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TOPICS APPEARING IN THIS DIGEST

T

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ADMINISTRATIVE LAW.

A

ADMINISTRATIVE LAW.

Generally

Administrative policy letter announcing Trust Territory Government's willingness to return land taken by Japanese Government in cases where fair compensation was not received by former owner does not purport to be enactment of law. (Policy Letter P-1, December 29, 1947) *Kengsiro v. Trust Territory*, 2 T.T.R. 76.

Land Title Determination

District Land Title Officer, when making determination of ownership, is acting in quasi-judicial capacity. *Theo v. Trust Territory*, 2 T.T.R. 149; *Sechelong v. Trust Territory*, 2 T.T.R. 526.

—Parties

Proceedings before District Land Title Officer for determination of ownership are only quasi in rem. *Ngerdelolek Village v. Ngerchol Village*, 2 T.T.R. 398.

Determinations of ownership by District Land Title Officer are not intended to determine private ownership good against all the world. (Office of Land Management Regulation No. 1) *Ngerdelolek Village v. Ngerchol Village*, 2 T.T.R. 398.

Determinations of ownership made in proceedings before District Land Title Officer in favor of private parties are only binding upon those claiming under or through such parties or properly represented by them. *Ngerdelolek Village v. Ngerchol Village*, 2 T.T.R. 398.

Determination of ownership by District Land Title Officer determines matters only between government and its agencies and representatives on one side and those filing claims against it on the other. (Office of Land Management Regulation No. 1) *Ngerdelolek Village v. Ngerchol Village*, 2 T.T.R. 398.

—Hearing Officer

If there is room for reasonable difference of opinion in regard to making determination of ownership, either as to facts or applicable law, parties are entitled to District Land Title Officer's own opinion. *Theo v. Trust Territory*, 2 T.T.R. 149.

District Land Title Officer, when making determination of ownership, is expected to exercise his own honest best judgment in determining facts from evidence and applying law thereto. *Theo v. Trust Territory*, 2 T.T.R. 149.

In making determination of ownership, District Land Title Officer's decisions cannot properly be dictated or made for him by his administrative superiors. *Theo v. Trust Territory*, 2 T.T.R. 149.

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Where District Land Title Officer's decision in making determination of ownership is shown to have been dictated or made for him by his administrative superiors, new trial or reversal will be granted on appeal, unless it is clear that appellant is not prejudiced thereby. *Theo v. Trust Territory*, 2 T.T.R. 149.

Where hearing on claim is made by one District Land Title Officer and decision is made by his successor, succeeding Title Officer should at least give parties opportunity for argument before him before making decision. *Sechelong v. Trust Territory*, 2 T.T.R. 526.

Where one District Land Title Officer hears claim in connection with determination of land ownership and his successor makes decision, defect is cured by granting of trial de novo in High Court. *Sechelong v. Trust Territory*, 2 T.T.R. 526.

Where District Land Title Officer hears claim, but final decision is made by his successor without further hearing, new trial on claim will be granted. *Sechelong v. Trust Territory*, 2 T.T.R. 526.

Where subsequent to Land Title Officer's determination of ownership trial de novo is granted in High Court subject to evidence in Title Officer's file, appellant has suffered no prejudice of which he can justly complain merely because determination was made by successor of Title Officer who held hearing on claim. *Sechelong v. Trust Territory*, 2 T.T.R. 526.

Where applicable regulation provides specifically for public hearings in connection with determination of land ownership and that after hearing all evidence and making his findings District Land Title Officer shall publish his determination, same Title Officer who decides claim should hear evidence. (Office of Land Management Regulation No. 1) *Sechelong v. Trust Territory*, 2 T.T.R. 526.

—Evidence

Official who exercises quasi-judicial functions cannot, by merely dropping essential document from his record, defeat rights of party. *Torual v. Trust Territory*, 2 T.T.R. 267.

Where land sketch attached to "Determination of Ownership and Release" from Land Title Officer, is ambiguous, it is of no legal force or effect as against party. *Catholic Mission v. Trust Territory*, 2 T.T.R. 251.

—Notice of Determination

There is no obligation upon District Land Title Officer to either notify unsuccessful claimant of determination made or to send notice to municipality where land lies. (Office of Land Management Regulation No. 1) *Ngikleb v. Trust Territory*, 2 T.T.R. 139.

In absence of express understanding to give further notice, failure of District Land Title Officer to give more than minimum notice required by applicable regulation is not adequate ground for extending time of appeal provided for. (Office of Land Management Regulation No. 1) *Ngikleb v. Trust Territory*, 2 T.T.R. 139.

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Where District Land Title Officer promises to notify claimant of his determination or instructs claimant to wait for such notice, and claimant or his representative had no actual notice of determination until one year after date it was filed, claimant's right of appeal is not cut off by time limited in applicable regulation. (Office of Land Management Regulation No. 1) *Ngodrii v. Trust Territory*, 2 T.T.R. 142.

Where District Land Title Officer fails to give claimant or his representative notice of determination of land ownership, after promising to do so, until after time for appeal has expired, failure to give such notice in accordance with promise constitutes default of public official. *Ngodrii v. Trust Territory*, 2 T.T.R. 142.

—Publication

In making determination of ownership, District Land Title Officer exhausts his authority to determine matter in question when he has signed determination and published it by delivery to person determined to be owner, or to his representative. (Office of Land Management Regulation No. 1) *Torual v. Trust Territory*, 2 T.T.R. 267.

In making determination of ownership, District Land Title Officer cannot hold owner's rights subject to his control merely by failing to complete publication. *Torual v. Trust Territory*, 2 T.T.R. 267.

District Land Title Officer's delay in completing publication of determination of ownership postpones time for appeal until he is compelled in appropriate proceeding to file required copy of his determination with Clerk of Courts or does so voluntarily. *Torual v. Trust Territory*, 2 T.T.R. 267.

District Land Title Officer has implied authority to correct clerical errors after he has published determination of ownership. *Torual v. Trust Territory*, 2 T.T.R. 267.

District Land Title Officer has no authority to recall determination in favor of claimant, and then without notice to claimant and opportunity to be heard, take new evidence and make new determination adverse to claimant. (Office of Land Management Regulation No. 1) *Torual v. Trust Territory*, 2 T.T.R. 267.

—Release

Where party gives release in connection with determination of ownership and release of land to him, and District Land Title Officer thereafter makes second determination adverse to party, release is no bar to relief sought in certiorari proceedings to have second determination set aside. *Torual v. Trust Territory*, 2 T.T.R. 267.

—Irregularities

By requesting determination on merits of land dispute and subjecting themselves to court's jurisdiction, parties waive any objections they might have to irregularities in proceedings before District Land Title Officer. *Catholic Mission v. Trust Territory*, 2 T.T.R. 251.

ADMINISTRATIVE LAW

—Appeal

Where party's failure to appeal in time from determination of District Land Title Officer is due to Title Officer's default, claimant may still file appeal if he does so promptly after receiving actual notice of determination from any source. *Ngodrii v. Trust Territory*, 2 T.T.R. 142.

Where appeal from determination of District Land Title Officer is filed long after year provided for in applicable regulation, it is too late to be considered on its merits. (Office of Land Management Regulation No. 1) *Ngikleb v. Trust Territory*, 2 T.T.R. 139.

Unless and until decision of District Land Title Officer is reversed or modified by High Court, legal interests of persons designated as owners is shown on determination of ownership. (Office of Land Management Regulation No. 1) *Ngerdelolek Village v. Ngerchol Village*, 2 T.T.R. 398.

Unless and until decision of District Land Title Officer is revised or modified by High Court, legal interests of person designated as owner are those shown on determination of ownership, except that no person can convey better title than he had at time of conveyance. (Office of Land Management Regulation No. 1) *Torual v. Trust Territory*, 2 T.T.R. 267.

AFFRAY.

Fear or Danger

Placing of other persons in fear or danger is essential element of crime of affray. (T.T.C., Sec. 424) *Tkoel v. Trust Territory*, 2 T.T.R. 513.

AGENCY.

Generally

Rules of common law are applicable in Trust Territory where principal-agent relationship is involved in dispute. (T.T.C., Sec. 22) *Western Carolines Trading Co. v. Orrukem*, 2 T.T.R. 392.

Under rules of common law, employee who is manager of company's branch store in Palau is in legal terms an "agent" and the company a "principal." *Western Carolines Trading Co. v. Orrukem*, 2 T.T.R. 392.

Liability of Principal

Where one known to be agent for another deals with third person within scope of agent's authority, presumption is that act or contract is principal's obligation as if he were personally present and acting. *Darby v. Ngirkelau*, 2 T.T.R. 160.

Where one known to be agent for another deals with third person within scope of agent's authority, presumption is that credit is extended to principal alone. *Darby v. Ngirkelau*, 2 T.T.R. 160.

Personal Liability of Agent

Mere fact that person is agent for another does not prevent him from becoming personally liable on contract with third person. *Darby v. Ngirkelau*, 2 T.T.R. 160.

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An agent may bind himself to perform principal's obligation. *Darby v. Ngirkelau*, 2 T.T.R. 160.

Public officer may become personally liable on contract with third person if he uses appropriate words to bind himself. *Darby v. Ngirkelau*, 2 T.T.R. 160.

One who executes unambiguous personal undertaking may not escape liability by claiming public agency was real principal, and officer may thus become personally liable on contract. *Darby v. Ngirkelau*, 2 T.T.R. 160.

Where agent and third party enter into contract, question of whether credit was given to agent alone, where principal was known to other contracting party, is one of fact to be determined from consideration of all facts and circumstances attending transaction. *Darby v. Ngirkelau*, 2 T.T.R. 160.

Presumption that contract made with known agent is principal's obligation may be overcome by evidence that other party gave credit to agent exclusively, and burden of proof is on party seeking to charge such agent. *Darby v. Ngirkelau*, 2 T.T.R. 160.

Seller sustains burden of showing that buyer made personal contract with him where evidence shows buyer undertook to personally pay seller for goods in question and that seller reasonably relied on buyer's credit alone. *Darby v. Ngirkelau*, 2 T.T.R. 160.

Apportionment of Liability

Liability of agent to principal can be avoided, terminated, or reduced by breach of contract by principal, his contributory fault, or his failure to mitigate damages. *Western Carolines Trading Co. v. Orrukem*, 2 T.T.R. 392.

Where damage is caused by agent's failure to perform his contract, but some damage could have been avoided by exercise of reasonable effort on part of principal, damages will be apportioned between them by court. *Western Carolines Trading Co. v. Orrukem*, 2 T.T.R. 392.

If, after discovery of previous shortage at branch store, company re-opens branch and fails to keep its promises to make inventories and hold down credit extended to branch, it is on notice of danger of further shortages. *Western Carolines Trading Co. v. Orrukem*, 2 T.T.R. 392.

Where damage for losses is apportioned between agent and principal, court will separate from total damage that portion which could reasonably have been avoided by principal's doing his part properly. *Western Carolines Trading Co. v. Orrukem*, 2 T.T.R. 392.

Where company and manager of its branch store agree that certain percent of shortages at branch will be charged to manager's personal account, effect of agreement is to assign manager the accounts receiv-

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able of branch as of date of agreement. *Western Carolines Trading Co. v. Orrukem*, 2 T.T.R. 392.

Where company is on notice of previous shortage at branch store and danger of further shortage, company could have avoided at least one-half of later shortage by reasonable effort and proper performance of its promises to make inventories and hold down credit extended to branch. *Western Carolines Trading Co. v. Orrukem*, 2 T.T.R. 392.

AGGRAVATED ASSAULT.

Generally

Where accused in criminal prosecution used more force than was necessary to subdue disorderly and intoxicated victim, he may be convicted of aggravated assault. (T.T.C., Sec. 377) *Ngirailengelang v. Trust Territory*, 2 T.T.R. 646.

Where victim of assault and battery was intoxicated and persistently pursued appellant without success, appellant was not justified in using dangerous weapon because there was no reasonable basis for his being in fear of his life or grievous bodily harm. (T.T.C., Sec. 377) *Ngeruangel v. Trust Territory*, 2 T.T.R. 620.

Felonious Intent

Aggravated assault is crime in which specific intent is element, and acts constituting crime must be done with intent to kill, rape, rob, inflict grievous bodily harm or to commit another felony. (T.T.C., Sec. 377) *Ngeruangel v. Trust Territory*, 2 T.T.R. 620.

Lesser Included Offense

Where prosecution in criminal proceedings fails to show specific intent necessary to constitute aggravated assault, appellate court may modify conviction to assault and battery with a dangerous weapon. (T.T.C., Sec. 377-A, as amended by Executive Order No. 49) *Ngeruangel v. Trust Territory*, 2 T.T.R. 620.

APPEAL AND ERROR.

Generally

Right of appeal granted by Trust Territory law is not inherent right or requirement of substantial justice. *Aguon v. Rogoman*, 2 T.T.R. 258; *You v. Gaameu*, 2 T.T.R. 264.

Courts considering appeals in Trust Territory are not concerned with fine points of evidence. *Oingerang v. Trust Territory*, 2 T.T.R. 385.

