#### Purpose and Scope

Scope and purpose of writ of habeas corpus is to inquire into cause of person's imprisonment and restraint. (9 TTC § 101) *In re Yusim*, 7 T.T.R. 353.

Scope and purpose of writ of habeas corpus is to inquire into cause of person's imprisonment and restraint. (9 TTC § 101) *In re Techur*, 7 T.T.R. 355.

#### Availability of Writ

Where Trial Division of the High Court incorrectly dismissed appeal from District Court, Appellate Division of the High Court could not grant writ of habeas corpus; proper procedure would have been to seek writ of mandamus, and Appellate Division would construe petition as one for mandamus and order reinstatement of appeal to Trial Division. *In re Santos*, 7 T.T.R. 501. †

#### Effect of Grant of Writ

If court finds, after hearing, that writ of habeas corpus should issue, person may be discharged from custody. (9 TTC § 106) *In re Yusim*, 7 T.T.R. 353.

If court finds, after hearing, that writ of habeas corpus should issue, person may be discharged from custody. (9 TTC § 106) *In re Techur*, 7 T.T.R. 355.

In habeas corpus proceeding, where trial court found that writ of habeas corpus should issue on ground of post-conviction delay in disposition of applicant's appeal of criminal conviction, court could not dismiss criminal charges against applicant, which were pending on appeal. (9 TTC § 106) *In re Yusim*, 7 T.T.R. 353.

## **HABEAS CORPUS**

In habeas corpus proceeding, where trial court found that writ of habeas corpus should issue on ground of post-conviction delay in disposition of applicant's appeal of criminal conviction, court could not dismiss criminal charges, pending on appeal, against applicant. (9 TTC § 106) In re Techur, 7 T.T.R. 355.

## **HOMESTEADS.**

### **Restriction Against Alienation**

Where, after defendant obtained homestead permit but before the permit matured, he agreed to sell the land to plaintiff, and after defendant received his deed and certificate of compliance with the homestead laws he delivered the deed to plaintiff with the statement that plaintiff keep the deed as proof that the "land is yours", and plaintiff had paid the contract price prior to delivery of the deed, there was a valid oral sale executed at the time of the delivery of the deed to plaintiff and Land Commission was obliged to issue plaintiff a certificate of title. Ilisari v. Taroliman, 7 T.T.R. 71.

Where plaintiff was granted a homestead permit and had complied with the requirements for receipt of a certificate of compliance, he had a vested right which could be conveyed or otherwise alienated, and where he conveyed a portion of the land after he received the certificate but before he received the deed he could not have the conveyance set aside. Sablan v. Norita, 7 T.T.R. 90.

## **HOMICIDE.**

### **Malice**

Malice aforethought, as applied to murder, is a question of fact and does not necessarily require ill will toward victim, but rather, signifies a general malignant recklessness toward others' lives and safety or a general disregard for ones' social duty; and where evidence was overwhelming that defendant threw a knife at his son and fatally wounded his wife as she attempted to protect child, the use of a deadly weapon to inflict a fatal wound was sufficient evidence for trial court to find requisite malice. Trust Territory v. Techur, 7 T.T.R. 412.

## **I**

## **INFANTS**

### **Paternity and Maternity**

Trial court properly found plaintiff to be natural child of decedent and his wife, and properly refused to allow wife to testify that she was not the mother of plaintiff, where wife gave information for birth certificate showing plaintiff to be child of decedent and his wife, a baptismal certificate was consistent with the birth certificate, and common law rule prohibited a parent from testifying so as to make parent's child illegitimate. Coleman v. Palacios, 7 T.T.R. 583.

## INJUNCTIONS

### INJUNCTIONS.

#### Object and Purpose

The object and purpose of an injunction is to preserve and keep things in the same state or condition and restrain acts, actual or threatened, which would be contrary to equity and good conscience, and which would presumably give the injured party a cause of action for which the law affords no adequate or complete relief. *Madrainglai v. Emesiochel*, 7 T.T.R. 13.

#### Irreparable Injury, Loss or Damage

Injunction against proceeding any further with duty-free airport concession granted by government for proposed airport would not be granted where interference with building schedule would subject the government and the public to certain loss which would far outweigh any benefit to plaintiff. *J. C. Tenorio Enterprises v. Johnston*, 7 T.T.R. 152.

#### Granting Orders

Where there was ample time to litigate the issue before the suggested harm might take place, injunction would not be granted. *J. C. Tenorio Enterprises v. Johnston*, 7 T.T.R. 152.

#### Dissolution

A court may refuse to maintain an injunction where conditions have so changed as to render an injunction useless, of no effect or improper, but there must be a substantial change in the facts to warrant a dissolution of an injunction. *Madrainglai v. Emesiochel*, 7 T.T.R. 13.

When considering whether it is proper to continue an injunction, a court must apply the general rules for granting an injunction, that is, there must be a clear showing of probable success of the plaintiff, and of possible irreparable injury to the plaintiff should the injunction be denied. *Madrainglai v. Emesiochel*, 7 T.T.R. 13.

Where court found title to land in municipality, found municipality could hold title to and lease land and found that municipality validly leased land, injunction previously issued against the lease of the land would be dissolved. *Madrainglai v. Emesiochel*, 7 T.T.R. 13.

#### Right of Interest

For an injunction to be issued, there must be a sufficient present interest or title in the right or property sought to be protected which is directly threatened by the act sought to be enjoined. *Madrainglai v. Emesiochel*, 7 T.T.R. 13.

#### Particular Cases

Private citizens cannot enjoin official acts when they cannot show damage to themselves different in character from that sustained by the public generally. *Madrainglai v. Emesiochel*, 7 T.T.R. 13.

Injunction against grant of government contract would not be granted where evidence showed no illegality in the process of asking for and

## INJUNCTIONS

accepting proposals for the contract and selecting the successful bidder. (31 TTC Ch. 1) *Juan C. Tenorio & Assoc. v. High Commissioner*, 7 T.T.R. 24.

Lack of environmental impact report on proposed use of land leased by municipality to others could not be the basis for an injunction against the lease where the law did not require such a report. *Madrainglai v. Emesiochel*, 7 T.T.R. 13.

## INTERNATIONAL LAW.

### Sovereignty—Sovereign Immunity

Implicit in the sovereignty of nations is the right to determine how, when and under what circumstances the government may be sued. (6 TTC §§ 251–253) *Ikosia v. Trust Territory*, 7 T.T.R. 274.

## J

## JUDGES.

### Tenure

After term of appointment as Associate Judge of District Court ended, appointee served as a holdover de facto judge until reappointment or until a new appointee replaced him pursuant to statute or until his holdover status was terminated by the High Commissioner, and he simply served at the discretion of the High Commissioner. (5 TTC § 251) *Sonoda v. Burnett*, 7 T.T.R. 156.

Judge who continued to serve without reappointment after end of term to which he was appointed was entitled to salary received during holdover period, and estoppel would apply should the government or its officials attempt to recover the salary. *Sonoda v. Burnett*, 7 T.T.R. 156.

Judge could not prevail upon claim that government was estopped from denying reappointment to his position where he conceded that the appointing authority had made no reappointment. *Sonoda v. Burnett*, 7 T.T.R. 156.

Judge seeking injunction against removal from office could not prevail where High Commissioner had discretion to reappoint him and did not do so. *Sonoda v. Burnett*, 7 T.T.R. 156.

## JUDGMENTS.

### Summary Judgment

Where no fact questions were presented, court would decide issues of law and would enter summary judgment where that was an appropriate disposition of the case. *Hadley v. Hadley*, 7 T.T.R. 164.

### —Issues

When considering a motion for summary judgment the court cannot try issues of fact, but can only determine if there are genuine issues of fact to be resolved. *Trust Territory v. Konou*, 7 T.T.R. 331.

## JUDGMENTS

### Tests and Standards

On a motion for summary judgment, inferences to be drawn from underlying facts contained in the materials before the court must be viewed in the light most favorable to the opposing party. *Castro v. Attao*, 7 T.T.R. 224.

### Particular Cases

Entry of summary judgment was proper where all parties moved for summary judgment and conceded that there were no genuine issues of fact. *Ponape Fed. of Coop. Assns. v. Peterson*, 7 T.T.R. 465.

Where there were genuine issues of fact in action for restoration of possession of land, as to whether there was a valid, binding oral lease, and as to the availability of the defense of the Statute of Limitations, summary judgment for plaintiff was improper. *Trust Territory v. Konou*, 7 T.T.R. 331.

### Tests to a Judgment

A plaintiff with a non-frivolous claim is entitled to a judgment and need not accept a settlement proposed by the defendant or the court. *Covington v. Chang*, 7 T.T.R. 103.

### When To Vacate—Fraud or Misconduct

To justify setting aside a judgment on the ground of fraud or misconduct, the acts or misconduct complained of must be such as to have prevented the losing party from fully and fairly presenting his case. *South Seas Corp. v. Sablan Construction Co.*, 7 T.T.R. 577.

### Tests

Where motion to vacate judgment was brought under federal rule which was remedial and should be liberally construed, appellate court to which denial of motion was appealed could not substitute its judgment for that of lower court absent a finding of abuse of discretion. *South Seas Corp. v. Sablan Construction Co.*, 7 T.T.R. 577.

