

JUDGMENT

The judgment of the District Court for the Palau District, entered November 1, 1960, in its Civil Action No. 189 is affirmed without costs.

NGIRATKEL ETPISON, Appellant

v.

RUDIMCH INDALECIO, Appellee

Civil Action No. 203

Trial Division of the High Court

Palau District

April 6, 1961

Appeal from judgment in Palau District Court for damages arising out of automobile accident. Defendant claims accident was caused by negligence of plaintiff's driver. The Trial Division of the High Court, Chief Justice E. P. Furber, held that doctrine of last clear chance applies where defendant's driver had reasonable opportunity to avoid accident in spite of previous negligence of plaintiff's driver.

Affirmed.

1. Torts—Negligence

Where suit arising out of automobile accident is not covered by local custom, it is governed by rules of common law expressed in restatements of American Law Institute to extent these rules are so expressed. (T.T.C., Sec. 22)

2. Torts—Negligence—Last Clear Chance

Where party's driver had reasonable opportunity to avoid automobile accident in spite of previous negligence of other party involved in accident, doctrine of last clear chance is applicable.

3. Torts—Negligence—Last Clear Chance

Doctrine of last clear chance constitutes exception to general rule that if automobile accident is caused partly by negligence of both parties, neither can recover.

4. Torts—Negligence

Fact that one party suffers more damage than the other has no bearing on question of liability for automobile accident.

ETPISON v. INDALECIO

<i>Assessor:</i>	JUDGE PABLO RINGANG
<i>Interpreter:</i>	SYLVESTER F. ALONZ
<i>Counsel for Appellant:</i>	BAULES
<i>Counsel for Appellee:</i>	JONAS W. OLKERIIL

FURBER, *Chief Justice*

This is an appeal from a judgment for damages arising out of an automobile accident.

Counsel for the appellant, who was one of the defendants in the District Court, claimed the evidence showed that the accident was due to the negligence of the plaintiff's driver and, furthermore, that the defendant had received more damage in the accident than the plaintiff. Counsel for the appellee claimed the evidence showed the accident was due to the negligence of the appellant's driver who was a co-defendant in the District Court.

OPINION

[1] This case is one involving new elements introduced into the Palau Islands by outsiders and not covered by local custom. So far as it is not covered by the written law of the Trust Territory, it is, therefore, in accordance with Section 22 of the Trust Territory Code, governed by the rules of the common law as expressed in the restatements of the law approved by the American Law Institute to the extent that these rules are so expressed.

The matter of liability for negligence is covered by the Restatement of the Law of Torts, Volume II, a copy of which will be found in the Palau District law library.

[2, 3] There was certainly some evidence of negligence on the part of each of the drivers involved in this accident. Taking the evidence as a whole, however, the court feels that the appellant's driver had reasonable opportunity to avoid, and should have avoided the accident in spite of any previous negligence of the plaintiff in get-

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

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

JUDGMENT

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

NGIRAMECHELBANG NGESKESUK, Appellant

v.

DIRRAIWESEI MOLEUL, Appellee

Civil Action No. 198

Trial Division of the High Court

Palau District

April 6, 1961

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

Reversed.

1. Palau Custom—Marriage

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

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

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