When reviewing decision rendered in case tried by court without a jury, appellate court will indulge every reasonable presumption in favor of findings made by court below as basis of its decision, and appellant has burden of showing error in findings of court below. *Miko v. Keit*, 2 T.T.R. 582.

APPEAL AND ERROR

Notice and Filing of Appeal

Filing of notice of appeal within time specified by law is ordinarily essential for jurisdiction to hear appeal. *Ngodrii v. Trust Territory*, 2 T.T.R. 142.

Filing of notice of appeal within time limitation of Trust Territory Code is essential to jurisdiction of court in absence of most unusual circumstances. (T.T.C., Sec. 198) *Aguon v. Rogoman*, 2 T.T.R. 258; *You v. Gaameu*, 2 T.T.R. 264.

Where party in civil action fails to show interest in prosecuting appeal, it is unfair to opposing party to leave matter pending indefinitely. *Aguon v. Rogoman*, 2 T.T.R. 258.

Where appellant in civil action fails to file notice of appeal within time permitted by law, appeal will be dismissed for want of jurisdiction and want of prosecution. (T.T.C., Sec. 198) *Aguon v. Rogoman*, 2 T.T.R. 258.

Mere ignorance of or failure to inquire about the law is insufficient excuse for late filing of appeal. (T.T.C., Sec. 198) *You v. Gaameu*, 2 T.T.R. 264.

Notice of second appeal after first appeal results in remand must be filed within time limited by Code after judgment based on new trial. (T.T.C., Sec. 198) *You v. Gaameu*, 2 T.T.R. 264.

—Excuse for Late Filing

Clerk of Courts has no obligation to volunteer information about possibility of appeal in civil action. *Aguon v. Rogoman*, 2 T.T.R. 258.

Neither failure of Clerk of Courts to volunteer information as to possibility of appeal in civil action nor appellant's apparent ignorance of time limit for appeal is sufficient excuse for late filing. (T.T.C., Sec. 198) *Aguon v. Rogoman*, 2 T.T.R. 258.

Exception to requirement of timely filing of appeal in Trust Territory is recognized where delay is result of default of officer of court. (T.T.C., Sec. 198) *Aguon v. Rogoman*, 2 T.T.R. 258; *You v. Gaameu*, 2 T.T.R. 264.

Appeal is not to be denied if failure to file notice within time limit is result of default of irregularity of public official for which appellant is not responsible, and appellant has acted with due diligence upon learning of situation. *Ngodrii v. Trust Territory*, 2 T.T.R. 142.

Where appellant on appeal from judgment in District Court is given opportunity to present further evidence and fails to show error in inference or assumption drawn by trial court, trial court's assumption is taken to be correct. *Ililau v. Idub*, 2 T.T.R. 185.

—Discretionary Review

In order to avoid substantial injustice, appellate court may in its discretion review record in cases where appeal is not timely filed. (T.T.C., Sec. 199) *Aguon v. Rogoman*, 2 T.T.R. 258.

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Certiorari

In certiorari proceedings, court will consider record in proceedings as well as that certified in return to writ. *Torual v. Trust Territory*, 2 T.T.R. 267.

Charges not responded to in return to writ of certiorari are taken as true. *Torual v. Trust Territory*, 2 T.T.R. 267.

Matters stated in return to writ of certiorari which are responsive to writ are deemed to be truthfully stated. *Torual v. Trust Territory*, 2 T.T.R. 267.

In certiorari proceedings, agreed statement of facts in record setting forth charges will be considered as fully as if facts stated therein had been set out in detail in application for writ. *Torual v. Trust Territory*, 2 T.T.R. 267.

Evidentiary Error

Appellate Courts in Trust Territory may not disturb judgment for error in admission or exclusion of evidence, or any other error, unless refusal to take such action appears inconsistent with substantial justice. (T.T.C., Sec. 337) *Oingerang v. Trust Territory*, 2 T.T.R. 385.

Ordinary effect of lower court's receiving improper evidence is that on appeal improper evidence will be rejected and not considered, especially where such evidence is largely cumulative to that properly received. *Oingerang v. Trust Territory*, 2 T.T.R. 385.

Where document might have been excluded as evidence as unnecessary, party was not prejudiced by its wrongful exclusion by Master. *Kono v. Mikael*, 2 T.T.R. 466.

Where Master fails to consider land document in land dispute, court reviewing Master's Report will examine it. *Kono v. Mikael*, 2 T.T.R. 466.

Jurisdictional Error

Excesses of jurisdiction from which relief may be obtained in certiorari are not restricted to jurisdiction in limited sense of jurisdiction over parties and subject matter. *Torual v. Trust Territory*, 2 T.T.R. 267.

Excesses of jurisdiction from which relief may be obtained in certiorari include cases where administrative officer has not proceeded according to essential requirements of law, so that his acts must be considered void. *Torual v. Trust Territory*, 2 T.T.R. 267.

Scope of Review

Appellate court will not interfere with decision of trial court on matter within its discretion unless abuse of discretion is shown. *Yamashiro v. Trust Territory*, 2 T.T.R. 638.

Appellate court is expected to make every reasonable presumption in favor of correctness of decision of lower court, burden being on appellant to affirmatively show error. *Amis v. Trust Territory*, 2 T.T.R. 364.

It is not function of appellate court to weigh evidence anew or pass on credibility of witnesses when trial court's findings are supported by

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substantial credible evidence, even though there is also evidence to contrary. *Recheungel v. Trust Territory*, 2 T.T.R. 517; *Opisbo v. Trust Territory*, 2 T.T.R. 565.

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

—Facts

The Trial Division of the High Court may review facts as well as law on appeal from District Courts but will make every reasonable presumption in favor of determination of trial court. (T.T.C., Sec. 200) *Soilo v. Trust Territory*, 2 T.T.R. 368.

Finding of fact by Trial Division of the High Court will not be set aside by Appellate Division unless clearly erroneous. (T.T.C., Sec. 200) *Yamashiro v. Trust Territory*, 2 T.T.R. 638.

Where judicial mind, upon consideration of all evidence, could reasonably have reached conclusion of court below, appellate court will review only questions of law. *Kenyul v. Tamangin*, 2 T.T.R. 648.

It is function of trial court to make determinations of fact which are dependent upon presentation of conflicting evidence, and appellate court must test sufficiency of proof on basis of what trial court had right to believe and not on what appellant wishes it believed. *Yamashiro v. Trust Territory*, 2 T.T.R. 638.

Principle that appellate court will not set aside fact findings of trial court unless clearly erroneous applies to findings incidental to rulings in course of trial. *Yamashiro v. Trust Territory*, 2 T.T.R. 638.

As long as there is substantial evidence to support Master's findings, they are entitled to stand as to disputed questions of fact. *Ernist L. v. Akung*, 2 T.T.R. 428.

—Newly-Discovered Evidence

Newly-discovered evidence is not good ground for either first or second appeal. *You v. Gaameu*, 2 T.T.R. 264.

—Witness Credibility

It is not function of appellate court to weigh evidence anew or pass on reliability of witnesses. *Kirispin v. Trust Territory*, 2 T.T.R. 628.

Appellate courts are constituted for dealing with questions of law and not for passing on credibility of witnesses or weighing of evidence. *Kenyul v. Tamangin*, 2 T.T.R. 648.

Where there is conflict in testimony, trial court is in better position to pass on credibility of witnesses, and appellate court is bound to uphold trial court as long as there is enough evidence to reasonably support it. *Amis v. Trust Territory*, 2 T.T.R. 364.

Master who sees and hears witnesses is in best position to weigh testimony. *Ernist L. v. Akung*, 2 T.T.R. 428.

APPEAL AND ERROR

Second Appeal

Second appeal may be taken after new trial on remand after prior appeal, provided second appeal is on new ground not covered in decision on previous appeal. *You v. Gaameu*, 2 T.T.R. 264.

ASSAULT.

Generally

Assault is an attempt or offer to beat another, without touching him. (T.T.C., Sec. 378) *Amis v. Trust Territory*, 2 T.T.R. 364.

Use of curses or threats by one who is irritated may be made without slightest intention of actually inflicting injury. *Ngeruangel v. Trust Territory*, 2 T.T.R. 620.

ASSAULT AND BATTERY.

Generally

Slightest unlawful touching of person of another may amount to assault and battery. (T.T.C., Sec. 379) *Ngiralai v. Trust Territory*, 2 T.T.R. 445.

Physical harm, in sense of injury requiring medical treatment, is not essential element of assault and battery. (T.T.C., Sec. 379) *Ngiralai v. Trust Territory*, 2 T.T.R. 445.

In crime of assault and battery, each blow in one continuous beating does not constitute separate crime, nor does temporary lull in infliction of blows necessarily mean that next blow is separate offense. (T.T.C., Sec. 379) *Paul v. Trust Territory*, 2 T.T.R. 603.

Self-Defense

Proprietor may use only such force as reasonably necessary to expel trespasser, but has no right to punish trespasser, and if he attempts to do so, becomes wrongdoer against whom trespasser may defend himself so far as necessary to prevent bodily harm. *Ngiralai v. Trust Territory*, 2 T.T.R. 445.

Ejection of Trespasser

Force which law allows in ejecting trespasser is only as much force as is necessary, or reasonably appears necessary, for putting trespasser off premises. *Ngiralai v. Trust Territory*, 2 T.T.R. 445.

Even if victim of criminal assault and battery is trespasser, he is entitled to reasonable time in which to leave premises peaceably. (T.T.C., Sec. 379) *Ngiralai v. Trust Territory*, 2 T.T.R. 445.

Proprietor has no right to punish trespasser or use force on him to supposedly protect his property after necessity for such protection is passed. *Ngiralai v. Trust Territory*, 2 T.T.R. 445.

Punishment by Teacher

Teacher has right, in absence of statute forbidding it, to inflict physical punishment upon child under his tutelage. *Dachuo v. Trust Territory*, 2 T.T.R. 236.

ASSAULT AND BATTERY WITH A DANGEROUS WEAPON

When relation of schoolmaster and pupil is established in defense of prosecution for assault and battery on pupil, presumption is that chastisement was proper and burden of proving unreasonableness or excess of punishment is on prosecution. (T.T.C., Sec. 379) *Dachuo v. Trust Territory*, 2 T.T.R. 286.

Right of teacher to inflict physical punishment on student is not unlimited, and excessive punishment makes teacher liable to both civil and criminal actions. (T.T.C., Sec. 379) *Dachuo v. Trust Territory*, 2 T.T.R. 286.

In some jurisdictions, parent or teacher exceeds limit of authority when he inflicts permanent injury even without malice, but is not guilty of assault and battery when he inflicts temporary pain in good faith for correction of child. (T.T.C., Sec. 379) *Dachuo v. Trust Territory*, 2 T.T.R. 286.

Under strict rule of teacher liability, teacher may be guilty of assault and battery even if no permanent injury is inflicted, if he inflicts punishment which is clearly excessive. (T.T.C., Sec. 379) *Dachuo v. Trust Territory*, 2 T.T.R. 286.

When inflicting punishment, teacher may consider habitual disobedience of pupil, and he is ordinarily not liable for error in judgment as to when and to what extent punishment is necessary. *Dachuo v. Trust Territory*, 2 T.T.R. 286.

Sentence

Where defendant in criminal prosecution for assault and battery receives light sentence, he has not been prejudiced by meager coverage of exact details of beating or where it took place in regard to boundaries of premises controlled by him. (T.T.C., Sec. 379) *Ngiralai v. Trust Territory*, 2 T.T.R. 445.

ASSAULT AND BATTERY WITH A DANGEROUS WEAPON.

Dangerous Weapon

Wide variety of articles may constitute dangerous weapons within definition used in connection with assaults. (T.T.C., Sec. 377-A) *Ngiraibai v. Trust Territory*, 2 T.T.R. 522.

Dangerous weapon, within meaning of statute defining assault and battery with a dangerous weapon, is weapon likely, in natural course of things, to produce death or great bodily harm, when used in manner in which it was used in particular case. (T.T.C., Sec. 377-A) *Ngiraibai v. Trust Territory*, 2 T.T.R. 522; *Paul v. Trust Territory*, 2 T.T.R. 603.

Test of what constitutes dangerous weapon is not dependent upon how serious or permanent injuries actually inflicted are, but upon likelihood or danger in natural course of things of death or great bodily harm. (T.T.C., Sec. 377-A) *Ngiraibai v. Trust Territory*, 2 T.T.R. 522.

Where, in criminal prosecution for assault and battery with a dangerous weapon, alleged dangerous weapon was not identified and must

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be inferred from injuries inflicted, which were superficial, court may deem evidence insufficient to find beyond reasonable doubt that dangerous weapon was used. (T.T.C., Sec. 377-A) Paul v. Trust Territory, 2 T.T.R. 603.

Weapon which, in manner used, creates danger of only slight or superficial probable injury, and in fact only causes such injury, does not constitute dangerous weapon as used in connection with crime of assault and battery with a dangerous weapon. (T.T.C., Sec. 377-A) Paul v. Trust Territory, 2 T.T.R. 603.

District Court is justified in considering bottle and stick to be dangerous weapons when bottle struck victim with such force it broke over his head, and stick broke arm of victim with which he was trying to protect himself. (T.T.C., Sec. 377-A) Ngiraibai v. Trust Territory, 2 T.T.R. 522.