### Res Judicata

Where neither the land at issue nor all the parties were the same, res judicata did not apply, even though some of the parties were the same and the facts were comparable. *Amon v. Langrine*, 7 T.T.R. 65.

### Interest

Generally, interest does not run on an unliquidated claim until after judgment, though it may be allowed in special situations from the time of filing of suit. *"Iroij Lablab" Jitiam v. Acme Importers*, 7 T.T.R. 95.

Where lease did not provide for interest to run on the cost of improvements, to be paid lessee in the event of termination of the lease, interest could be recovered only as of the time of judgment, not as of the time of filing of suit. *"Iroij Lablab" Jitiam v. Acme Importers*, 7 T.T.R. 95.

## **JUDGMENTS**

### **Execution in Aid of—Exempt Items**

Lower court properly found that auto was a necessary item and exempt from execution in aid of judgment under statute where judgment debtor had two farms in different locations, worked nights in a third location and there was no public transportation. *Connell Bros. Co., Ltd. v. Manglona*, 7 T.T.R. 574.

### **Ex Parte Participation in Opinion**

It was improper and patent error for trial judge to, without notice to the other party, ask the prevailing party to prepare findings of fact, conclusions of law, judgment and opinion, which the judge then modified and adopted. *South Seas Corp. v. Sablan Construction Co.*, 7 T.T.R. 577. Where trial judge was in error in requesting, without notice to other party, that prevailing party prepare findings of fact, conclusions of law, judgment and opinion, which judge modified and adopted, but there was no evidence of fraud, or of denial of full and fair trial to losing party, or that trial judge had already decided the case when he made his ex parte communication with prevailing party, and losing party was able to argue in open court regarding objections to the findings, and a thorough hearing was held on losing party's motion to vacate judgment, the hearing being held before a judge other than the trial judge, denial of the motion did not prejudice losing party and would be upheld. *South Seas Corp. v. Sablan Construction Co.*, 7 T.T.R. 577.

### **Stay of Execution—When Granted**

Where action involved questions pertaining to interests in land there was an automatic stay of judgment, so that appellant did not waive any rights by not filing for a stay of judgment. (8 TTC § 2) *Lanki v. Lanikieo*, 7 T.T.R. 533.

### **Finality of Decisions**

The decisions of the Appellate Division of the High Court are final. *Abrams v. Trust Terr. H.C. Discip. Panel*, 7 T.T.R. 517.

## **L**

## **LABOR RELATIONS.**

### **Dismissal or Discipline of Employee—Grounds**

Board of Education policy providing that teachers and other educational personnel could not hold elective positions in the government if they would be absent from their job for a period in excess of their annual leave was in conflict with statute listing the persons disqualified from candidacy for the elective positions held by teachers challenging the policy, but not including teachers and other educational personnel in the list of disqualified persons, an indication that they were not intended to be on the list, and the policy was invalid. (43 TTC § 102) *Nakamura v. Remengesau*, 7 T.T.R. 297.

## LACHES

Board of Education policy providing that teachers and other educational personnel could not hold elective positions in the government if they would be absent from their job for a period in excess of their annual leave, and providing for appeal to the board, was clearly unreasonable as to classification and of so wide a scope and breadth as to be illegal, since it included anyone working for the educational system, and allowed those with enough leave, and successful appellants to the board, to hold elective positions, despite the policy that holding elective positions would disrupt the school. *Nakamura v. Remengesau*, 7 T.T.R. 297.

### Safety—Government Employees

Government had a duty to provide its employee with a safe place to work, and breach of the duty was negligence. *Antonio v. Trust Territory*, 7 T.T.R. 123.

Where deranged government hospital patient attacked hospital employee, the government was liable to employee in negligence for failure to provide a safe place to work while allegedly knowing or having reason to know of the dangerous propensities of the patient, and the tort did not arise out of the assault and battery, but rather out of the government's failure of duty. (6 TTC § 252(2), (5)) *Antonio v. Trust Territory*, 7 T.T.R. 123.

Where patient in government hospital attacked hospital employee, government was liable in negligence and was not covered by discretionary acts or intentional torts provisions of sovereign immunity statute. (6 TTC §§ 252(2), (5)) *Antonio v. Trust Territory*, 7 T.T.R. 123.

## LACHES.

### Generally

Whether laches applies to a given case depends upon circumstances of the case and is a question primarily addressed to discretion of trial Court. *Rabauliman v. Matagolai*, 7 T.T.R. 424.

### Particular Cases

Person entitled to inherit *alab* rights could not assert the claim where, since Japanese times, the claim had not been asserted and person exercising the *alab* rights, and his predecessors, had exercised the rights during that time. *Linidrik v. Main*, 7 T.T.R. 231.

Establishment of rights in land under the Marshallese system of land tenure, apparently accepted by those concerned, cannot be upset years later. *Linidrik v. Main*, 7 T.T.R. 231.

Where trustee of land beneficiaries received from decedent did not claim any undue influence in his exchange of the land for government land, and beneficiaries brought action to rescind the exchange fourteen years after the exchange, and after the death of the trustee, and they had used the land and made no prior complaint, their claim was barred by laches. *Cepeda Crisostimo v. Trust Territory*, 7 T.T.R. 34.

In an action by heirs to recover land exchanged for other lands, owned by government, pursuant to an exchange agreement entered into between

## **LACHES**

land trustee and government which was not agreed to by heirs as required by Land Management Regulation, Trial Court's finding of laches was not clearly erroneous where review of record, in response to appellants' claim that they relied, with good faith, on government's assurances that they would get property back, revealed that letter issued over seven years before appellants filed their complaint, in response to their inquiry about return of land, stated only that government was planning on establishing a land-use policy and that appellants' request would be held in abeyance; appellants' complaint was stale since they failed to use diligence required by law to rescind land exchange agreement. (Land Management Regulation No. 1, § 9(a); 6 TTC § 305) *Crisostimo v. Trust Territory*, 7 T.T.R. 375.

## **LANDLORD AND TENANT.**

### **Estoppel**

Where neither lessor nor lessee was contesting or asserting a claim based on the lease, those opposed to the lease of the land could not successfully raise estoppel by deed. *Madrainglai v. School of the Pacific*, 7 T.T.R. 107.

## **LAND MANAGEMENT REGULATION.**

### **Land Trustee—Authority**

Each land exchange affected by a land trustee appointed pursuant to Land Management Regulation must be considered on its own merits to determine if one dealing with land trustee could rely on his authority to deal with land. (Land Management Regulation No. 1) *Crisostimo v. Trust Territory*, 7 T.T.R. 375.

Where oldest son of deceased lot owner filed original claim on behalf of decedent's heirs, was the only heir to appear at original land title hearing pursuant to Land Management Regulation, even though record reflected that all known heirs were given notice, was successful in defeating government's claim to lot in question, and was appointed land trustee by land title officer at that hearing, and where oldest son's oldest sister indicated that according to custom the oldest son should act for heirs, and oldest son's brother, by deposition, admitted that land trustee was acting as family "spokesman" at original hearing, government could rely on oldest son as land trustee to make exchange of lot in question for other lands owned by government. (Land Management Regulation No. 1) *Crisostimo v. Trust Territory*, 7 T.T.R. 375.

## **LARCENY.**

### **Intent**

Intent to commit theft was shown by possession of the fruits of the theft. *Lizama v. Trust Territory*, 7 T.T.R. 256.

## LIMITATION OF ACTIONS

### LEGISLATIVE POWER.

#### Delegation

The legislature, after having enacted general provisions, may delegate power to an administrative board or agency for it to establish rules and regulations by which the law is to be implemented, but the legislature must enunciate a standard by which the board must be guided and place the standard in the enabling statute, and the standard must be sufficiently definite to both guide the board in implementing the power conferred and to advise those affected of their rights and responsibilities. *Trust Territory v. Bermudes*, 7 T.T.R. 80.

Statute providing that a drug is any nonalcoholic drug containing any substance which significantly affects consciousness, ability to think, critical judgment, motivation, mood, psychomotor coordination or sensory perception and is substantially involved in drug abuse or has substantial potential for such involvement, and that Director of Health shall determine on the basis of current medical knowledge which substances are drugs, is null and void as an unlawful delegation of power from the Congress of Micronesia to the director and a violation of equal protection. (63 TTC §§ 301, 302) *Trust Territory v. Bermudes*, 7 T.T.R. 80.

### LIMITATION OF ACTIONS.

#### Recovery of Land

If a person in possession of land is claiming adverse possession and there is no document to rescind, and landowner sues for recovery of his land, twenty-year statute of limitations would apply. *Crisostimo v. Trust Territory*, 7 T.T.R. 375.

#### —Particular Cases

Where plaintiffs claimed they had acquired title to certain land in 1939, and government asserted that in 1954 it had acquired the land through an executed and recorded land exchange agreement, 20 year statute of limitations had not run against plaintiffs, who did not file suit until 1976, for there was no showing that plaintiffs ever knew about the recording and the record showed that it was not until 1975 that there was any activity, possession or other acts which would have put plaintiffs on notice that anyone else claimed the land. *Muna v. Trust Territory*, 7 T.T.R. 531.