B

BILLS AND NOTES.

Generally

Uniform Negotiable Instruments Act is not applicable in Trust Territory. Likauche v. Trust Territory, 2 T.T.R. 375.

C

CHEATING.

Generally

Altering figures on check or money order without altering writing, and then endeavoring to cash it constitutes crime of attempted cheating. (T.T.C., Secs. 382, 431) Likauche v. Trust Territory, 2 T.T.R. 375.

CIVIL PROCEDURE.

Generally

Courts in Trust Territory should modify usual trial procedure when substantial justice so requires. Gaamew v. You, 2 T.T.R. 98.

Parties Without Counsel

Although party has right to proceed without counsel if he desires, he has obligation to make honest and sincere effort to comply with requirements of law and practice so far as he knows them or has them brought to his attention by court. Gaamew v. You, 2 T.T.R. 98.

Party proceeding in court without counsel has obligation to be respectful and reasonably considerate of court and should not substitute repeated argument for proof. Gaamew v. You, 2 T.T.R. 98.

When party proceeds in court without counsel or with inexperienced counsel, court should see that party is not prevented by ignorance or inadvertence from introducing important evidence readily available to him. Gaamew v. You, 2 T.T.R. 98.

CONFESSIONS

Adherence to usual trial procedure should not prevent introduction of evidence after usual time for it if court is convinced party who is proceeding without counsel or inexperienced counsel is honestly endeavoring to proceed as properly as he knows how. *Gaamew v. You*, 2 T.T.R. 98.

Arguments by Counsel

During trial in Trust Territory courts, counsel may not argue about alleged facts not properly before court nor substitute their ideas about facts for proper showing of them. *Yinmed v. Trust Territory*, 2 T.T.R. 492.

In Trust Territory, argument addressed to judge hearing case as to fact in that case should come after evidence has been taken and should be based on evidence and on stipulations and admissions which have been properly accepted in place of evidence. *Firetamag v. Trust Territory*, 2 T.T.R. 413.

No new facts should be brought up in argument to judge trying case that have not been covered by evidence and stipulations and admissions properly accepted in place of evidence. *Firetamag v. Trust Territory*, 2 T.T.R. 413.

Election of Remedies

Party who disputes another's right to certain land is not entitled to both land and money, and must elect one or the other remedy. *Refaen v. Itosi*, 2 T.T.R. 553.

Party is bound by election of remedies whether or not he understands nature of his remedies or necessity of electing between them. *Refaen v. Itosi*, 2 T.T.R. 553.

When party who disputes another's rights in land elects to sue for money claimed due him because of sale of land, he cannot later bring action for return of the land. *Refaen v. Itosi*, 2 T.T.R. 553.

Where party manifests election of remedies by bringing suit for damages in regard to land dispute instead of seeking return of land, fact that judgment for damages has not been satisfied is not material, and he cannot ignore previous judgment and bring second suit for return of land. *Refaen v. Itosi*, 2 T.T.R. 553.

Damages

Defendant in civil action is entitled to have matter of damages introduced in usual way and with full right of cross-examination even if admitted later than usual. *Gaamew v. You*, 2 T.T.R. 98.

CONFESSIONS.

Generally

If accused in criminal case acknowledges outside of court that he committed crime charged, or admits all things which government would

CONFESSIONS

have to show to prove him guilty are true, this constitutes a confession. *Firetamag v. Trust Territory*, 2 T.T.R. 413.

Confessions, see, also, Criminal Law—Admissions

Admissibility

Court should refuse to admit confession in criminal case unless satisfied it was voluntarily made. *Firetamag v. Trust Territory*, 2 T.T.R. 413.

Appellate court will not upset finding of trial court that confession was voluntary and not obtained by promise or coercion where there is ample evidence to support such finding. *Yamashiro v. Trust Territory*, 2 T.T.R. 638.

Court should refuse to admit evidence of allegedly damaging admission or confession at criminal trial unless court is satisfied that admission or confession was voluntary. *Itelbong v. Trust Territory*, 2 T.T.R. 595.

Fact that confession was obtained after long questioning by police is not enough to make it inadmissible. *Yamashiro v. Trust Territory*, 2 T.T.R. 638.

Where there is no evidence to convict accused in criminal prosecution except confession, and method of obtaining confession was reprehensible, court will set aside conviction. *Fontana v. Trust Territory*, 2 T.T.R. 616.

—Trial Procedure

If accused in criminal case objects to admission of confession on ground it was not voluntary or was improperly obtained, court should give both sides opportunity to present evidence on how confession was obtained before evidence of confession is admitted. *Firetamag v. Trust Territory*, 2 T.T.R. 413; *Itelbong v. Trust Territory*, 2 T.T.R. 595.

Corroborating Evidence

No one should be convicted in criminal case on basis of confession alone. *Firetamag v. Trust Territory*, 2 T.T.R. 413.

Voluntary confession made outside of court may be shown in evidence against accused at trial, provided there is other substantial evidence showing crime charged has actually been committed. *Firetamag v. Trust Territory*, 2 T.T.R. 413.

In order to convict accused in criminal case in Trust Territory, there must be enough other evidence besides confession so that court is satisfied by confession and other evidence that accused has committed crime charged beyond reasonable doubt. *Firetamag v. Trust Territory*, 2 T.T.R. 413.

CONSTITUTIONAL LAW.

Due Process

No person in Trust Territory may be deprived of life, liberty or property without due process of law. (T.T.C., Sec. 4) *Firetamag v. Trust Territory*, 2 T.T.R. 413.

CONSTITUTIONAL LAW

American theory behind Bill of Rights in United States Constitution and in Trust Territory Code is that of majority rule subject to certain rights of individuals who are in minority, which rights majority may not properly disregard no matter how large majority may be. *Mesechol v. Trust Territory*, 2 T.T.R. 84.

Due process and equal protection of laws clauses in Bill of Rights impose obligation on all officials to act reasonably and fairly in accordance with established principles of justice, and not make arbitrary choices or interfere with freedom of action of individuals any more than is reasonably necessary, and obligation applies to municipalities as well as to others. (T.T.C., Sec. 7) *Mesechol v. Trust Territory*, 2 T.T.R. 84.

Equal Protection

Equal protection of laws may be denied by improper administration of law that seems fair on its face. (T.T.C., Sec. 7) *Mesechol v. Trust Territory*, 2 T.T.R. 84.

Double Jeopardy

Trust Territory Bill of Rights gives protection against second prosecution for any offense carrying criminal penalty. (T.T.C., Sec. 4) *Paul v. Trust Territory*, 2 T.T.R. 603.

Words of Trust Territory Bill of Rights prohibiting double jeopardy must be construed in accordance with judicial interpretation of these words in Fifth Amendment of United States Constitution. (T.T.C., Sec. 4) *Paul v. Trust Territory*, 2 T.T.R. 603.

Double Jeopardy, see, also, Criminal Law—Double Jeopardy

Public Trial and Confrontation of Witnesses

In all criminal prosecutions in Trust Territory, accused has right to public trial, and to be confronted with witnesses against him. (T.T.C., Sec. 4) *Firetamag v. Trust Territory*, 2 T.T.R. 413.

Accused has right in all criminal prosecutions to be confronted with witnesses against him, including right to cross-examination and to know upon what evidence he is being tried. (T.T.C., Sec. 4) *Tkoel v. Trust Territory*, 2 T.T.R. 513.

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

Jury Trial

Provisions of amendments to United States Constitution relating to jury trial in civil and criminal cases do not apply to unincorporated territory. *Sechelong v. Trust Territory*, 2 T.T.R. 526.

United States Constitutional provisions on subject of jury trial do not of themselves apply to Trust Territory, which has not been incorporated into United States. *Sechelong v. Trust Territory*, 2 T.T.R. 526.

Any right to jury trial in Trust Territory must depend on some specific action to administering authority. *Sechelong v. Trust Territory*, 2 T.T.R. 526.

CONSTITUTIONAL LAW

Since there has been no specific action extending right of jury trial to Trust Territory, and Trust Territory Code provisions appear inconsistent with thought of jury trials, there is at present no right to trial by jury in Trust Territory. *Sechelong v. Trust Territory*, 2 T.T.R. 526.

Self-Incrimination

No person in Trust Territory may be compelled in any criminal case to be witness against himself. (T.T.C., Sec. 4) *Firetamag v. Trust Territory*, 2 T.T.R. 413.

CONTEMPT.

Civil—Violation of Judgment

In case of civil contempt for violation of injunctions, person cannot be guilty of contempt for violating injunction unless it is shown he had actual notice of injunction prior to performance of acts complained of. (T.T.C., Sec. 284) *Ranipu v. Trust Territory*, 2 T.T.R. 167.

Where those acting for *alab* definitely violated judgment in previous civil action because of provocation of *dri jermal*, no adjudication of contempt will be made against them. *Mike M. v. Jekron*, 2 T.T.R. 178.

Criminal—Generally

Essence of offense of contempt of court is wilful disregard of authority of court or disobedience to it. (T.T.C., Sec. 415) *Ranipu v. Trust Territory*, 2 T.T.R. 167.

Public disturbance which is insufficient to constitute contempt of court may constitute offense of disturbing the peace. (T.T.C., Sec. 426) *Ranipu v. Trust Territory*, 2 T.T.R. 167.

Trial court in Trust Territory has discretion not to handle criminal contempt matter as separate case entered in criminal docket. (T.T.C., Sec. 415) *Aimeliik People v. Remengesau*, 2 T.T.R. 320.

—Interference With Operation of Court

In doubtful situations where there is interference with operation of court, question of intent is important in determining whether interference was knowingly and wilfully accomplished or amounted to wilful disrespect. (T.T.C., Sec. 415) *Ranipu v. Trust Territory*, 2 T.T.R. 167.

Where conviction is sought on ground of interference with court by acts not intended to impede court as protest against it, person cannot be found guilty of criminal contempt unless it is shown he knew or should have known that acts were likely to affect operation of court. (T.T.C., Sec. 415) *Ranipu v. Trust Territory*, 2 T.T.R. 167.

—Violation of Court Order

Where jurisdiction of court is doubtful and temporary order is issued, violations of order are punishable as criminal contempt. (T.T.C., Sec. 415) *Aimeliik People v. Remengesau*, 2 T.T.R. 320.

CONTRACTS

—Sentence

Determination of relative amount of punishment to be given each party convicted of criminal contempt, within limits of law, is matter resting within sound discretion of trial court. *Aimeliik People v. Remengesau*, 2 T.T.R. 320.

CONTRACTS.

Failure to Agree

Where parties have not agreed on price for sale of land and vendor expects \$250.00 but vendee considers \$30.00 full price, there is no agreement, and vendee will have to pay price of \$250.00 to meet vendor's offer. *Penno v. Katarina*, 2 T.T.R. 470.

Performance

Where party has completed his part of contract in delivering goods, it is immaterial, so far as his rights are concerned, what anyone unconnected with him did or did not do with regard to such goods. *Darby v. Ngirkelau*, 2 T.T.R. 160.

Usury

Voluntary taking or reservation of more than legal rate of interest is per se usurious, despite lack of intent to violate law. *Madris v. Ilab*, 2 T.T.R. 351.

Where interest collected by party in Palau exceeds maximum limit of twenty-two percent, part of interest is usurious. (Palau Congress Resolution 38-59) *Madris v. Ilab*, 2 T.T.R. 351.

In Palau, interest in excess of twenty-two percent per annum may be recovered by one who pays it in action brought within two years of date of payment. (Palau Congress Resolution 38-59) *Madris v. Ilab*, 2 T.T.R. 351.

In Palau, any party injured as result of usury may recover from payee, upon proof of usury before competent court, amount of usurious interest actually paid. (Palau Congress Resolution 38-59) *Madris v. Ilab*, 2 T.T.R. 351.

Voidable Contracts—Drunkenness

Apparent agreement made by party when he is plied with liquor is not binding upon him and his repudiation of it by bringing civil action is justified. *Tamaggimed v. Bathin*, 2 T.T.R. 499.

Plying of individual with liquor in order to induce him to make apparent agreement involving repudiation of his previous agreement with others not present is not good under either Yap or American custom, regardless of how drunk person is made. *Tamaggimed v. Bathin*, 2 T.T.R. 499.

—Undue Influence

Where out of respect, fear or awe of some traditional leader but without threat of unlawful force, one is persuaded to make agreement and receives benefit of agreement, party to agreement cannot be relieved of consequences of it. *Kanser v. Pitor*, 2 T.T.R. 481.

COURTS

COURTS.

District Court

District Courts in Trust Territory have clear authority to determine and make orders as to right to immediate possession of land. (T.T.C., Sec. 138) *Aimeliik People v. Remengesau*, 2 T.T.R. 320.

Authority of District Courts in Trust Territory to issue orders regarding right to immediate possession of land is not limited to situations in which High Court action is pending. *Aimeliik People v. Remengesau*, 2 T.T.R. 320.

Purpose of Trust Territory law allowing District Courts to determine right to immediate possession of land is to have courts readily available to determine such rights in orderly manner in order to avoid resort to force. *Aimeliik People v. Remengesau*, 2 T.T.R. 320.

District Court in Trust Territory acts within its jurisdiction in issuing temporary restraining order regarding right to immediate possession of land, and may punish contemptuous violation of its order. (T.T.C., Sec. 415) *Aimeliik People v. Remengesau*, 2 T.T.R. 320.

Although District and Community Courts cannot adjudicate title to land or any interest therein, this does not prevent District or Community Court from ordering transfer of land as payment for damages where there is no dispute about ownership and when value of land does not exceed jurisdictional limitation of court. (T.T.C., Secs. 138, 149) *Miko v. Keit*, 2 T.T.R. 582.

Jurisdiction

Court order is void only when court has clearly acted without authority. *Aimeliik People v. Remengesau*, 2 T.T.R. 320.

When jurisdiction of court is doubtful, it has inherent authority to make temporary order to preserve state of things while matter of jurisdiction is being considered in orderly manner. *Aimeliik People v. Remengesau*, 2 T.T.R. 320.

Justiciable Controversy

There are situations, particularly of emotional nature, where there may be considerable unhappiness without any practical remedy through the courts. *Gilmar v. Nifrou*, 2 T.T.R. 201.

Law courts are in difficult position to deal on permanently satisfactory basis by any form of judgment with family disputes involving primarily injured feelings. *Gilmar v. Nifrou*, 2 T.T.R. 201.

Courts cannot create by decree love, affection and cooperation which it is hoped will prevail in family. *Gilmar v. Nifrou*, 2 T.T.R. 201.

Parties

Civil action should be brought in name of person who owns it or has real interest in result, and daughter of owner of claim has no real interest. *Hanako v. Maria*, 2 T.T.R. 326.

COURTS

Witnesses

Although it is unpleasant under Yap custom to have brother and sister testifying on opposite sides of civil dispute, it is not just that one should be barred from testifying any more than the other. *Gilmar v. Nifrou*, 2 T.T.R. 201.

Fact that witness in criminal case had been drinking *kava* before giving testimony does not necessitate disregard of his testimony. *Opisbo v. Trust Territory*, 2 T.T.R. 565.

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

Continuance

Request for continuance of trial in order to seek extraordinary remedies to obtain trial by jury is matter resting in discretion of court and is not matter of right. *Sechelong v. Trust Territory*, 2 T.T.R. 526.

Where witness who is necessary to explain land document fails to appear because of breakdown of outboard motor, continuance is warranted until party has reasonable opportunity to present witness. *Kono v. Mikael*, 2 T.T.R. 466.

Dismissal

When action could have been dismissed at close of plaintiff's evidence, plaintiff cannot justly complain about delay in dismissal of action. *Gilmar v. Nifrou*, 2 T.T.R. 201.

Settlements

Executed agreements of settlement, concluding relations of parties and based upon valid and adequate consideration, honest differences, and good faith, are binding upon parties. *Madriz v. Ilab*, 2 T.T.R. 351.

If agreement or settlement of land controversy is reached, even though subject matter of controversy may be beyond jurisdiction of court, Community Court or District Court Judge may reduce it to writing, and his report of settlement agreement, when signed by parties, has force and effect of judgment. (T.T.C., Sec. 164) *Aty v. Sieuo*, 2 T.T.R. 303.

In view of importance of family unity and cooperation under Yapese system of culture, trial judge is fully justified in going to great lengths to bring about settlement of situation primarily involving injured feelings of party's wife. *Gilmar v. Nifrou*, 2 T.T.R. 201.

Judicial Notice

Judge may use discretion in deciding whether to look up citations of authority presented by counsel. *Amis v. Trust Territory*, 2 T.T.R. 364.

Courts will not ordinarily take judicial notice of value of real estate. *Naoro v. Inekis*, 2 T.T.R. 232.

Courts will take judicial notice of matters of common knowledge relating to value of real property generally. *Naoro v. Inekis*, 2 T.T.R. 232.

COURTS

Courts will take judicial notice that certain amount of money was extremely low for sale of land at prior time. *Naoro v. Inekis*, 2 T.T.R. 232.

Community Court may take judicial notice of ordinance and presume it was duly enacted in absence of evidence to contrary. *Timas v. Trust Territory*, 2 T.T.R. 109.

CRIMINAL LAW.

Generally

Trust Territory courts and counsel appearing before them should be interested in substantial justice in criminal proceedings rather than technicalities. *Yinmed v. Trust Territory*, 2 T.T.R. 492.

In Trust Territory, courts are expected to promote substantial justice in criminal proceedings and to take equal care to see that those who are guilty beyond reasonable doubt are punished and that those who are not guilty beyond reasonable doubt are not punished. *Firetamag v. Trust Territory*, 2 T.T.R. 413.

Criminal law will not redress grievances or settle questions of property where honest differences of opinion are involved. *Aliwis v. Trust Territory*, 2 T.T.R. 223.

Admissions

In criminal case where accused pleads not guilty, admissions in open court should not be accepted in place of evidence unless they are clear and voluntarily made and with understanding of effect. *Lornis v. Trust Territory*, 2 T.T.R. 114.

In criminal prosecution, mere ambiguous statement of accused in open court is insufficient evidence to show adultery beyond reasonable doubt. *Lornis v. Trust Territory*, 2 T.T.R. 114.

Accused's admissions to investigating officers outside of court are not proper matters for consideration by court, on charge to which accused has pleaded not guilty, unless and until such admission is properly introduced at trial. *Itelbong v. Trust Territory*, 2 T.T.R. 595.

Admissions, see, also, Confessions

Double Jeopardy

No special form is required to raise issue of double jeopardy in criminal prosecution, since courts consider substance rather than form. *Paul v. Trust Territory*, 2 T.T.R. 603.

In many jurisdictions accused in criminal proceeding is held to have waived defense of former jeopardy by failure to raise issue before going to trial on merits. *Paul v. Trust Territory*, 2 T.T.R. 603.

Under United States Federal Rules, defense of former jeopardy should be raised by motion to dismiss before trial, and Trust Territory rules should be construed with regard to Federal Rules. (Fed. Rules of Crim. Proc., Rule 12) *Paul v. Trust Territory*, 2 T.T.R. 603.

CRIMINAL LAW

In Trust Territory, proper way to raise defense of double jeopardy is by motion to dismiss before taking of testimony and preferably before plea is taken. (Rules of Crim. Proc., Rules 9, 10) Paul v. Trust Territory, 2 T.T.R. 603.

Where issue of double jeopardy is not raised in criminal prosecution before taking of testimony, defense is waived, except that court may permit defense to be raised later and grant relief where it appears waiver has been due to honest inadvertance, ignorance of facts, or failure to understand them. Paul v. Trust Territory, 2 T.T.R. 603.

Where greater criminal offense includes lesser offense, test of double jeopardy is whether facts alleged in second prosecution, or any part of them constituting lesser included offense could, if given in evidence, have warranted conviction in first prosecution, unless first prosecution was procured by fraud, connivance or collusion of defendant, or some new fact, such as death of victim, has intervened after first prosecution. (T.T.C., Sec. 4) Paul v. Trust Territory, 2 T.T.R. 603.

Where appellant in criminal prosecution has been previously convicted in District Court of assault and battery based on same act as alleged in High Court information for assault and battery with a dangerous weapon, and evidence supporting information would clearly have been admissible to support first complaint, appellant is in double jeopardy of punishment for assault alleged in information when he has already been convicted under prior complaint. Paul v. Trust Territory, 2 T.T.R. 603.

Prosecution for assault and battery with dangerous weapon may be barred by prior conviction for assault and battery arising out of same act. (T.T.C., Sec. 377-A) Paul v. Trust Territory, 2 T.T.R. 603.

Double Jeopardy, see, also, Constitutional Law—Double Jeopardy

Corpus Delicti

In criminal proceedings, corpus delicti may be proved by circumstantial evidence as well as by direct evidence. Yamashiro v. Trust Territory, 2 T.T.R. 638.

It is not necessary to prove corpus delicti by evidence entirely independent and exclusive of confession in criminal proceedings, and sufficient proof to convict exists when corpus delicti is established by other evidence and confession taken together. Yamashiro v. Trust Territory, 2 T.T.R. 638.

Custom

Only those violations of custom which are so serious as to be clearly regarded by great mass of population concerned as deserving some punishment can properly be considered crimes without any legislation to define them. Sechelong v. Trust Territory, 2 T.T.R. 92.

Every failure to observe nicest details of polite custom cannot fairly be considered a crime. Sechelong v. Trust Territory, 2 T.T.R. 92.

Custom, see, also, Custom; Specific Heading, i.e., Palau Custom

CRIMINAL LAW

Statutes:

Fact that no signed copy of municipal ordinance is on file with Clerk of Courts for Truk District is immaterial in conviction for violation of ordinance, where ordinance was passed prior to executive order requiring such filing. (T.T.C., Sec. 31; Executive Order No. 60) *Timas v. Trust Territory*, 2 T.T.R. 109.

—Construction

Where language of penal statute is unambiguous and conveys clear meaning, there is no occasion to resort to rules of statutory interpretation. *Nokei v. Trust Territory*, 2 T.T.R. 329.

Written laws imposing criminal penalties are subject to strict construction, and are to be interpreted strictly against government and liberally in favor of accused. *Zakios v. Trust Territory*, 2 T.T.R. 102.

Strict Liability

Although criminal intent is essential element of common law crimes, it is not always necessary element of statutory crimes. *Senip v. Trust Territory*, 2 T.T.R. 227.

It is within power of legislature to declare an act criminal irrespective of intent or knowledge of doer of act. *Senip v. Trust Territory*, 2 T.T.R. 227.

Legislature may declare an act criminal irrespective of intent or knowledge of one who acts, and question then becomes whether defendant did forbidden act. *Day v. Trust Territory*, 2 T.T.R. 421.

Intent

Where specific intent is not element of crime, general criminal intent may be inferred or implied from commission of act prohibited as crime. *Ngeruangel v. Trust Territory*, 2 T.T.R. 620.

Specific Intent

Where specific intent is element of crime, it must be proved as independent fact and cannot be inferred merely from commission of unlawful act. *Ngeruangel v. Trust Territory*, 2 T.T.R. 620.

In criminal prosecution, question of whether specific intent exists must be determined not only from act itself, but also from defendant's testimony and all surrounding circumstances. *Ngeruangel v. Trust Territory*, 2 T.T.R. 620.

Lesser Included Offense

Single continuing crime cannot be split up by time into two parts for separate prosecutions. (T.T.C., Sec. 4) *Paul v. Trust Territory*, 2 T.T.R. 603.

Wherever there is reasonable doubt as to whether certain causes of action constitute more than one crime, all charges should be presented to same court at same time. *Paul v. Trust Territory*, 2 T.T.R. 603.

CRIMINAL LAW

Test of whether same act constitutes violation of two distinct statutory provisions is whether each provision requires proof of additional facts which other does not, but test is not applicable to repeated offenses under same provision of written law or greater offense including lesser one. *Paul v. Trust Territory*, 2 T.T.R. 603.

Where it is unclear in criminal prosecution in Trust Territory whether crime committed is cheating or forgery, prosecution should be for cheating or attempted cheating rather than for forgery. (T.T.C., Secs. 392, 394) *Likauche v. Trust Territory*, 2 T.T.R. 375.

Principal and Accessory

Distinction between principal and accessory before the fact is technical one and of little practical significance. (T.T.C., Sec. 430) *Ropon v. Trust Territory*, 2 T.T.R. 313.

Accessory to criminal offense is equally guilty with person who committed crime, and he receives same punishment as principal. (T.T.C., Sec. 430) *Ropon v. Trust Territory*, 2 T.T.R. 313.

Where person is convicted as accessory before the fact when he should have been convicted as principal, he has not suffered injustice of which he can complain. (T.T.C., Sec. 430) *Ropon v. Trust Territory*, 2 T.T.R. 313.

Complaint

Although time and place should be stated in criminal charge, it is sufficient if it is proved that crime was committed prior to bringing of charge, within period of limitations, and within jurisdiction of court, provided accused has not been misled to his prejudice. *Timas v. Trust Territory*, 2 T.T.R. 109.

Where complaint sufficiently charges persons accused with having committed adultery with each other, in violation of local custom and at place within jurisdiction of court and on date within statute of limitations, and complaint cites Code section violated, accused could not have been misled to their prejudice. (T.T.C., Sec. 434) *Lornis v. Trust Territory*, 2 T.T.R. 114.

—Defect

Objection that complaint in criminal proceeding is improperly drawn must be raised by motion before trial. (Rules of Crim. Proc., Rule 9) *Lornis v. Trust Territory*, 2 T.T.R. 114.

Failure to present defense or objection to defect in complaint, information or citation by motion before trial constitutes waiver of such defense. (Rules of Crim. Proc., Rule 9) *Lornis v. Trust Territory*, 2 T.T.R. 114.

Where there is error in criminal complaint as to violation charged, error will be disregarded if accused is not misled to his prejudice on account of error. (T.T.C., Sec. 445(a)) *Itelbong v. Trust Territory*, 2 T.T.R. 595.