Where government was in possession of land under color of title, deed to such land recorded fourteen years before action to recover land was filed could not be blithely ignored and circumvented by saying that plaintiffs' suit was one to recover land which would require passage of twenty years before a voidable land exchange agreement could mature into a final contract. *Crisostimo v. Trust Territory*, 7 T.T.R. 375.

Where heirs' action against government was filed fourteen years after recording of land exchange agreement entered into by government and land trustee and agreement was not agreed to by heirs as required by

## LIMITATION OF ACTIONS

Land Management Regulation, and heirs' prayer for relief asked that exchange agreement be voided, action was for rescission, not for a quiet title suit or recovery of land, so that six-year "catch-all" statute rather than twenty-years statute of limitations applied. (Land Management Regulation No. 1, § 9(a); 6 TTC § 305) *Crisostimo v. Trust Territory*, 7 T.T.R. 375.

## LIQUOR CONTROL.

### Sale

In prosecution for selling beer on a Sunday, guilt beyond a reasonable doubt was not shown where two police officers testified that they saw person with beer and that he told them he had bought it from defendant, a third police officer testified that person told him he had purchased the beer, and person and defendant testified that there had been no purchase. *Keith v. Trust Territory*, 7 T.T.R. 199.

## M

## MARSHALLS CUSTOM.

### Designation of Successor

Approval by *iroij* was sufficient to validate will designating successor *alab*. *Linidrik v. Main*, 7 T.T.R. 231.

### Succession to Titles

Although according to Marshallese custom, the oldest member of a lineage usually represents a younger one, it is not uncommon for special arrangements to be made which are not in accordance with the custom, and where father designated younger daughter as successor *leroiij*, the designation was registered with the Japanese administration, the successor was recognized by all interested persons, and there was no evidence that oldest sister ever asserted any claim to *leroiij* rights, trial court's decision affirming the younger sister's rights would be affirmed. *Linidrik v. Main*, 7 T.T.R. 231.

## MARSHALLS LAND LAW.

### Lineage Ownership—Transfer

In order for *alab* to give his daughter land, land must have been capable of being given away; if land was lineage land at time of gift, *alab* could not give it to his daughter without obtaining consent of persons who would normally inherit in the lineage. *Motlok v. Lebeiu*, 7 T.T.R. 359.

### —Inheritance

Under Marshallese custom, lineage land is passed on from matrilineal line, not patrilineal line, so that plaintiff who was oldest person in matrilineal line, even though he was from a smaller, younger *bwij*, would succeed to *alab* rights, rather than defendant who was descendant from

## MARSHALLS LAND LAW

oldest *bwij* and daughter of last recognized *alab* whose *bwij* had ended with his death during World War II. *Motlok v. Lebeiu*, 7 T.T.R. 359.

### “Agri in Bwij”

If lineage does not concur with desire of *alab* to *ninnin* to his children, children may remain on land as *agri in bwij*. *Motlok v. Lebeiu*, 7 T.T.R. 359.

### “Iroij”—Powers

If an *Iroij* recognizes a person as *alab*, it must be in accordance with Marshallese custom, as to do otherwise exceeds his authority; an *Iroij* cannot change *alab* rights at will and there must be some reason to justify change. *Motlok v. Lebeiu*, 7 T.T.R. 359.

Though determination made by an *Iroij* with regard to his lands is entitled to great weight, in an *alab* land dispute where record on appeal disclosed that the present *Iroij* recognized defendant, a descendant from oldest *bwij* and daughter of last recognized *alab*, now deceased, whose *bwij* ended upon his death, as present *alab*, and where record further disclosed that present *Iroij* stated he received his information from his predecessor, but where evidence showing some occurrence or reason to alter normal succession of *alab* rights and allow the *Iroij* to recognize someone other than the plaintiff, a descendant in matrilineal line from a smaller, younger *bwij*, who would take in normal and customary way, was not present in record, and where present *Iroij* was unable to tell reason that defendant's father transferred land to defendant, *Iroij* exceeded his authority and record substantiated trial court's finding that plaintiff was entitled to *alab* rights. *Motlok v. Lebeiu*, 7 T.T.R. 359.

### “Iroij Lablab”—Approval of Transfers

Whether by will or oral transfer, approval of the *iroij lablab*, or the *droulul* on “Jebrik's side” of Majuro, is mandatory to effectuate a transfer of a land interest other than by inheritance. *Amon v. Langrine*, 7 T.T.R. 65.

### Jebdrik's Side of Majuro—Generally

On *Jebdrik's* side of Majuro Atoll there has been no *Iroij Lablab* for years and there are instead a number of *Iroij Eriks*, with the *Iroij Lablab's* powers lying in a committee known as the *Droulul*; and an *Alab* and *Dri Jerbal* must recognize and cooperate with the proper *Iroij Erik* and failure to do so may be sufficient cause for the *Droulul* to remove them from the land and terminate their interests. *Lanki v. Lanikieo*, 7 T.T.R. 533.

### —Obligations Toward Iroij Erik

*Alab* and *Dri Jerbal* against whom judgment was entered in action for their removal for failure to perform obligations to *Leroij Erik* on *Jebdrik's* side of Majuro Atoll should be given the opportunity to acknowledge the *Leroij Erik* and perform their customary obligations to her in light of the judgment. *Lanki v. Lanikieo*, 7 T.T.R. 533.

## MARSHALLS LAND LAW

### —Transfers

Where father's will, upon which adopted son based claim to interests in land, was not approved by the *droulul* and the necessary lineage consents were not given to cut off matrilineal succession in the lineage in favor of the adopted son, his claim must fail and the interests were to pass in the proper succession in the matrilineal line. *Amon v. Langrine*, 7 T.T.R. 65.

### “Dri Jerbal”—Transfer of Rights

Will transferring one's *dri jermal* rights to one's children does not have to be approved by the *alab*. *Jabwe v. Henos*, 7 T.T.R. 227.

### —Establishment

Finding of trial court that plaintiff and his brothers and sisters possessed *dri jermal* rights to certain *watos* in Marshall Islands District was supported by more than sufficient credible evidence where record on appeal revealed that mother of plaintiff and his brothers and sisters not only lived and worked on land in question but that her position as *dri jermal* was recognized by former *alab* and by *iroij lablab*. *Laubon v. Monna X*, 7 T.T.R. 439.

### Interests Taken by Government—Distribution of Compensation

Where, under Marshallese custom, the *Iroij* received 6 percent of copra proceeds and the *alab* and *dri jermal* interests received 94 percent, upon condemnation of land it was proper for lower court to distribute the condemnation award according to that formula. *Loeak v. Bulele*, 7 T.T.R. 504.

## MUNICIPALITIES.

### Councilmen—Meetings, Votes and Procedure

Where a quorum was present at council meeting and a majority approved of action at issue, whether the signature of one person was proper did not have to be decided. *Madrainglai v. School of the Pacific*, 7 T.T.R. 107.

Where municipal charter provided that ordinances were to be enacted by a majority vote of the municipal council, but did not specify the number of votes required to act other than by ordinance, a majority vote on other matters would be sufficient unless an express provision of the charter required a greater than majority vote; therefore, even if four of the eleven municipal council seats were in dispute, the other seven were sufficient for the municipality to act where they all signed lease of municipal land which was being questioned. *Madrainglai v. Emesiochel*, 7 T.T.R. 13.

### —Disputed Council Seats

High Court cannot enjoin the activities of a municipal council pending a determination of disputed council seats. *Madrainglai v. Emesiochel*, 7 T.T.R. 13.

## NEGLIGENCE

### Lease of Municipal Land

The Trust Territory Code provision that the Government of the Trust Territory may hold title to lands in the Trust Territory means the government at all levels, so that it gives municipalities the power to hold title to land and thus to lease it. (57 TTC § 11101) *Mdrainglai v. Emesiochel*, 7 T.T.R. 13.

Since municipal land is public land, a grant or lease of the land by the municipal council may not be proper if the council exceeds its authority and the lease or grant constitutes a breach of public trust. *Mdrainglai v. Emesiochel*, 7 T.T.R. 13.

Where charter for municipality provided for a municipal council and one was formed, lease of municipal land, approved by the council, did not have to also be approved by the traditional council. *Mdrainglai v. School of the Pacific*, 7 T.T.R. 107.

### Sovereign Immunity—Generally

Sovereign immunity doctrine may become inapplicable once the government engages in proprietary functions, active wrongdoing or misfeasance, property damage, or the taking of property without just compensation. *Ngirmekur v. Municipality of Airai*, 7 T.T.R. 477.

#### —Conversion

Conversion of property will subject a governmental entity to suit despite the sovereign immunity doctrine. *Ngirmekur v. Municipality of Airai*, 7 T.T.R. 477.

#### —Trespass

A city is not exempt under the sovereign immunity doctrine from liability for a trespass caused by its corporate act. *Ngirmekur v. Municipality of Airai*, 7 T.T.R. 477.