CRIMINAL LAW

Where there is error in criminal prosecution in making reference to law violated, only possible prejudice to accused arises from fact penalties under one law are much heavier than under the other. *Temengil v. Trust Territory*, 2 T.T.R. 31.

Where there is error in criminal prosecution in making reference to law violated, and penalties under one law are heavier than penalties under the other, court will eliminate provisions with regard to imprisonment to avoid possible prejudice and in interests of substantial justice. *Temengil v. Trust Territory*, 2 T.T.R. 31.

Criminal complaint must refer to provision of law which accused is alleged to have violated, but error or omission may be corrected by leave of court any time prior to sentence, and is not ground for reversal if not misleading to accused's prejudice. (T.T.C., Sec. 445a) *Lornis v. Trust Territory*, 2 T.T.R. 114.

Pre-Trial Procedure

Public has social interest in seeing that guilty persons do not go free merely because of error on part of constabulary which has no bearing on question of guilt of accused. *Fontana v. Trust Territory*, 2 T.T.R. 616.

Violation of certain sections of Trust Territory Code by constabulary does not mean accused must be acquitted or that any evidence obtained thereafter during detention must be excluded. (T.T.C., Sec. 498) *Fontana v. Trust Territory*, 2 T.T.R. 616.

No violation of provisions in Trust Territory Code, Chapter 6, including failure to give notice to accused, will in and of itself entitle accused to acquittal in criminal proceedings in Trust Territory. (T.T.C., Sec. 498) *Yinmed v. Trust Territory*, 2 T.T.R. 492.

Where accused is not given copy of complaint or is given copy while drunk, he is only entitled to continuance until he receives copy and has time to prepare for trial. (T.T.C., Sec. 498) *Yinmed v. Trust Territory*, 2 T.T.R. 492.

In Trust Territory, any defense or objection capable of determination without trial of merits of case must be raised before trial by motion. (Rules of Crim. Proc., Rule 9) *Paul v. Trust Territory*, 2 T.T.R. 603.

Since purpose of giving bail receipt is to protect against possible loss or misappropriation of bail, failure to do so has no bearing whatever on defendant's guilt. (T.T.C., Sec. 498) *Yinmed v. Trust Territory*, 2 T.T.R. 492.

Warning contained in "Notice to Accused" regularly used by constabulary in Trust Territory is only required before suspect in criminal case is questioned about crime of which he is suspected. (Rules and Regulations for the Trust Territory Constabulary, Sec. 15(f)(1)) *Yinmed v. Trust Territory*, 2 T.T.R. 492.

Rights of Accused—Confrontation

Accused in criminal proceedings in Trust Territory may only be convicted after trial before impartial court, on basis of information presented as provided by law before court and in presence of interested members of public, subject to certain exceptions involving minors and scandalous matter. (T.T.C., Sec. 4) *Firetamag v. Trust Territory*, 2 T.T.R. 413.

—Confrontation of Witnesses

Purpose of public trial is to protect rights of person accused of crime so that public may see he is fairly dealt with, and to keep judge aware of his responsibility, importance of his work, and fact public has right to know about it. (T.T.C., Sec. 4) *Firetamag v. Trust Territory*, 2 T.T.R. 413.

Purpose of public trial in criminal case is defeated if court is allowed to consider as evidence information passed to it privately or indirectly and not in regular course of judicial proceedings. (T.T.C., Sec. 4) *Firetamag v. Trust Territory*, 2 T.T.R. 413.

While accused in criminal prosecution can waive right to be confronted with witnesses against him, it cannot properly be taken away from him without his consent. (T.T.C., Sec. 4) *Tkoel v. Trust Territory*, 2 T.T.R. 513.

Matter of whether to permit witnesses of prosecution, whose testimony would be merely cumulative, to be offered for cross-examination without taking time for direct examination, rests in discretion of trial court. *Yamashiro v. Trust Territory*, 2 T.T.R. 638.

Accused cannot demand as matter of right to be allowed to cross-examine witness who has not been called to testify by either side. *Yamashiro v. Trust Territory*, 2 T.T.R. 638.

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

—Counsel

Trust Territory has assumed burden of prosecuting and defending Trust Territory citizens accused of serious crimes, and accused in criminal proceedings is entitled to competent attorney. *Mendiola v. Trust Territory*, 2 T.T.R. 651.

Trial Procedure—Motion to Dismiss

Where alleged facts on which original motion to dismiss criminal case is based are not properly presented, there can be no argument based on them (unless admitted) until presented either by written statement or statements under oath or by testimony by leave of court. (Rules of Crim. Proc., Rule 18a) *Yinmed v. Trust Territory*, 2 T.T.R. 492.

If accused in criminal proceeding raises issue which should properly have been offered at hearing on original motion to dismiss, he cannot, having raised issue, fairly claim to be prejudiced by government's submitting evidence on it. *Yinmed v. Trust Territory*, 2 T.T.R. 492.

CRIMINAL LAW

Burden of Proof

Finding of guilt in criminal prosecution cannot be based on inference drawn merely from arguments or lack of arguments of accused. *Timas v. Trust Territory*, 2 T.T.R. 109.

—Prima Facie Case

Time or place of crime need not be proved precisely as stated unless they are necessary ingredients of crime. *Paul v. Trust Territory*, 2 T.T.R. 603.

Where sole witness for government in criminal case is both complainant and arresting officer, and his uncontradicted testimony covers all elements of crime charged, prima facie case has been made out to support conviction. *Yinmed v. Trust Territory*, 2 T.T.R. 492.

—Reasonable Doubt

In criminal prosecution, proof beyond reasonable doubt of all essential elements of crime is fundamental to Trust Territory system of justice. *Timas v. Trust Territory*, 2 T.T.R. 109.

Trust Territory courts are expected to give accused in criminal proceedings benefit of any reasonable doubt there may be as to his guilt. *Firetamag v. Trust Territory*, 2 T.T.R. 413.

Crime may be proved beyond reasonable doubt by circumstantial evidence which may be as satisfactory as direct testimony and may outweigh it. *Soilo v. Trust Territory*, 2 T.T.R. 368.

In order for prosecution in criminal proceedings to prove fact by circumstantial evidence, circumstances relied upon must be inconsistent with any other rational conclusion and exclude every other reasonable theory or supposition other than that which prosecution seeks to have inferred. *Ngeruangel v. Trust Territory*, 2 T.T.R. 620.

Evidence

All facts necessary to show guilt in particular criminal case should be shown either by legal evidence or by stipulations or admissions which judge is authorized to accept in place of evidence. *Firetamag v. Trust Territory*, 2 T.T.R. 413.

Where accused pleads not guilty in criminal prosecution, finding of guilt must be based upon evidence or upon express admissions made voluntarily. *Timas v. Trust Territory*, 2 T.T.R. 109.

Where inconsistencies in testimony of prosecution's witnesses are not contradicted by defendant in criminal proceedings, trial court is fully justified in finding, on basis of all the evidence, that accused failed to yield right of way. (T.T.C., Sec. 814(c)) *Itelbong v. Trust Territory*, 2 T.T.R. 595.

—Exculpatory Statements

Exculpatory statements, including admissions contained in them, have long been recognized as admissible. *Yamashiro v. Trust Territory*, 2 T.T.R. 638.

CRIMINAL LAW

In considering exculpatory statements, trial court is entitled to use judgment as to what parts of statement should be believed and what parts are untrue. *Yamashiro v. Trust Territory*, 2 T.T.R. 638.

—Obtained in Violation of Rights of Accused

Evidence obtained in violation of rights of accused is inadmissible. (T.T.C., Secs. 454, 457(d), 458, 498) *Fontana v. Trust Territory*, 2 T.T.R. 616.

Evidence obtained as a result of violation of Chapter 6 of Trust Territory Code is inadmissible against accused, but no such provision applies to evidence obtained in violation of Chapter 5, and such evidence is admissible provided it is otherwise proper. *Fontana v. Trust Territory*, 2 T.T.R. 616.

—Physical Evidence

In criminal proceedings, admission into evidence of physical objects to which testimony relates is matter resting in discretion of trial court, and admission of them as exhibits will constitute grounds for reversal only when clear prejudicial abuse of discretion is shown. *Ngeruangel v. Trust Territory*, 2 T.T.R. 620.

Witnesses

Common law rule, that it is duty of prosecution in felony cases to call and examine all persons who have knowledge of material facts, arose under system where accused had no right of compulsory process for obtaining witnesses in his favor, and rule has no application in Trust Territory where accused is granted this right under Bill of Rights. (T.T.C., Sec. 4) *Yamashiro v. Trust Territory*, 2 T.T.R. 638.

Accused in criminal prosecution is not prejudiced by testimony of witness who is liable for prosecution for perjury where trial court does not consider such testimony. *Ngirailengelang v. Trust Territory*, 2 T.T.R. 646.

Person serving as witness in criminal prosecution may not also serve as assessor to judge. *Lornis v. Trust Territory*, 2 T.T.R. 114.

Prosecutor's Error or Omission

Decisions of other courts which hold that accused in criminal case is entitled to acquittal at close of prosecution's case where it has failed to prove essential element of crime, and that if this is not granted he should be acquitted on appeal, have no application in Trust Territory. (T.T.C., Sec. 200) *Firetamag v. Trust Territory*, 2 T.T.R. 413.

Where government in criminal prosecution fails to prove essential point through inadvertence or misunderstanding, and evidence on point is available, accused is not entitled to acquittal but merely to new trial. *Likauche v. Trust Territory*, 2 T.T.R. 375.

Trust Territory courts, in promoting substantial justice, are not expected to let accused go free simply because of some error of prosecution in failing to present evidence on essential element of crime. *Itelbong v. Trust Territory*, 2 T.T.R. 595.

CRIMINAL LAW

Where essential point in criminal prosecution has been omitted through inadvertence or misunderstanding, and it is probable there is evidence available on it, accused is not entitled to acquittal on appeal as matter of right, and case will be remanded with such directions for new trial as may be just. (T.T.C., Sec. 200) *Tkoel v. Trust Territory*, 2 T.T.R. 513.

Where it appears probable that there is evidence available on point not covered by prosecution in criminal trial, court will remand case with such directions as may be just, instead of merely reversing judgment and acquitting accused. (T.T.C., Sec. 200) *Itelbong v. Trust Territory*, 2 T.T.R. 595.

In criminal proceedings in Trust Territory, where essential point of prosecution's case is omitted through inadvertence or misunderstanding, and it is probable there is sufficient evidence available on it, appellate court will remand case with such directions for new trial as may be just, instead of merely reversing judgment. (T.T.C., Sec. 200) *Firetamag v. Trust Territory*, 2 T.T.R. 413.

Sentence—Modification

Appellate court will not overrule discretion of trial judge in sentencing and restitution requirements made within limits provided by law. *Paul v. Trust Territory*, 2 T.T.R. 238.

Where trial court reduces sentences of appellants after they are imposed in criminal contempt proceedings, appellants are not prejudiced thereby and cannot fairly complain about it. (T.T.C., Sec. 415) *Aimelik People v. Remengesau*, 2 T.T.R. 320.

Appeals—Scope of Review

On appeal in criminal case, court must review evidence in light most favorable to government. *Kirispin v. Trust Territory*, 2 T.T.R. 628.

In criminal prosecution, whether alleged facts not covered by evidence are true or not, they have no proper place in consideration of appeal. *Delemel v. Trust Territory*, 2 T.T.R. 334.

In considering criminal case on appeal, appellate court must test sufficiency of proof on basis of what trial court had right to believe, not on what defendant wishes it believed. *Oingerang v. Trust Territory*, 2 T.T.R. 385; *Recheungel v. Trust Territory*, 2 T.T.R. 517.

Where appeal in criminal prosecution is based on ground that evidence does not support finding, essential point is whether there was sufficient evidence to justify trial court in making finding which it did, considering primarily evidence most favorable to decision of lower court. *Amis v. Trust Territory*, 2 T.T.R. 364.

Trial judge who hears witness in criminal case is in better position to judge witness credibility on basis of whole testimony than appellate court can be by reading transcript of evidence. *Opisbo v. Trust Territory*, 2 T.T.R. 565.

Where there is no indication that alleged facts raised in argument on appeal of criminal case were introduced at trial or included in record,

CRIMINAL LIBEL

or that counsel made motion that trial court hear evidence, appellate court will completely disregard such alleged facts. (Rules of Crim. Proc., Rule 3(e)) Delemel v. Trust Territory, 2 T.T.R. 334.

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

—Prejudicial Error

Court hearing criminal appeal is concerned with whether justice is done rather than with technicalities. *Ropon v. Trust Territory*, 2 T.T.R. 313.

Criminal proceedings before trial court will not be invalidated by appellate court for error or omission occurring in such proceedings unless error or omission results in injustice to accused. (T.T.C., Sec. 497) *Ropon v. Trust Territory*, 2 T.T.R. 313.

Only those errors or omissions resulting in injustice to accused in criminal proceedings are grounds for reversal or invalidation of any court order, finding or sentence. (T.T.C., Sec. 497) *Yinmed v. Trust Territory*, 2 T.T.R. 492.

In criminal prosecution, where there is error in reference to law allegedly violated, such error is not grounds for reversal of conviction if error did not mislead accused to his prejudice. (T.T.C., Sec. 445) *Temengil v. Trust Territory*, 2 T.T.R. 31.

Where accused in criminal prosecution was fully conscious of fact he was being tried for liquor violation, only question of injustice depends on whether he was misled to his prejudice by error in reference to law violated. *Temengil v. Trust Territory*, 2 T.T.R. 31.

New Trial

In criminal proceedings, motion for new trial on grounds of newly discovered evidence, filed by appellant after oral argument on appeal, should be remanded to trial court for hearing. *Yamashiro v. Trust Territory*, 2 T.T.R. 638.

Where essential point in criminal prosecution has been omitted and it is probable there is evidence on it, accused may choose to let original finding of guilt and sentence stand rather than proceed with new trial on remand. *Tkoel v. Trust Territory*, 2 T.T.R. 513.

CRIMINAL LIBEL.

Generally

Offense of criminal libel under Trust Territory Code is based on common law principles, except that it has been extended to include oral statements. (T.T.C., Sec. 425) *Uto v. Trust Territory*, 2 T.T.R. 209.

Trust Territory statute on criminal libel requires only exposure to hatred, contempt or ridicule, as opposed to actual damage by it. (T.T.C., Sec. 425) *Uto v. Trust Territory*, 2 T.T.R. 209.

Criminal libel is crime which affects public peace by publication of defamatory matter concerning another, not because of injury to reputation but because it is calculated to corrupt public morals, incite

CRIMINAL LIBEL

to violations of criminal law or provoke breach of the peace. (T.T.C., Sec. 425) Uto v. Trust Territory, 2 T.T.R. 209.

Person may be exposed to hatred, contempt or ridicule by words which naturally tend to create hatred, contempt or ridicule, and in prosecuting crime of criminal libel, it is not necessary to prove hatred, contempt or ridicule has actually been aroused. (T.T.C., Sec. 425) Uto v. Trust Territory, 2 T.T.R. 209.

Actual Damage

In complaint for criminal libel, it is not necessary to allege actual damage to complainant. (T.T.C., Sec. 425) Uto v. Trust Territory, 2 T.T.R. 209.

Intent of statute on criminal libel is to protect people from irritation and provocation to retaliate, regardless of whether reputation of person defamed is impaired. (T.T.C., Sec. 425) Uto v. Trust Territory, 2 T.T.R. 209.

Malice

Malice is essential element of criminal libel but it may be implied malice as distinguished from express malice and is inferred from making of libelous statement. (T.T.C., Sec. 425) Uto v. Trust Territory, 2 T.T.R. 209.

Malice is doing wrongful act intentionally without just cause. Uto v. Trust Territory, 2 T.T.R. 209.

"Legal" malice does not require proof of specific intent to injure individual or group. Uto v. Trust Territory, 2 T.T.R. 209.

Privilege

Accurate and fair criticism of judicial and other public officers is privileged, but unfounded charges of crime and misconduct in office are not. Uto v. Trust Territory, 2 T.T.R. 209.

Although fair public criticism of public official is privileged and cannot be slanderous, this privilege does not extend to accusations of crime. Uto v. Trust Territory, 2 T.T.R. 209.

Fair comment is that which, whether true or false, expresses real opinion of author, having been formed with reasonable degree of care on reasonable grounds. Uto v. Trust Territory, 2 T.T.R. 209.

CUSTOM.

Applicability

Principles of common law do not govern case in Trust Territory where local customary law to the contrary is applicable. (T.T.C., Sec. 22) Ngiramulei v. Rideb, 2 T.T.R. 370.

Trial court in Trust Territory may properly base its decision on local custom where customary law is not in conflict with laws of Trust Territory or laws of United States in effect in Trust Territory. (T.T.C., Sec. 21) Ngiramulei v. Rideb, 2 T.T.R. 370.

Custom in conflict with existing statutory provision is void. Ngiruhelbad v. Merii, 2 T.T.R. 631.

DISTURBING THE PEACE

Written law is superior to any previous custom on Ponape Island and changes any customary law there may have been previously which was contrary to it. *Tuhpwer v. Ioanis*, 2 T.T.R. 357.

Where ordinance purports to give wide power to newly created body and to revive type of penalty long in disuse, it does not come within exception of Trust Territory Bill of Rights regarding custom. *Mesechol v. Trust Territory*, 2 T.T.R. 84.

In order to bring ordinance within exception of Bill of Rights regarding custom, ordinance must be either purely declaratory of present-day customary law or merely place some limitation on it. (T.T.C., Sec. 4) *Mesechol v. Trust Territory*, 2 T.T.R. 84.

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

Burden of Proof

Where there is dispute as to existence or effect of local custom, party relying upon it must prove it by evidence satisfactory to court. *Basilus v. Rengiil*, 2 T.T.R. 430.

Where there is dispute as to existence or effect of local custom, and court is not satisfied as to its existence or applicability, custom becomes mixed question of law and fact. *Basilus v. Rengiil*, 2 T.T.R. 430.

Where there is dispute as to existence or effect of local custom, existence or applicability becomes mixed question of law and fact, and party relying upon it must prove it by satisfactory evidence. *Mutong v. Mutong*, 2 T.T.R. 588; *Kenyul v. Tamangin*, 2 T.T.R. 648.

Violation

Some violations of custom may form basis for civil damages without being crimes. *Sechelong v. Trust Territory*, 2 T.T.R. 92.

Crimes

If accused in criminal prosecution under local custom fails to observe present-day Palauan practice by trying personally to settle dispute, he has not committed any crime in doing so. *Sechelong v. Trust Territory*, 2 T.T.R. 92.

Judicial Notice

If local custom is firmly established and widely known, court will take judicial notice of it. (T.T.C., Sec. 21) *Basilus v. Rengiil*, 2 T.T.R. 430; *Mutong v. Mutong*, 2 T.T.R. 588.

D

DISTURBING THE PEACE.

Generally

Crime of disturbing the peace covers large range of activities which annoy and disturb people affected to such an extent as to deprive them

DISTURBING THE PEACE

of right to peace and quiet and to provoke breach of the peace. (T.T.C., Sec. 426) Oingerang v. Trust Territory, 2 T.T.R. 385.

Intent

Fact that defendant was actuated by good motive in uttering words is not a defense to charge of disturbing the peace. (T.T.C., Sec. 426) Oingerang v. Trust Territory, 2 T.T.R. 385.

Where accused in criminal prosecution accosted woman ship passenger, even for purpose of obtaining liquor, in manner suggesting indecent request, actions were unjustifiable and may be found to have disturbed the peace of passengers concerned. (T.T.C., Sec. 426) Oingerang v. Trust Territory, 2 T.T.R. 385.

Words

Words may constitute offense of disturbing the peace if they are likely to bring about an altercation. (T.T.C., Sec. 426) Oingerang v. Trust Territory, 2 T.T.R. 385.

DOMESTIC RELATIONS.

Confirmation of Custom

The High Court may enter decree confirming annulment, divorce or adoption in accordance with recognized custom. (T.T.C., Sec. 715) Mutong v. Mutong, 2 T.T.R. 588.

Loss of Consortium

Wide latitude must be allowed for exercise of judgment as to measure of loss of consortium and affections in money. Miko v. Keit, 2 T.T.R. 582.

Marriage

Both Palauan custom and English-American common law recognize strong public interest in protecting and encouraging harmony between husband and wife. Sechelong v. Trust Territory, 2 T.T.R. 92.

Generally throughout Trust Territory, families of man and woman are required to consent to their union before marriage relationship between them is considered to exist. Mutong v. Mutong, 2 T.T.R. 588.

Registration or recording of marriage is not essential to its validity. Mutong v. Mutong, 2 T.T.R. 588.

—Custom

While there are similarities between marriage under local custom and "common law marriage" under American law, alleged customary marriage cannot be determined solely on basis of precedents relating to common law marriage. Mutong v. Mutong, 2 T.T.R. 588.

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

—Presumption

Where man and woman are living together as husband and wife, marriage should always be presumed. Mutong v. Mutong, 2 T.T.R. 588.

DOMESTIC RELATIONS

Where there is evidence of consent by some members of families of parties to be married and evidence of cohabitation, well-recognized presumption of marriage operates in favor of party claiming validity of marriage. *Mutong v. Mutong*, 2 T.T.R. 588.

Where man and woman are living together as husband and wife, presumption of marriage is especially strong where legitimacy of children is concerned, and increases in strength with length of time of marriage. *Mutong v. Mutong*, 2 T.T.R. 588.

Although presumption of marriage is not conclusive where man and woman are living together, court will give effect to presumption where parents recognize marriage, there is subsequent cohabitation, birth of children, and reconciliation after separation. *Mutong v. Mutong*, 2 T.T.R. 588.

Divorce

Principles of law contained in Trust Territory decisions regarding divorce apply only to cases of divorce under Code. *Yamada v. Yamada*, 2 T.T.R. 66.

Trust Territory Code provisions regarding divorce must be construed in accordance with general principles applied in states having similar statutory provisions. *Yamada v. Yamada*, 2 T.T.R. 66.

In granting divorce under Trust Territory Code, court is expected to exercise good judgment in determining in accordance with established legal principles whether divorce should be granted even if one of permitted causes is shown. (T.T.C., Sec. 698) *Yamada v. Yamada*, 2 T.T.R. 66.

—Custom

Although Trust Territory law recognizes divorce under local custom, courts should have nothing to do with original granting of customary divorce. (T.T.C., Sec. 714) *Yamada v. Yamada*, 2 T.T.R. 66.

Trust Territory Code provisions regarding divorce indicate policy of making divorces available in accordance with liberal or tolerant modern view prevailing in some states in United States. *Yamada v. Yamada*, 2 T.T.R. 66.

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

—Defenses

Court may choose not to grant divorce where repeated forgiveness of parties indicates possibility of reconciliation. *Yamada v. Yamada*, 2 T.T.R. 66.

Older view in United States, that if both parties are guilty of offense constituting ground for divorce neither could obtain divorce, is not in accord with spirit of Trust Territory Code nor suitable to conditions here. *Yamada v. Yamada*, 2 T.T.R. 66.

Proper rule as to granting of divorce under Trust Territory Code is that misconduct of plaintiff (recrimination) is discretionary or qualified

DOMESTIC RELATIONS

defense, and if both parties are guilty of misconduct, court may grant divorce to one less at fault. *Yamada v. Yamada*, 2 T.T.R. 66.

Trust Territory courts should refuse to grant divorce at request of party who is more seriously at fault, especially where reconciliation is prevented by that party's desire to continue misconduct. *Yamada v. Yamada*, 2 T.T.R. 66.

Although principle of greater fault does not apply where ground for divorce is based on separation, where divorce is requested on grounds of cruel treatment, neglect or personal indignities, it does apply. *Yamada v. Yamada*, 2 T.T.R. 66.

In action for divorce, where plaintiff's misconduct is serious and continuing and misconduct of defendant is largely provoked by plaintiff's conduct, court will find plaintiff is party most at fault and not entitled to divorce. *Yamada v. Yamada*, 2 T.T.R. 66.

—Custody

In action for divorce, custody of children is controlled primarily by best interests of children. (T.T.C., Sec. 704) *Yamada v. Yamada*, 2 T.T.R. 66.

In action for divorce, custody of mother of children under twelve years of age usually is best where consistent with local culture. (T.T.C., Sec. 704) *Yamada v. Yamada*, 2 T.T.R. 66.

Support

In action for divorce, where customary law on child support is unclear, case should be remanded to district court for further hearing. *Mutong v. Mutong*, 2 T.T.R. 588.

DRUNKEN AND DISORDERLY CONDUCT.

Generally

Under Trust Territory law, disturbance of particular persons is not essential element of offense of drunken and disorderly conduct. (T.T.C., Sec. 427) *Yinmed v. Trust Territory*, 2 T.T.R. 492.

All that is required to be shown in criminal prosecution for drunken and disorderly conduct under Trust Territory law is that accused was drunk and disorderly in any street, road, or other public place from voluntary use of intoxicating liquor. (T.T.C., Sec. 427) *Yinmed v. Trust Territory*, 2 T.T.R. 492.

To establish crime of drunken and disorderly conduct, prosecution must establish beyond reasonable doubt that accused was drunk and disorderly and that this conduct occurred on street, road or public place. (T.T.C., Sec. 427) *Nokei v. Trust Territory*, 2 T.T.R. 329.

In criminal prosecution for drunken and disorderly conduct, disturbance of particular persons may be element to consider as to seriousness of particular incident. (T.T.C., Sec. 427) *Yinmed v. Trust Territory*, 2 T.T.R. 492.

EMBEZZLEMENT

Public Place

Where no evidence is introduced to show that building in which offense of drunken and disorderly conduct allegedly occurred was "public place," prosecution failed to prove element of offense charged. (T.T.C., Secs. 424, 427) *Nokei v. Trust Territory*, 2 T.T.R. 329.

DYNAMITING FISH.

Generally

Crime of dynamiting fish consists of fishing with dynamite, hand grenades or any other form of explosive, or any form of poison, with exception of fishing for scientific purposes under certain circumstances. (T.T.C., Sec. 780) *Ropon v. Trust Territory*, 2 T.T.R. 313.