#### —Wrongful Eviction

Sovereign immunity doctrine did not apply to bar suit against municipality by possessor of land in the community, for wrongful forcible eviction not in accordance with law or custom. *Ngirmekur v. Municipality of Airai*, 7 T.T.R. 477.

## N

### NEGLIGENCE.

#### Generally

Negligence is the doing of something which a reasonably prudent person would not do, or the failure to do something which a reasonably prudent person would do, and is in essence the failure to use ordinary or reasonable care, such care being that which persons of ordinary prudence would use to avoid injury to themselves or others. *Songer v. Jack*, 7 T.T.R. 289.

## NEGLIGENCE

### Proximate Cause

A proximate cause of an injury is one which in natural and continuous sequence produces the injury and without which the injury would not have occurred. *Songer v. Jack*, 7 T.T.R. 289.

### Particular Cases

Truck driver who made left turn at intersection directly into the path of motorcyclist's oncoming vehicle was negligent. *Songer v. Jack*, 7 T.T.R. 289.

### Building Contractors—Standard of Care

Amount of caution required of a person in exercise of ordinary care depends upon danger which is apparent to him or should be apparent to a reasonably prudent person under similar circumstances. *Sablan v. Dillingham Corp.*, 7 T.T.R. 368.

Where building contractor had actual knowledge of slope of car rental lot towards appellant's adjoining residential property but nevertheless proceeded with paving the lot, and where contractor's resident manager had actual knowledge of dangerous condition, and his conversation with owner of rental car lot amply demonstrated his concern for consequences that would inevitably arise from paving the lot, thus increasing, concentrating and intensifying flow of drainage water upon appellants' premises, building contractor had duty to exercise ordinary care which a person of ordinary prudence would use in order to avoid injury or damage to others under similar circumstances. *Sablan v. Dillingham Corp.*, 7 T.T.R. 368.

### —Liability

Paving contractor could not insulate itself from liability for damage from water draining upon adjoining lower residential property due to its negligent paving of rental car lot, on ground that it had completed its contract to pave lot and lot owner had accepted its work. *Sablan v. Dillingham Corp.*, 7 T.T.R. 368.

When contractor turned over completed paving job to rental car lot owner and knew or in exercise of ordinary care should have known of danger that increased surface water drainage posed to adjoining lower residential property, it remained liable to residential property owner for damages proximately caused or contributed to by its actions in paving rental car lot. *Sablan v. Dillingham Corp.*, 7 T.T.R. 368.

Where paving contractor had knowledge of danger, created by grading of rental car lot by its owner and by its own paving, to adjoining lower residential property, and since it was foreseeable that inevitable consequences of paving would increase, concentrate and intensify flow of drainage water upon adjoining residential property, which actually occurred, paving contractor was liable, jointly and severally, with rental car lot owner for water damages. *Sablan v. Dillingham Corp.*, 7 T.T.R. 368.

**PALAU CUSTOM.**

**Divorce—Support**

When a Palauan couple are married by custom, have a child, the husband obtains a divorce on ground of adultery by the wife, and the wife or her parents are given custody of the child, customary law provides that neither the wife nor her parents are entitled to child support from the father, the family of the wife is not entitled to *Olmesumech*, the wife and her family have the obligation to support the child, and the child has obligations to the matrilineal line to compensate for the support it receives. *Ngiraroro v. Martin*, 7 T.T.R. 310.

**PALAU LAND LAW.**

**Japanese Survey—Presumptions**

Plaintiff claiming that she and her sister, as heirs of their father, were entitled to land listed under the name of the father in the Tochi Daicho was entitled to presumption that the listing in the Tochi Daicho was correct unless there was a clear showing that the determination which resulted in the listing was wrong, and opposing party had the burden of proving the listing wrong. *Edeyaoch v. Timarong*, 7 T.T.R. 54.

**—Particular Cases**

Where land was correctly listed to father of plaintiff, heir to her father, in Tochi Daicho, Government of the Trust Territory, which claimed the land through an unproven sale, could not divest plaintiff of ownership on the basis of its land title determinations, surveys and issuance of homestead permits relating to the land. *Edeyaoch v. Timarong*, 7 T.T.R. 54.

**Clan Ownership—Transfer**

Where witness testified that that transfer of title to clan land to him sometime prior to 1934 was confirmed by 1936 trial held during the Japanese administration, and the Japanese had conducted a survey of the land between 1938 and 1941 and registered the land in the Tochi Daicho in the name of person witness sold the land to in 1936, and the sale, according to an exhibit at current proceeding, was consented to and confirmed by the Japanese administration and the chiefs, the clan's interest in the land was cut off and the sale was valid. *Lekeok v. Illangelang*, 7 T.T.R. 27.

**Individual Ownership—Clan or Lineage Rights**

Once land becomes individual land, the clan or lineage loses all control over it. *Edeyaoch v. Timarong*, 7 T.T.R. 54.

**—Decedents' Estates**

Customary Palauan practice was not the only accepted system of intes-

## PALAU LAND LAW

tate disposition and distribution of property prior to the 1957 enactment of a statutory system. *Ngirumergang v. Watanabe*, 7 T.T.R. 260. Finding that adopted son of individual owner of land was, after his father's death intestate, the individual owner of the land, and that person claiming the land could not prevail where he alleged that since the father died without having disposed of the land it was up to the lineage to dispose of the property and that he took through the lineage and therefore held good title, would not be disturbed on appeal. *Ngirumergang v. Watanabe*, 7 T.T.R. 260.

Individually owned land passes to a decedent's heirs, which by custom are his children, and a brother of decedent has no right to claim or administer the land. *Edeyaoch v. Timarong*, 7 T.T.R. 54.

### Village Land

Public or village land is held by the title holder for the village and can be disposed of only in certain ways. *Ngiramelkei v. Sechelong*, 7 T.T.R. 119.

It is the custom that village land is held in the name of the title holder of the clan. *Ngiramelkei v. Sechelong*, 7 T.T.R. 119.

### —User's Rights

An individual may be given permission to use village land, but vested rights in the land do not accrue to the individual either by the permission or the use. *Ngiramelkei v. Sechelong*, 7 T.T.R. 119.

Where evidence showed that land decedent had used and built a house on was public or village land, not decedent's individual land, decedent had no authority to will or deed the land to his wife as her individual land and the land was to be held and administered for the village by the clan's title holder. *Ngiramelkei v. Sechelong*, 7 T.T.R. 119.

## POLICE POWER.

### Generally

When testing the validity of regulations and acts promulgated in the exercise of the police power within the Trust Territory, the question is not whether a particular exercise of the power imposes restrictions on rights secured to individuals, but whether restrictions so imposed are reasonable. *Trust Territory v. Bermudes*, 7 T.T.R. 80.

The proper area for exercising the police power is given a broad definition with regard to laws which will inure to the health, morals and general welfare of the public, and with regard to such laws the guarantees of life, liberty and property do not operate as a limitation of the police power. *Trust Territory v. Bermudes*, 7 T.T.R. 80.

## PONAPE LAND LAW.

### Inheritance

German Land Code, which governed succession and inheritance on Pon-

## PROHIBITION

ape until enactment of District Order in 1957, governed disposition of property of decedent who died in 1956. *Hadley v. Hadley*, 7 T.T.R. 164. In Ponape District action regarding inheritance of land in Metelanimw Municipality, claim of intestate's adoptive son takes precedence over claim of adoptive daughter. *Long v. Susumu*, 7 T.T.R. 286.

Eldest son, and not illegitimate son whose parents never married, was entitled, under the then applicable German Land Code, to land owned by his father, who died in 1956. *Hadley v. Hadley*, 7 T.T.R. 164.

### Kapingamarangi—Family Ownership

Under Kapingamarangi customary law, a husband is not entitled to compensation from his wife for supporting her during their marriage, and thus is not entitled on that ground to her solely-owned land upon her death. *Moses v. Kiteren*, 7 T.T.R. 267.

Child born out of wedlock was entitled to her mother's land upon mother's death, as against claim of mother's husband that he was entitled the land because he had supported his wife during their marriage. *Moses v. Kiteren*, 7 T.T.R. 267.

## PROHIBITION.

### Generally

Writ of prohibition is to be used with great caution and forbearance and should be issued only in cases of extreme necessity. *Arriola v. Hefner*, 7 T.T.R. 437.

Prohibition is to be used with great caution and forbearance, for the furtherance of justice and to secure order and regularity in judicial proceedings, and should be issued only in cases of extreme necessity. *Sonoda v. Trial Div. of High Court*, 7 T.T.R. 236.

The purpose of a writ of prohibition is to restrain or prevent; it is not to be used for the purpose of reviewing and correcting errors and irregularities of a lower court. *Sonoda v. Trial Div. of High Court*, 7 T.T.R. 236.

Writ of prohibition is not one of right but one of sound judicial discretion, to be granted or refused according to facts and circumstances of particular case, and it ordinarily will not issue where there is another legally adequate remedy, as by appeal or otherwise. *Arriola v. Hefner*, 7 T.T.R. 437.