Attempt

Crime of dynamiting fish includes attempt to catch fish by use of dynamite, regardless or whether attempt is successful. (T.T.C., Sec. 780) *Ropon v. Trust Territory*, 2 T.T.R. 313.

Under statutory crime of dynamiting fish, use of appliance within meaning of prohibition includes situation where appliance was ready and intended for use although not actually put into operation. (T.T.C., Sec. 780) *Ropon v. Trust Territory*, 2 T.T.R. 313.

In criminal prosecution for dynamiting fish, it is immaterial that explosive failed to explode and that no fish were caught. (T.T.C., Sec. 780) *Ropon v. Trust Territory*, 2 T.T.R. 313.

E

EMBEZZLEMENT.

Generally

In criminal prosecution for embezzlement, it is not necessary for government to prove exact amount alleged in information has been embezzled. (T.T.C., Sec. 393) *Paul v. Trust Territory*, 2 T.T.R. 238.

Evidence of failure to report cash disbursements, and of unaccountable shortage from special and petty cash funds, is sufficient to establish intent to defraud government and to permanently convert money so withheld to accused's own use. (T.T.C., Sec. 393) *Paul v. Trust Territory*, 2 T.T.R. 238.

Intent

Fact that person accused of embezzlement may have intended to replace amounts taken, or may have received no personal profit nor have intended to profit from taking, is not valid defense. (T.T.C., Sec. 393) *Paul v. Trust Territory*, 2 T.T.R. 238.

Sentence

Although maximum penalty which is imposed for embezzlement depends on whether amount involved is less than or greater than fifty dollars, actual amount beyond fifty dollars is matter for court to con-

EMBEZZLEMENT

sider in exercising discretion as to punishment to be imposed within limits of law. (T.T.C., Sec. 393) *Paul v. Trust Territory*, 2 T.T.R. 238.

EMINENT DOMAIN.

Taking

"Taking" under power of eminent domain is generally defined as entering upon private property and under warrant of legal authority devoting it to public use, or otherwise affecting it in such a way as to substantially deprive owner of beneficial enjoyment thereof. *Sechesuch v. Trust Territory*, 2 T.T.R. 458.

In United States, in order for action to constitute taking of land, without any formal condemnation proceedings, possession and use of land or beneficial enjoyment of it must be affected. *Sechesuch v. Trust Territory*, 2 T.T.R. 458.

Mere temporary entry on land for purpose of making survey of it is not enough by itself to constitute a taking. *Sechesuch v. Trust Territory*, 2 T.T.R. 458.

Making of public recording of map showing proposed improvement of land does not constitute a taking in absence of special circumstances, such as further clear act evidencing intention to proceed according to map, or statute providing that recording of map shall operate as a taking. *Sechesuch v. Trust Territory*, 2 T.T.R. 458.

Where Japanese Government took possession of land in 1926, erected structures thereon and interfered with any other use of any small intervening portions not actively used by it, entire area is considered to have been in possession of Japanese Government since 1926. *Catholic Mission v. Trust Territory*, 2 T.T.R. 251.

Compensation

Under American constitutional requirements that private property may not be taken for public use without just compensation, there is implied requirement that compensation be in money. *Moorou v. Trust Territory*, 2 T.T.R. 124.

EQUITY.

Generally

Generally speaking, only grounds on which suit can be maintained to recover money paid are fraud, mistake or duress. *Madris v. Ilab*, 2 T.T.R. 351.

One who invokes aid of courts must expect to stand upon the truth. *Gilmar v. Nifrou*, 2 T.T.R. 201.

Laches

Doctrine of laches is applicable in Trust Territory and may estop party from bringing action. *Kanser v. Pitor*, 2 T.T.R. 481.

In enforcement of equitable right, party must act diligently and expeditiously, on pain of losing right. *Rochunap v. Yosochune*, 2 T.T.R. 16.

EVIDENCE

In order to bar suit on ground of stale claim, four elements must be present: action by defendant for which plaintiff seeks remedy, delay in asserting plaintiff's rights, lack of knowledge by defendants that plaintiff would bring action, and injury to defendants in event suit is not barred. *Rochunap v. Yosochune*, 2 T.T.R. 16.

Essential element of defense of laches is showing of injury or prejudice by delay in question. *Torual v. Trust Territory*, 2 T.T.R. 267.

Court will not reach into distant past to correct injustices which may have existed. *Kanser v. Pitor*, 2 T.T.R. 481.

Claim not worthy of presentation during Japanese Administration is not worthy of presentation now unless specifically authorized by enactment of Trust Territory. *Kanser v. Pitor*, 2 T.T.R. 481.

EVIDENCE.

Generally

Court cannot reasonably be expected to disbelieve uncontradicted sworn testimony unless there is something clearly incredible about it. *Yinmed v. Trust Territory*, 2 T.T.R. 492.

Where evidence is taken in certiorari proceeding in order to avoid delay of amended return, and defendants' counsel in open court expressly waives objection to taking of evidence, defendants cannot later properly object to consideration of evidence so taken. *Torual v. Trust Territory*, 2 T.T.R. 267.

Documents

Master's failure to understand German land document is not good reason for excluding it from evidence. *Kono v. Mikael*, 2 T.T.R. 466.

—Lost or Destroyed

Loss or destruction of document does not of itself ordinarily affect rights evidenced by document. *Torual v. Trust Territory*, 2 T.T.R. 267.

Courts having equity jurisdiction may compel re-execution of lost or destroyed document or otherwise establish such document. *Torual v. Trust Territory*, 2 T.T.R. 267.

Hearsay

Testimony concerning suit filed before Japanese administrator of which there is no authoritative record of proceeding is subject to objection that it is hearsay. *Nitoka v. Neseper*, 2 T.T.R. 12.

Declaration Against Interest

Declarations against interest are received in evidence, notwithstanding they are hearsay, since reliability of declarations is dependable because person does not ordinarily assert facts which are against his own pecuniary interest. *Naoro v. Inekis*, 2 T.T.R. 232.

Statement by vendor that he sold land rather than retained it is declaration against interest. *Naoro v. Inekis*, 2 T.T.R. 232.

EVIDENCE

Self-Serving Declaration

Statements to plaintiffs outside of court may be self-serving declarations which are properly received in evidence, but they cannot be accorded same weight as declaration against interest. *Naoro v. Inekis*, 2 T.T.R. 232.

Stipulations and Admissions

Any stipulation or admission, in order to be accepted in place of evidence, must be made or presented publicly in open court just as evidence is. *Firetamag v. Trust Territory*, 2 T.T.R. 413.

Evidence of Criminal Conduct in Civil Suit

Alleged criminal conduct of party defendant in civil action has nothing to do with claims in civil suit, since court is only concerned with particular right and not with conduct affecting other matters not related to claim. *Gilmar v. Nifrou*, 2 T.T.R. 201.

Any delay in bringing criminal charges against individual to trial should be taken up with prosecuting authorities and has nothing to do with merits of civil action. *Gilmar v. Nifrou*, 2 T.T.R. 201.

F

FORGERY.

Generally

Crime of forgery requires material alteration of writing or document. (T.T.C., Sec. 394) *Likauche v. Trust Territory*, 2 T.T.R. 375.

Technical interpretation of crime of forgery in some jurisdictions requires that forger have substantial knowledge of law and that document in form meets all legal requirements that would ordinarily be known to lawyers or those dealing with documents of that kind. (T.T.C., Sec. 394) *Likauche v. Trust Territory*, 2 T.T.R. 375.

Defective Instrument

If forged instrument is obviously defective, law will not presume that it can accomplish fraud which is intended since law presumes competent knowledge to guard against such effect. (T.T.C., Sec. 394) *Likauche v. Trust Territory*, 2 T.T.R. 375.

Under present state of Trust Territory law, unlawfully and falsely altering amount of check in figures, with intent thereby to defraud, constitutes forgery even though amount in words is not altered, since under conditions now existing in Trust Territory figures on check are likely to have strong influence on those handling it and should be considered to constitute material part of check. (T.T.C., Sec. 394) *Likauche v. Trust Territory*, 2 T.T.R. 375.

Use of false or altered document which does not meet requirements of forgery constitutes cheating, on theory that document cannot be considered forgery because it shows on its face that it does not meet

FORMER ADMINISTRATIONS

legal requirement of form and could not defraud person knowing legal requirement. (T.T.C., Sec. 394) *Likauche v. Trust Territory*, 2 T.T.R. 375.

FORMER ADMINISTRATIONS.

Applicable Law

Same rules of construction which apply to statutes govern interpretation of administrative rules and regulations of Japanese Administration. *Ngiruhelbad v. Merii*, 2 T.T.R. 631.

Whether any action was legally right or wrong should be decided according to law at time action was taken. *Kanser v. Pitor*, 2 T.T.R. 481.

If division of land on Truk was valid at time it was made, it must still be recognized as valid, and party may not now have it judged by some different standard from that which was in effect under law in force at time division was made. *Aselis v. Keremalus*, 2 T.T.R. 433.

Japanese Mandate

Japanese Government administering territory under mandate of League of Nations was in same position as sovereign which has been accorded recognition. *Catholic Mission v. Trust Territory*, 2 T.T.R. 251.

Under League of Nations Mandate, Japanese Government was obligated to promote material and moral well-being and social progress of inhabitants of territory. *Moorou v. Trust Territory*, 2 T.T.R. 124.

Official Acts

Whether determination made during period of German Administration was right or wrong, courts of present administration cannot properly upset it now. *Keribar v. Lejolan*, 2 T.T.R. 36.

Where Japanese Government confiscated and took possession of piece of land in 1926, whether such taking was legal or illegal under law in effect at the time, it must be recognized as act of Japanese Administration. *Catholic Mission v. Trust Territory*, 2 T.T.R. 251.

Transfer of land to Japanese Government in 1926 must be accepted by courts of present administration without examining merits just as confiscations by foreign government of property within its power are binding upon government which recognizes government effecting such confiscation. *Catholic Mission v. Trust Territory*, 2 T.T.R. 251.

Recognition of Established Rights

Where land in Truk was divided during German Administration without consent of former owner, and owner has raised no objection until forty years later, inference is strong that former owner either acquiesced in division or considered it valid. *Aselis v. Keremalus*, 2 T.T.R. 433.

Redress of Prior Wrongs

It is no part of duty of nation receiving cession of territory to right wrongs which grantor nations may have theretofore committed unless wrong occurred so near time of cession that there was no reasonable

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opportunity to apply to courts or other authorities of that nation for redress. *Catholic Mission v. Trust Territory*, 2 T.T.R. 251.

Present government is not required as matter of right to correct wrongs of any former administration. *Ngiruhelbad v. Merii*, 2 T.T.R. 631.

—Exception to Applicable Doctrine

Present administration is not required as matter of right to correct such wrongs as former administration may have done, except in cases where wrong occurred so near time of change of administration that there was no opportunity for it to be corrected through courts or agencies of former administration. *Kanser v. Pitor*, 2 T.T.R. 481.

Taking of Private Property by Japanese Government—Compensation

Whether taking of private property in Palau Islands by Japanese Government was negotiated sale under threat of taking or informal taking under Japanese Administration's power of eminent domain, former owner has burden of proving that he did not receive just compensation. *Ngirkelau v. Trust Territory*, 2 T.T.R. 72.

Whether taking of private property in Palau Islands by Japanese Government was negotiated sale under threat of taking or informal taking under Japanese Administration's power of eminent domain, former owner has obligation to use reasonable effort to reduce his damage or loss. *Ngirkelau v. Trust Territory*, 2 T.T.R. 72.

Where Japanese Government acted fraudulently towards private landowners, latter are entitled to repudiate their acceptance of money from government as compensation for their lands. *Moorou v. Trust Territory*, 2 T.T.R. 124.

Japanese Government acted fraudulently when it cooperated with corporation to bring about forced sales of land from private owners and then demanded that money received therefrom be exchanged for bonds and notes. *Moorou v. Trust Territory*, 2 T.T.R. 124.

Where Japanese Government and corporation acted in concert in obtaining lands from private owners, transfer of lands and payment in government bonds and notes constituted single transaction. *Moorou v. Trust Territory*, 2 T.T.R. 124.

Although money which landowners accepted from Japanese Government for sale of land in 1940 may have constituted just compensatiton in yen at that time, forced exchange of yen for government bonds and notes is different matter. *Moorou v. Trust Territory*, 2 T.T.R. 124.

Value of bonds and notes received from Japanese Government for sale of land in 1940 should be determined by value at time and place where they were forced on owners and in light of circumstances existing there at the time. *Moorou v. Trust Territory*, 2 T.T.R. 124.

Japanese Government as a Mandatory and present government as a Trusteeship must give special weight to actual value of government bonds and notes to inhabitants of the territory where these are received. *Moorou v. Trust Territory*, 2 T.T.R. 124.

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Where value of bonds and notes to owners was far less than money they were forced by Japanese Government to surrender for them, forced exchange in connection with sale of land constitutes substantial failure of consideration, so that owners were deprived of lands without their free will and without receiving just compensation. *Moorou v. Trust Territory*, 2 T.T.R. 124.