### Prerequisites for Writ

A writ of prohibition will issue only when there has been an action by an inferior court which is either in excess of its jurisdiction or which is such as to constitute an abuse of that jurisdiction. *Sonoda v. Burnett*, 7 T.T.R. 156.

Requisites for issuance of writ of prohibition, absence of any of which requires denial of writ, are that petitioner must show that respondent is about to exercise judicial power, that exercise of such power is

## **PROHIBITION**

unauthorized by law, and that it would result in injury for which there is no other adequate remedy. *Arriola v. Hefner*, 7 T.T.R. 437.

A writ of prohibition will not issue where there exists a plain, speedy and adequate remedy in the ordinary course of the law, such as an appeal. *Sonoda v. Trial Div. of High Court*, 7 T.T.R. 236.

As a rule, a writ of prohibition will not issue where the act in question has already been done; thus, it will not lie to restrain an inferior court after the judgment has been given and fully executed, unless it appears on the face of the proceedings that the court has no jurisdiction. *Sonoda v. Trial Div. of High Court*, 7 T.T.R. 236.

### **Particular Cases**

Writ of prohibition does not properly lie in proceeding for contempt since an adverse ruling can be adequately remedied by appeal. (Rules Crim. Procedure, Rule 20(c)) *Arriola v. Hefner*, 7 T.T.R. 437.

Attack on judge assigned to hear case involved was not a proper basis for a writ of prohibition. *Sonoda v. Burnett*, 7 T.T.R. 156.

Where judge which petition for writ of prohibition sought to keep from sitting in a particular case had already heard the case and dismissed the complaint, and could not be prohibited from proceeding, since there was nothing more for him to do in the case, and petitioner was not challenging the jurisdiction of the lower court, but rather, the alleged bias of the judge, the writ would be denied. *Sonoda v. Trial Div. of High Court*, 7 T.T.R. 236.

## **PROPERTY.**

### **Adverse Possession**

Although interest in land may be waived by not asserting one's claim to it over a long period of time, defendant could not prevail on her claim to land where she allegedly possessed it from 1948 to 1971, at which time she attempted to build a house on it and plaintiff filed a suit and intervenor intervened, and there were apparently no acts or transactions during that time which put plaintiff and intervenor on notice that they should act. *Lekeok v. Ilangelang*, 7 T.T.R. 27.

## **PUBLIC OFFICERS.**

### **Presumptions**

There is a presumption of regularity of official acts. *Madrainglai v. School of the Pacific*, 7 T.T.R. 107.

### **Immunity From Suit**

Public officers are immune from civil suit for money damages for negligent, nonministerial acts committed by them while they are acting within the scope of their authority and in the discharge of their official duties. *Santa v. Johnston*, 7 T.T.R. 133.

Plaintiff alleging that police officers handcuffed him in an unnecessarily harmful manner could proceed against the officers, and against the

## RAPE

police chief, who allegedly knew of the practice, despite their official position. *Santa v. Johnston*, 7 T.T.R. 133.

### Respondeat Superior

Respondeat superior doctrine does not cover the superiors of police officers who mistreat persons unless personal responsibility on the part of the superiors is shown. *Santa v. Johnston*, 7 T.T.R. 133.

### Conflict of Interest

Where District Public Defender's Representative agreed to handle, for a fee, a civil action brought by a private party, his services under the agreement were incompatible with the discharge of his responsibilities as Public Defender's Representative and in violation of code section providing that a government employee shall not engage in outside employment not compatible with the full and proper discharge of the responsibilities of his office or position or otherwise prohibited by law. (61 TTC § 11) *Armaluuk v. Mereb*, 7 T.T.R. 459.

Code section prohibiting a government employee from engaging in outside employment or other outside activity not compatible with the full and proper discharge of the responsibilities of his office or position or otherwise prohibited by law applies to persons on leave. (61 TTC § 11) *Armaluuk v. Mereb*, 7 T.T.R. 459.

## R

### RAPE.

#### Elements—Unlawful Intercourse

Unlawful sexual intercourse with a female not the wife of the accused, an element of rape, was established where the complainant and defendant both testified that they were not married and had had sexual intercourse. (11 TTC § 1302) *Ona v. Trust Territory*, 7 T.T.R. 206.

#### —Force

Force, an element of rape, need not be applied during the whole course of the commission of the offense before it can be found to have occurred. *Ona v. Trust Territory*, 7 T.T.R. 206.

With respect to proof of force as a necessary element of rape, the victim's resistance need only be such as to make the absence of consent and the actual resistance reasonably apparent, and must be apportioned to the outrage, and the amount of resistance required depends upon the surrounding circumstances, such as the relative strength of the parties, the age and condition of the victim, the uselessness of resistance as it would appear to the victim and the degree of force shown by the perpetrator, and the victim is not required to resist until her strength or consciousness is gone. (11 TTC § 1302) *Trust Territory v. Loney*, 7 T.T.R. 172.

## **RAPE**

Whether rapist threatened to kill, or to beat victim, was immaterial with respect to necessary element of force. (11 TTC § 1302) Trust Territory v. Loney, 7 T.T.R. 172.

Where defendant lured 12 year old girl into house, threatened to beat or kill her with a rock in his hand, physically restrained her when she tried to run and threw her to the floor and assaulted her, force was established. (11 TTC § 1302) Trust Territory v. Loney, 7 T.T.R. 172.

Where victim tried to run away from rapist but was caught and thrown to the floor, it was established that the intercourse was against her will. (11 TTC § 1302) Trust Territory v. Loney, 7 T.T.R. 172.

Sexual intercourse was against rape complainant's will and by force, two of the necessary elements of rape, where trial court believed complainant's testimony that she was thrown to the ground, her clothes ripped and she was forced, though she struggled, and testimony that she tearfully reported the incident to her mother. (11 TTC § 1302) Ona v. Trust Territory, 7 T.T.R. 206.

### **—Penetration**

If the other requisite elements of rape are established, any penetration, however slight, is sufficient to complete the crime. (11 TTC § 1302) Trust Territory v. Loney, 7 T.T.R. 172.

Testimony of rapist's victim that there was penetration, and medical officer's testimony that examination showed lacerations of the posterior wall of the vagina and a ruptured hymen established intercourse. (11 TTC § 1302) Trust Territory v. Loney, 7 T.T.R. 172.

### **—Emission**

Proof of emission is not necessary to establishing rape. (11 TTC § 1302) Trust Territory v. Loney, 7 T.T.R. 172.

## **REAL PROPERTY.**

### **Generally**

Landowner cannot be deprived of his land except by his consent, or as a result of his own negligence, or in some manner provided by law. Castro v. Attao, 7 T.T.R. 224.

### **Right To Lease**

Unless otherwise prohibited, the ownership of land presumes the right to control it and therefore to lease it. Madrainglai v. Emesiochel, 7 T.T.R. 13.

### **Right To Hold Interest**

Disqualification from holding title to land can be effected only by the government. Madrainglai v. Emesiochel, 7 T.T.R. 13.

### **Uncontested Claims**

The government cannot acquire title to individual land by simply claim-

## REAL PROPERTY

ing it by public notice and considering the land its own if the owner does not contest the government. *Edeyaoch v. Timarong*, 7 T.T.R. 54.

### Transfers Generally

After legal title has passed from government to an entryman on public grounds, he may alienate the land as he sees fit. *Iisari v. Taroliman*, 7 T.T.R. 391.

### —Statute of Frauds

Trust Territory law does not require a transfer of land to be in writing, and there is no statute of frauds. *Iisari v. Taroliman*, 7 T.T.R. 71.

### —Oral Agreements

Verbal transfer of land is valid as there is no statute requiring a written instrument to transfer land in Trust Territory. *Iisari v. Taroliman*, 7 T.T.R. 391.

Where defendant received a homestead permit in 1958, plaintiff moved onto property sometime thereafter, defendant received certificate of compliance in 1961 and government deed in 1962, defendant conceded that he received \$250 from plaintiff and gave plaintiff the homestead permit, plaintiff testified that she entered into an agreement for sale of house and land after she paid defendant \$250 and that defendant gave her the deed he received from government, at time of delivery of deed defendant said words to effect that land was now plaintiff's, and defendant admitted that he did not ask plaintiff to leave premises until this litigation was initiated, there was more than sufficient evidence upon which trial court could base its finding of an oral sale of land to plaintiff. (6 TTC § 355(2)) *Iisari v. Taroliman*, 7 T.T.R. 391.

### —Particular Cases

Where defendant obtained a homestead permit in 1958, and received certificate of compliance in 1961 and government deed in 1962, and delivered deed to plaintiff who paid defendant \$250 for land, conveyance to plaintiff was not one which transferred any rights in or to the homestead permit but was a conveyance of a legal title which the government had previously given to defendant, who could alienate the land as he saw fit. *Iisari v. Taroliman*, 7 T.T.R. 391.

### Sales—Duress

Where government, after asking trustee of land beneficiaries received from decedent if he would exchange the land for government land, waited three years before the exchange was effected, and none of the beneficiaries raised an objection during that time, and no evidence of duress was put forth, it would not be found, at beneficiaries' action seeking a return to them of the land they had exchanged, that the government had applied pressure to the trustee. *Cepeda Crisostimo v. Trust Territory*, 7 T.T.R. 34.

## REAL PROPERTY

### Deeds—Government Deeds

A government deed is conclusive upon the courts and the government when collaterally attacked. *Ilisari v. Taroliman*, 7 T.T.R. 71.

If government did not own land it could not pass title to another by a homestead permit and subsequent quitclaim deed. *Castro v. Attao*, 7 T.T.R. 224.

### Lost Grant

Court will not re-establish title in the heirs of one whose ownership of land was wrongfully usurped by the Japanese during their administration by their destruction of a document showing ownership. *Sandbargen v. Gushi*, 7 T.T.R. 471.

### Quiet Title—Burden of Proof

Burden of proof is upon the plaintiff in a quiet title action and he can recover only by showing that title is in himself, not by showing a weakness in defendant's title. *Sandbargen v. Gushi*, 7 T.T.R. 471.

### —Particular Cases

Where plaintiff offered no documentary evidence of title, there was no record of sale of the land to plaintiff or his alleged predecessor in title, and testimony regarding the history of the property and its possession was not in plaintiff's favor, title in plaintiff was not established. *Sandbargen v. Gushi*, 7 T.T.R. 471.

### Adjudication of Ownership

Where there was no evidence that landowner sold his land to the chief of his municipality or to the Japanese Government and no evidence that the chief owned the land or sold it to the Japanese Government, and the chief did not have the right to sell individual land not belonging to him, Trust Territory's claim it owned the land because of sale to Japanese Government and statute making all lands owned by the Japanese Government public property could not be sustained. (67 TTC § 1) *Edeyaoch v. Timarong*, 7 T.T.R. 54.

### —Notice and Hearing

Land Title Determination hearings must provide a measure of due process to the landowner with adequate and reasonable notice of the right to file claims and be heard, and to also be informed of the fact that his land, sufficiently described, is being claimed. *Edeyaoch v. Timarong*, 7 T.T.R. 54.

### —Evidence

The Grundbuch, published in 1913 during the German administration, is strong, although not conclusive, evidence of ownership of land. *Sandbargen v. Gushi*, 7 T.T.R. 471.

### Foreclosure—Supporting Evidence

In foreclosure case, review of documents signed by mortgagor, and of

## RECEIVERSHIP

transcript of testimony, was more than sufficient to allow finding that mortgagor knew what she had signed and in fact knew that if loan was not paid, she would lose her land. *Trust Territory v. Lopez*, 7 T.T.R. 449.

### Eviction—Wrongful Eviction

Damages claim by winner of wrongful eviction suit, for full value of items still on the premises, must be denied. *Ngirmekur v. Municipality of Airai*, 7 T.T.R. 477.

That evidence of damages to person found to have been wrongfully evicted was not exact or definitive did not mean that list of damages would be disregarded as being purely speculative, where plaintiff and his effects had been forcibly evicted, and plaintiff had returned for three days and was afraid to stay on the property any longer, for it was defendants' actions which caused the problem requiring plaintiff to prove damages within the standards set by the law. *Ngirmekur v. Municipality of Airai*, 7 T.T.R. 477.

Punitive damages, an enhancement of compensatory damages because of wanton, reckless, malicious and oppressive character of the acts complained of, would be awarded plaintiff where, while he was off the land, municipality evicted him, threw his personal effects outside, and nailed up the buildings, without having the right to do so and without following either law or custom in doing so. *Ngirmekur v. Municipality of Airai*, 7 T.T.R. 477.

Where municipality obtained court judgment that clan to which plaintiff belonged did not own the land upon which plaintiff lived, then formed a vigilante committee and proceeded to evict plaintiff without legal process and not in accordance with custom, and the court had not determined that municipality owned the land, only that plaintiff's clan did not, municipality and those who acted in its name were liable for plaintiff's damages. *Ngirmekur v. Municipality of Airai*, 7 T.T.R. 477.

### Damages—Right to

Person awarded money for damage to or use of property occurring prior to 1951, who admitted he had no rights in the property in 1951, and who gained no rights in the property until 1956, was not entitled to share in the award. 50 U.S.C. App. §§ 2020-2020b. *Konou v. Jitiam*, 7 T.T.R. 630.

## RECEIVERSHIP.

### Power To Appoint Receiver

Generally, an equity court may appoint a receiver only when the appointment is ancillary to a pending action, but where a corporation expressly consents to the appointment or admits its insolvency, the receivership need not be ancillary to a main action. *In re Transpacific Lines, Inc.*, 7 T.T.R. 179.

### —Notice

Appointment of a receiver without notice is entirely a matter of judicial discretion and will not be disturbed on appeal in absence of a clear abuse of that discretion. *In re Transpacific Lines, Inc.*, 7 T.T.R. 547.

## RECEIVERSHIP

Appointment of a receiver without notice may be granted upon the request of the financially troubled party in possession of the assets if such party has a definite interest in property which is in grave and immediate danger of dissipation and it is only through the appointment that immediate or substantial injury can be prevented and complete justice done. In re Transpacific Lines, Inc., 7 T.T.R. 547.

It is error for a court to appoint a receiver without notice and fix no time for a prompt notice and hearing. In re Transpacific Lines, Inc., 7 T.T.R. 547.

While an ex parte appointment of a receiver without notice may be erroneous under a given set of circumstances it is not necessarily void and the error may be cured if followed closely by a hearing on the merits. In re Transpacific Lines, Inc., 7 T.T.R. 547.

Where corporation was granted appointment of receiver upon its own request, without notice to appellants, persons interested in corporation's assets, and appellants were given an extensive hearing upon their motion to vacate the appointment, appellants were not deprived of due process. In re Transpacific Lines, Inc., 7 T.T.R. 547.

### —Request of Financially Troubled Party

Jurisdiction to appoint a receiver may not be conferred by consent of the party whose assets are sought to be conserved. In re Transpacific Lines, Inc., 7 T.T.R. 547.

Though receivership is not generally granted solely upon the request of the financially troubled party, where those controlling and running the business are no longer capable of preserving or protecting the corporate assets, which is the purpose of a receivership, grant of receivership upon their request may be appropriate. In re Transpacific Lines, Inc., 7 T.T.R. 547.

Ex parte appointment of a receiver at request of financially troubled corporation, without notice to appellants, who were creditors, holders of default, shareholders, plaintiffs in a shareholders' derivative action, and certain members of management and employees, was not an abuse of discretion where necessary requirement that there be danger of immediate loss of assets which could only be remedied by the appointment was provided by facts that corporation could not pay its debts and was insolvent for all practical purposes, a quorum for a meeting of the executive committee or the board of directors was unattainable and the corporation thus could not function, and substantial goods would be lost if corporation could not function. In re Transpacific Lines, Inc., 7 T.T.R. 547.

### —Main Action or Desired Relief Necessary

With certain exceptions, a receivership must be ancillary to some other main relief sought; there is no such thing as a pure receivership action. In re Transpacific Lines, Inc., 7 T.T.R. 547.

## SEARCH AND SEIZURE

### Appeals—Refusal To Vacate Appointment

Generally, in absence of statutory authority, an order refusing to discharge, or vacate the appointment of, a receiver is not appealable, even in jurisdictions where an order appointing a receiver is appealable; but an appellant not given an opportunity to be heard prior to the original appointment may make such an appeal, for when an appointment is *ex parte*, the order confirming it is treated as an order appointing the receiver and it stands as if no other order had preceded it. *In re Transpacific Lines, Inc.*, 7 T.T.R. 547.

### Bond

Receiver for corporation operating under government franchise did not have to post bond where government gave the receiver written authority and supported his actions. *In re Transpacific Lines, Inc.*, 7 T.T.R. 179.

### Priority of Claims—Receivership Expenses

The expenses of an operating receivership constitute a first charge upon current income and under certain circumstances upon the corpus of the property in receivership. *In re Transpacific Lines, Inc.*, 7 T.T.R. 179.

Trust Territory government occupied a position of preference as to funds it advanced to insolvent corporation under receivership so that the corporation could marshal its assets and finish its business. *In re Transpacific Lines, Inc.*, 7 T.T.R. 179.

## S

## SEARCH AND SEIZURE.

### Consent—Joint User

Joint occupant of premises can consent to search. *Trust Territory v. Techur*, 7 T.T.R. 412.

### Evidence—Exclusionary Rule

Evidence obtained as result of an illegally obtained statement of defendant cannot be used against him unless it has become so attenuated as to dissipate taint; and where sole basis of police officer's acquisition of murder weapon is an illegally obtained statement, murder weapon is not admissible in evidence. *Trust Territory v. Techur*, 7 T.T.R. 412.

### —Actual Prejudice

Improperly admitted evidence is not ground for reversal unless there is actual prejudice to defendant; and where defendant's guilt is more than adequately established by testimony of other witnesses, error in admitting evidence illegally obtained is harmless. *Trust Territory v. Techur*, 7 T.T.R. 412.

## STATUTES

### STATUTES.

#### Construction

Trust Territory Bill of Rights is to be construed and interpreted as in the United States Courts. *Whipps v. Morris*, 7 T.T.R. 269.

#### —Legislative Intent

Judicial construction of a statute should be in keeping with the natural and probable legislative purpose. In the *Matter of Airam*, 7 T.T.R. 426.

#### —Construction With Other Laws

Where a statute contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different intention existed. (39 TTC §§ 51-53) In the *Matter of Airam*, 7 T.T.R. 426.

#### —Implied Repeal

Allegedly inconsistent Trust Territory Code sections relating to sovereign immunity would not, on the ground the third section was enacted after the first two sections, be construed so as to read those parts of the first two sections which were allegedly inconsistent with the third as being repealed by the third. (6 TTC §§ 251-253) *Antonio v. Trust Territory*, 7 T.T.R. 123.

## T

### TAXATION.

#### Generally

The obligation to pay taxes arises only from legislation and the interpretation of that legislation is guided by the rule that words are to be given their common and ordinary meaning. *Tenorio v. Trust Territory*, 7 T.T.R. 592.

#### Gross Revenue Tax—Construction

Term "for pecuniary profit" in statute defining "business" subject to gross revenue tax means for the profit of stockholders or members, and is a general term, not a word of art, and includes any entity or undertaking which makes money. (77 TTC § 251(8)) *Ponape Fed. of Coop. Assns. v. Peterson*, 7 T.T.R. 386.

A cooperative, by its very nature, is a "business" carried on for pecuniary profit for economic benefit, subject to gross revenue tax. (77 TTC § 251(8)) *Ponape Fed. of Coop. Assns. v. Peterson*, 7 T.T.R. 386.

Gross revenue tax is tax on gross revenue, not on net profit, and when cooperative sells produce, it is sold by the cooperative and money is received by cooperative and at this point gross revenue is attributable and taxable to cooperative, not to its members. (77 TTC § 258) *Ponape Fed. of Coop. Assns. v. Peterson*, 7 T.T.R. 386.

Statute defining "business" for gross revenue tax purposes expressly intends to tax any entity which is the seller, resulting in gross revenue,

## TAXATION

so long as it is not a casual sale. (77 TTC § 251(8)) Ponape Fed. of Coop. Assns. v. Peterson, 7 T.T.R. 386.

In interpreting gross revenue tax statute, the primary rule was to ascertain and declare the intent of the Congress of Micronesia and carry such intent into effect in the fullest degree. (77 TTC § 251 et seq.) Ponape Fed. of Coop. Assns. v. Peterson, 7 T.T.R. 465.

Where gross revenue tax statute did not indicate an exemption for cooperative associations, argument that they were impliedly excluded by the Congress of Micronesia was to no avail. (77 TTC § 251 et seq.) Ponape Fed. of Coop. Assns. v. Peterson, 7 T.T.R. 465.

Letter from Director of Finance to taxpayer interpreting term "gross revenue" as used in tax law was not an unlawful usurpation of legislative authority, but rather, an administrative interpretation of the law, and construction of the law ultimately rested with the court. (77 TTC § 251(7)) Tenorio v. Trust Territory, 7 T.T.R. 592.

Statutes defining "business" and "gross revenue", and imposing a tax upon gross revenue, are not ambiguous, and it was thus the court's duty to apply their explicit provisions. (77 TTC §§ 251(7), (8), 258) Ponape Fed. of Coop. Assns. v. Peterson, 7 T.T.R. 465.

### —Applicability

Under gross revenue tax statute's definition of "business" as any profession, trade, manufacture or other undertaking carried on for pecuniary profit, including all activities carried on for economic benefit either direct or indirect, cooperative associations which made sales and rendered services for valuable consideration to members and nonmembers, and made patronage refunds and granted dividends to its members, was a "business". (77 TTC § 251(8)) Ponape Fed. of Coop. Assns. v. Peterson, 7 T.T.R. 465.

### —Exemptions

Gross revenue tax is on entire operative income, not on profits, gross profits or net income; thus, argument that non-profit associations were not subject to the tax was to no avail. (77 TTC § 258) Ponape Fed. of Coop. Assns. v. Peterson, 7 T.T.R. 465.

### —Gross Receipts

"Gross receipts" does not include receipts held for the account of another. Tenorio v. Trust Territory, 7 T.T.R. 592.

"Gross receipts" as used in gross receipts tax law does not mean the total amount of money put into a slot machine, but rather, the money taken out of the machine by the owner after opening the machine; the tax may not be levied upon the total amount inserted in the machine, and the money is not "received" until the machine is opened and that portion of the money inserted which has not been paid out by the machine as winnings is taken out of the machine by the owner. (77 TTC §§ 251(7), 258) Tenorio v. Trust Territory, 7 T.T.R. 592.

## TAXATION

Where slot machine owner split with proprietor of the establishment where the machine was located the money inserted in the machine and not paid out as winnings, the proprietor's share was rent and not an expense allowable as a deduction from gross receipts tax on the gross receipts from the machine. (77 TTC §§ 251(7), 258) *Tenorio v. Trust Territory*, 7 T.T.R. 592.

Where, after taking out of slot machines the money that was not paid out by the machines, the owner of the machines used part of that money for jackpot payoffs, that part of the money was not gross receipts includable in gross receipts tax. (77 TTC §§ 251(7), 258) *Tenorio v. Trust Territory*, 7 T.T.R. 592.

## TORTS.

### Negligence—Elements

Negligence is the doing of something which a reasonably prudent man would not do, or the failure to do something which a reasonably prudent man would do, guided by those considerations which ordinarily regulate human affairs. *Kihleng v. Lucios*, 7 T.T.R. 168.

Before liability could be imposed upon person who allegedly damaged plaintiff's truck while driving it, plaintiff had to prove negligence on defendant's part, that such negligence was the proximate cause of the damage, and the amount of damages plaintiff was entitled to recover. *Kihleng v. Lucios*, 7 T.T.R. 168.

### —Proximate Cause

Proximate cause is the active and efficient cause that sets in motion a train of events which bring about a result without the intervention of any force started and working actively from a new and independent source. *Kihleng v. Lucios*, 7 T.T.R. 168.

Attack by deranged patient on government hospital employee who sued the government was not an intervening act. *Antonio v. Trust Territory*, 7 T.T.R. 123.

### —Evidentiary Standards

Burden of proof in negligence action was preponderance of the evidence, that is, evidence which, when fairly considered, produced the stronger impression and had the greater weight and was more convincing as to its truth when weighed against the opposing evidence. *Kihleng v. Lucios*, 7 T.T.R. 168.

Plaintiff seeking to recover in personal injury negligence action had to prove by a preponderance of the evidence that defendant was negligent, that the negligence proximately caused accident, that the injuries proximately resulted therefrom, and the amount of damages sustained. *Songer v. Jack*, 7 T.T.R. 289.

### —Contributory Negligence

Defendant pleading affirmative defense of contributory negligence must prove by a preponderance of the evidence that plaintiff was negligent and

## TORTS

that such negligence proximately caused or contributed to accident and injuries sustained. *Songer v. Jack*, 7 T.T.R. 289.

### Particular Cases

Where defendant drove plaintiff's truck at high speed and in an erratic and reckless manner and while intoxicated, he did not act as a reasonably prudent man and was negligent. *Kihleng v. Lucios*, 7 T.T.R. 168.

### Damages—Assessing Damages

Generally, bills for medical care required by injuries caused by another's negligence do not alone suffice to establish the reasonableness of the bills and there must be some other evidence of reasonableness of the bills before they may be considered in assessing damages; but the rule will not always be applied where there is some showing of the nature or extent of the injury or of the medical services rendered. *Songer v. Jack*, 7 T.T.R. 289.

### Before and After Value

Proper measure of damages where defendant negligently damaged plaintiff's truck was the difference between the fair market value immediately before and after the accident where the cost of repair exceeds the value of the truck before the accident. *Kihleng v. Lucios*, 7 T.T.R. 168. Plaintiff seeking compensation for negligent damage to her property must prove by a preponderance of the evidence either the difference in the fair market value of the property immediately before and immediately after the accident, or the cost of repairing the property so as to restore its fair market value to that which it was immediately before the accident, at a cost less than the difference in the before and after value. *Songer v. Jack*, 7 T.T.R. 289.

### Compensatory Damages

Compensatory damages are those which satisfy or recompense one for loss or injury sustained, and thus are a form of putting one in the same financial position he was in prior to a tort. *Ngirmekur v. Municipality of Airai*, 7 T.T.R. 477.

### Loss of Consortium

Husband of plaintiff negligently injured by defendant was entitled to damages for loss of companionship, comfort, affection, society, solace, moral support, enjoyment of sexual relations, and physical assistance in the operation and maintenance of the home. *Songer v. Jack*, 7 T.T.R. 289.

### Loss of Earnings

In personal injury negligence action, loss of past and future earnings could not be awarded where plaintiff was an unpaid missionary, there was no credible evidence that any employment opportunities were offered, and the evidence as to earnings and earning capacity was so vague and inconclusive that any award would necessarily be based on pure conjecture. *Songer v. Jack*, 7 T.T.R. 289.

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### **—Pain and Suffering**

In awarding damages for pain, discomfort, fears, anxiety and other mental and emotional distress of which injuries caused by negligence are a proximate cause, court must exercise calm and reasonable judgment and fix damages which are just and reasonable in the light of the evidence; there is no definite standard prescribed by law. *Songer v. Jack*, 7 T.T.R. 289.

### **—Particular Cases**

Motorcyclist injured when truck driver negligently turned left at intersection into her path as she entered intersection was entitled to reasonable damages for medical care, and supplies, loss of earnings and earning capacity, damage to the motorcycle, and pain discomfort, fears, anxiety and other mental and emotional distress, past and future, proximately caused by the injuries. *Songer v. Jack*, 7 T.T.R. 289.

## **TRIAL.**

### **Instructions—Special Judges**

There is no requirement in statutes of Trust Territory or rules of High Court requiring presiding judge, in a trial without a jury, to instruct special judges concerning the law, as is required in a trial by jury; and procedure whereby presiding judge informs special judges of the law is discretionary. (5 TTC § 204(2)) *Trust Territory v. Techur*, 7 T.T.R. 412.

### **Argument of Counsel—Rebuttal Argument**

Government did not obtain an "unequal privilege" when it was allowed a rebuttal argument where defendant in criminal proceeding did not demonstrate how he was prejudiced. (Rule Crim. Procedure, Rule 13) *Trust Territory v. Minor*, 7 T.T.R. 398.

### **Triable Issues—Non-Parties**

In action by certain persons to determine whether they should share in proceeds awarded by Micronesian Claims Commission for the benefit of decedent's heirs, status of decedent's wife could not be determined where she knew of the action but was not a party to it and had not made any claim to the proceeds. *Coleman v. Palacios*, 7 T.T.R. 583.

## **TRUSTEESHIP.**

### **Trusteeship Agreement—Generally**

Trusteeship agreement does not create a trust capable of enforcement through the courts. *Trust Territory v. Lopez*, 7 T.T.R. 449.

### **—Particular Cases**

In foreclosure case, where transaction involving land in question was binding on appellant-mortgagor, and the legal proceedings provided appellant and government-appellee with a full hearing and judgment of

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court was in accordance with law and foreclosure was pursuant to terms of the mortgage, there was no deprivation of property without due process of law nor was there a taking of private property for public use without just compensation, and resort to trusteeship agreement which required the government "to protect the inhabitants against the loss of their land" was not required. *Trust Territory v. Lopez*, 7 T.T.R. 449.

The Economic Development Loan Fund, a special revolving account funded by grants from United States Congress to promote sound economic development, providing funds at low interest rates to Trust Territory citizens not able, in most cases, to obtain funds from regular commercial banks, is not a scheme by the government to make loans so it can foreclose on land given as security and government would be remiss and derelict in its duty to other Trust Territory citizens waiting for funds to become available if it did not make a bona fide effort to recover money paid out even if it meant foreclosing on land given as security; and trusteeship agreement does not create a trust of the fund capable of enforcement. *Trust Territory v. Lopez*, 7 T.T.R. 449.

### Implied Trusts—Particular Cases

Where claims commission awarded money to man and woman, both signed releases and endorsed the checks issued for the award, they had been awarded the money as representatives of the heirs of a certain person and the heirs sued for the money, the man defaulted, and it was found that the woman disclaimed any interest in the property or the money and had not accepted any responsibility for the money and did not know the purpose of the checks or who was entitled to the money and allowed the man to have the money, the woman was not liable as a trustee or fiduciary. *Aguon v. Miguel*, 7 T.T.R. 628.

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### Applicable Law—United States Decisions

The principles and concepts embodied in the United States cases establishing and upholding the one man, one vote rule apply to the Trust Territory. *Bedor v. Remengesau*, 7 T.T.R. 317.

### —Interior Secretarial Orders

The legislative power of the Congress of Micronesia extends to all rightful subjects of legislation, but no legislation may be inconsistent with the Department of the Interior Secretarial Orders or the Trust Territory Bill of Rights. *Bedor v. Remengesau*, 7 T.T.R. 317.

### Public Policy—Establishment

Constant practice by government officials is not in and of itself sufficient to form a public policy against purchase of stock in a Trust Territory corporation by non-American aliens. *South Seas Corp. v. Sablan Construction Co.*, 7 T.T.R. 636.

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### —Acts Against

An act or activity against public policy is one which tends to be injurious to the public or against the public good. *South Seas Corp. v. Sablan Construction Co.*, 7 T.T.R. 636.

### Suits Against—Sovereign Immunity

Complaint against the government, for negligent supervision of its agents, resulting in injury to plaintiff through a certain manner of handcuffing him, was based on assault and battery and thus barred by sovereign immunity statute barring suits arising out of assault and battery. (6 TTC § 252(5)) *Santa v. Johnston*, 7 T.T.R. 133.

Under statute subjecting territorial government to liability for loss of property under circumstances where it would be liable were it a private person, government was not liable where its firemen were charged with failure to act and with negligent maintenance of fire equipment such that it could not be used. (6 TTC §§ 251–253) *Ikosia v. Trust Territory*, 7 T.T.R. 274.

### Contracts

Member of joint venture which was an unsuccessful bidder for duty-free airport concession granted by government had no standing to challenge decision to award the concession to the successful bidder. *J. C. Tenorio Enterprises v. Johnston*, 7 T.T.R. 152.

### —Termination

Trust Territory Government could terminate franchise it had granted for sea transportation in the islands where it had the power to contract for the maintenance and operation of surface vessels in the islands. *In re Transpacific Lines, Inc.*, 7 T.T.R. 179.

### Citizenship

Person adopted by Marshallese in the 1930's, who thereby became a citizen of the Marshall Islands under Marshall Islands custom, became a Trust Territory citizen upon the advent of the Trust Territory Government, and statute ruling him out as a citizen would not be applied to take away citizenship he had established before the enactment of the statute. (53 TTC § 1) *Milne v. Debrum*, 7 T.T.R. 148.

### Administering Authority—Vital Products and Services

Where company granted exclusive sea transportation contract and franchise for the Trust Territory by the government had deteriorated to the point where shipping and passenger service were practically nonexistent and its financial position was extremely poor, the High Commissioner had the right and the duty to take action to preserve adequate shipping and passenger service for the territory. *In re Transpacific Lines, Inc.*, 7 T.T.R. 179.

Where United States, as administering authority for the Trust Territory, through its Secretary of the Interior, reserved for the High Commis-

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sioner the power and authority to contract for the maintenance and operation of surface vessels in the territory, and company granted exclusive contract and franchise for sea transportation in the territory had deteriorated to the point where services were almost nonexistent and its financial position was very poor, High Commissioner had the power and authority to place the company in administrative receivership. *In re Transpacific Lines, Inc.*, 7 T.T.R. 179.

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### UNITED STATES.

#### Congress—Powers

The United States Congress can establish the statutory time in which to file a claim. *Dingelius v. Singeo*, 7 T.T.R. 304.

### USURY.

#### Money Had and Received—Recovery

Common law action for money had and received is available in an appropriate case to recover usurious interest paid; however, availability of this common law remedy exists only if it is declared illegal to collect excess interest or statute provides that contract to collect excess interest above stated rate is void in whole or in part. *Kingzio v. Bank of Hawaii*, 7 T.T.R. 343.

Where statute setting legal interest limit does not impose criminal sanctions or declare contract above stated rate void, but merely prohibits courts from lending their aid to enforcement of contracts for more than stated rate, common law right to maintain action to recover interest in excess of stated rate does not exist. (33 TTC § 251) *Kingzio v. Bank of Hawaii*, 7 T.T.R. 343.

Trial court erred in granting borrowers summary judgment to recover interest paid in excess of 1% per month on loans exceeding \$300 where lending bank used "Block/Add on" method of computation and charged rates of interest varying from 6% to 12%, depending on type of loan and when loan was made, and where there were many instances where actual rate of interest specified in original loan contract was higher than 1% per month on balance due but none of loans in question exceeded usury rate of 2% per month on balance due. (33 TTC §§ 251, 253) *Kingzio v. Bank of Hawaii*, 7 T.T.R. 343.

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### WATERS.

#### Surface Waters—Natural Servitude

There is a natural servitude of natural drainage between adjoining lands, so that lower owner must accept surface water which naturally drains onto his land. *Sablan v. Dillingham Corp.*, 7 T.T.R. 368.

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### **—Increasing Servitude**

There is no right to collect surface water into artificial channels and discharge it onto land of an adjoining owner to latter's damage. Sablan v. Dillingham Corp., 7 T.T.R. 368.

## **WILLS.**

### **Invalid Wills—Ratification**

Where purported will was declared invalid by court, the decedent was intestate and ratification of the division made by the alleged will, by the highest traditional chief of Uh Municipality of Ponape District, who was the magistrate, was of no effect. Welter v. Obet, 7 T.T.R. 611.

## **WITNESSES.**

### **Refreshment of Recollection—Items Not Admitted in Evidence**

It was proper for officer who had arrested defendant in criminal proceeding to refresh his recollection regarding the time of arrest by the use of proposed exhibit not admitted into evidence. In re Santos, 7 T.T.R. 604.