—Limitations

Clear intent of Trust Territory policy regarding relief from transfer of lands to Japanese Government from non-Japanese owner applies to a taking just as much as to purported sale. (Policy Letter P-1, December 29, 1947) *Sechesuch v. Trust Territory*, 2 T.T.R. 458.

Policy established by Trust Territory regarding relief from taking of lands by Japanese Government is binding on court until such time as it is rescinded or modified. (Policy Letter P-1, December 29, 1947) *Sechesuch v. Trust Territory*, 2 T.T.R. 458.

Administrative policy with regard to return of lands taken by Japanese Government for which fair compensation was not paid to former owner does not constitute basis for order in nature of specific performance. (Policy Letter P-1, December 29, 1947) *Kengsiro v. Trust Territory*, 2 T.T.R. 76.

For purpose of applying Trust Territory policy regarding relief from taking of lands by Japanese Government, taking of land of which owner had no notice until 1940 is considered to have been made in 1940. (Policy Letter P-1, December 29, 1947) *Sechesuch v. Trust Territory*, 2 T.T.R. 458.

Land transfers from non-Japanese private owners to Japanese Government, corporations or nationals since March 27, 1935, are considered valid unless former owner establishes sale was not made of free will and just compensation not received. (Policy Letter P-1, December 29, 1947) *Sechesuch v. Trust Territory*, 2 T.T.R. 458.

Court is bound by Trust Territory policy that where land was taken by Japanese Government after March 27, 1935, taking is valid unless former owner establishes sale was not made of free will and just compensation not received. (Policy Letter P-1, December 29, 1947) *Catholic Mission v. Trust Territory*, 2 T.T.R. 251.

Land transfers to Japanese corporations since March 27, 1935, are subject to review and are considered valid unless former owner establishes sale was not made of free will and just compensation not received. (Policy Letter P-1, December 29, 1947) *Sechelong v. Trust Territory*, 2 T.T.R. 526.

Where alleged sale of land to Japanese Government occurred in 1940, it took place so late in Japanese Administration that present administration has obligation to correct wrong if land owners establish sale was made without their free will and that just compensation was not received. (Policy Letter P-1, December 29, 1947) *Moorou v. Trust Territory*, 2 T.T.R. 124.

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Fear of Japanese authorities is not legal excuse for failure to bring action under former administration since Japanese courts were open to land disputes. *Kanser v. Pitor*, 2 T.T.R. 481.

Fear of power of individual as reason for long delay in taking action is not legal excuse for failure to take action on claim for land in Truk, since Japanese courts were open to land claims. *Rochunap v. Yosochune*, 2 T.T.R. 16.

Failure of party to take action during first years of American Administration in regard to claim for land, although American justice was available to all, makes untenable plaintiff's explanation of inactivity based on fear. *Rochunap v. Yosochune*, 2 T.T.R. 16.

Where matters concerning relationship between yen values in 1941 and dollar values at present time have not been fully adjusted by parties in action where relationship is relevant, court will allow further opportunity to be heard thereon before making specific ruling as to party's claim for return of land taken by Japanese Government. *Kengsiro v. Trust Territory*, 2 T.T.R. 76.

Where transfer of land to Japanese Government occurred in 1926, and therefore many years before termination of Japanese Administration, there was ample time to seek redress through judiciary or other authorities of that administration. *Catholic Mission v. Trust Territory*, 2 T.T.R. 251.

As matter of equity, former owner of land taken by Japanese Government in 1941 for which just compensation was not received is entitled to have his land returned to him upon making return to government for fair value of partial compensation which he received, or to be paid now for remainder of fair value of land at time it was taken. *Kengsiro v. Trust Territory*, 2 T.T.R. 76.

Where clan was definitely on notice by about 1933 that Japanese Government had claimed its land, so much time has elapsed between taking of land and end of Japanese Administration that courts of present administration cannot properly upset it. *Sechesuch v. Trust Territory*, 2 T.T.R. 458.

Where land was taken by government in 1922 to be used as community land, taking is subject to review in accordance with established Trust Territory policy. (Policy Letter P-1, December 29, 1947) *Tabelual v. Magistrate Omelau*, 2 T.T.R. 540.

H

HOMICIDE.

Generally

One who inflicts injury on another is deemed by law to be guilty of homicide if injury contributes mediately or immediately to death of another. *Kirispin v. Trust Territory*, 2 T.T.R. 628.

Murder in the First Degree

Where accused in criminal prosecution was probably intoxicated and engaged in fight from which he received physical violence, it is reasonable to assume that he was acting under severe emotional distress and that there was no premeditation essential for conviction of first degree murder. (T.T.C., Sec. 385) *Mendiola v. Trust Territory*, 2 T.T.R. 651.

Where prosecution fails to show premeditation essential to first degree murder but does show malice, appellate court may modify conviction to second degree murder and direct trial court to re-sentence accused. (T.T.C., Sec. 386) *Mendiola v. Trust Territory*, 2 T.T.R. 651.

I

INTERNATIONAL LAW.

Sovereignty

All persons and property within territorial jurisdiction of sovereign are amenable to regulation of terms and conditions on which real or personal property within territory may be transmitted. *Ngiruhelbad v. Merii*, 2 T.T.R. 631.

Rights and interests in private property, located in territory acquired by conquest, cession or treaty, are defined, held and transmitted under laws of new sovereign. *Ngiruhelbad v. Merii*, 2 T.T.R. 631.

J

JUDGMENTS.

Stare Decisis

In general, courts adhere to and follow decisions previously made in similar courts under doctrine of stare decisis. *Tuchurur v. Recauld*, 2 T.T.R. 576.

Doctrine of stare decisis governs decisions of same questions in same way in actions between strangers to the record. *Tuchurur v. Recauld*, 2 T.T.R. 576.

Res Judicata

Public policy and interests of litigants require there be an end to litigation which, without doctrine of res judicata, would be endless. *Tuchurur v. Recauld*, 2 T.T.R. 576.

Doctrine of res judicata inheres in legal systems of all civilized nations as obvious rule of expediency, justice and public tranquility. *Tuchurur v. Recauld*, 2 T.T.R. 576.

Doctrine of res judicata rests upon ground that party to be affected, or some other with whom he is in privity, has litigated or had opportunity to litigate same matter in former action in court of competent jurisdiction, and should not be permitted to litigate it again to harassment and vexation of opponent. *Tuchurur v. Recauld*, 2 T.T.R. 576.

JUDGMENTS

Doctrines of stare decisis and res judicata are based upon wholly different principles. *Tuchurur v. Recauld*, 2 T.T.R. 576.

Under doctrine of res judicata, only parties and persons in privity with them are bound by previous decision. *Tuchurur v. Recauld*, 2 T.T.R. 576.

Under doctrine of res judicata, if judgment necessarily presupposes certain premises, they are as conclusive as judgment itself. *Tuchurur v. Recauld*, 2 T.T.R. 576.

Under doctrine of res judicata, every proposition assumed or decided by court leading up to final conclusion and upon which such conclusion is based is as effectively passed upon as ultimate question which is finally solved. *Tuchurur v. Recauld*, 2 T.T.R. 576.

Under doctrine of res judicata, if record of former trial shows judgment could not have been rendered without deciding particular matter, it will be considered as having settled matter as to all further actions between the parties. *Tuchurur v. Recauld*, 2 T.T.R. 576.

Doctrine of res judicata may be applied to matters essentially connected with subject matter of litigation and to questions necessarily involved or implied in final judgment, although such matters are not directly referred to in pleadings. *Tuchurur v. Recauld*, 2 T.T.R. 576.

Where essential element to party's claims in two separate actions is that individual's title to land involved in both actions was wrongfully or improperly acquired, and there is relationship between parties plaintiff in both actions, and lands involved in both actions adjoin, question of individual's title to land cannot be litigated again in attempt to show its invalidity. *Tuchurur v. Recauld*, 2 T.T.R. 576.

Where judgment of court only purports to adjudicate as between "parties and all persons claiming through or under them", claim of one who was neither party to such action nor claiming through one who was party, is not barred in subsequent action. *Ngerdelolek Village v. Ngerchol Village*, 2 T.T.R. 398.

Stay of Execution

Execution of judgment will not be stayed pending appeal unless either appellate or reviewing or trial court orders stay for cause shown and upon such terms as it may fix. (T.T.C., Sec. 201) *Mottan v. Lanjen*, 2 T.T.R. 347.

Person who desires to delay effect of judgment should be ready to give security or other guarantee that judgment will be paid or otherwise complied with if it is affirmed in whole or in part, as result of the appeal. (T.T.C., Sec. 290) *Mottan v. Lanjen*, 2 T.T.R. 347.

Order in Aid of Judgment

Order in aid of judgment may call for payments before appeal is finally determined, if order has been entered that appeal shall not stay the judgment. (T.T.C., Sec. 290) *Mottan v. Lanjen*, 2 T.T.R. 347.

LEGISLATIVE POWER

Trust Territory law expressly authorizes transfers of interests in land under an order in aid of judgment. (T.T.C., Sec. 288(c)) *Miko v. Keit*, 2 T.T.R. 582.

Damages

Any error in reduction of damages awarded to party by district court is not prejudicial to adverse party nor matter of which he can justly complain. *Darby v. Ngirkelau*, 2 T.T.R. 160.

Where District Court judgment does not cover matter of amount due in accordance with it, justice requires both sides be given opportunity to present evidence as to this issue. *Mottan v. Lanjen*, 2 T.T.R. 347.

L

LANDLORD AND TENANT.

Commercial Lease—Change in Nature of Business

While business was operated as club instead of retail store as contemplated in lease agreement, rent should be appropriate for changed type of business unless and until new agreement is reached with lessors. *Mottan v. Lanjen*, 2 T.T.R. 347.

Where lease agreement contemplated usual type of retail store in Marshall Islands, change in nature of business from retail store to club should not have been made without consent of lessors. *Mottan v. Lanjen*, 2 T.T.R. 347.

Where business contemplated under lease agreement was usual type of retail store in Marshall Islands, with no mention of selling alcoholic beverages, sale of beer for consumption on premises changed nature of business to a "club." *Mottan v. Lanjen*, 2 T.T.R. 347.

LARCENY.

Intent

In criminal prosecution for petit larceny, intent of accused, or his honest belief that no one would complain of his taking damaged radiator, go only to question of blame, that is, amount of sentence, factors to be considered by trial court. (T.T.C., Sec. 397) *Ebas v. Trust Territory*, 2 T.T.R. 95.

In criminal prosecution for petit larceny, even if accused intended to give detached radiator to purchaser of weapons carrier, he knew or ought to have known that he had no right to do this. (T.T.C., Sec. 397) *Ebas v. Trust Territory*, 2 T.T.R. 95.

LEGISLATIVE POWER.

Generally

Nature and purpose of legislative power is to clarify and change law when in public interest. *Tuhpwer v. Ioanis*, 2 T.T.R. 357.

LIQUOR CONTROL

LIQUOR CONTROL.

Licenses

In criminal prosecution for violation of liquor licensing law, if accused's liquor distributor's license was not issued in strict accordance with applicable law, but was issued and accepted by him from government in good faith without any fault on his part, and sale or transfer complained of was in fact within terms of license or any limits on it communicated to him or of which he is shown to have notice, he should be acquitted. *Temengil v. Trust Territory*, 2 T.T.R. 31.

In prosecution for violation of liquor licensing law, if sale or transfer of liquor by accused is clearly shown by evidence to be outside limits of his license or at place not covered by license, he should be convicted. *Temengil v. Trust Territory*, 2 T.T.R. 31.

Sale

Broad interpretation is generally given to word "sell" in connection with laws seeking to control distribution of intoxicating liquors. *Recheungel v. Trust Territory*, 2 T.T.R. 517.

Intent of Palau law restricting sale of liquor is to restrict to persons licensed thereunder all sales of liquor which have any commercial or public aspect. (Palau District Public Law 8-61) *Recheungel v. Trust Territory*, 2 T.T.R. 517.

Sale by individual of his own liquor is not excepted from broad words of Palau law forbidding sale of liquor to minor. (Palau District Public Law 8-61) *Recheungel v. Trust Territory*, 2 T.T.R. 517.

To constitute "selling" in violation of Palau law regulating sale of liquor, it is not necessary to show sale was in regular course of particular business. (Palau District Public Law 8-61) *Recheungel v. Trust Territory*, 2 T.T.R. 517.

Exhibiting of hard liquor on shelves of retail store, dispensing liquor and beer from store, and accepting payments or making charges therefor comes within field of activity which is prohibited under Palau law regarding sale of liquor, regardless of whether liquor or its proceeds are considered part of assets of store business. (Palau District Public Law 8-61) *Recheungel v. Trust Territory*, 2 T.T.R. 517.

LIVESTOCK.

Impounding

Person who has impounded stray livestock in accordance with statute may claim just compensation for its keep for such time as he reasonably has to hold it, including first two days and regardless of how soon owner is identified, provided person impounding animal gives required notice and animal is reclaimed within sixty days. (Ponape District Law 3-9-59) *Tuhpwer v. Ioanis*, 2 T.T.R. 357.

Intent of Ponape law providing for impounding of stray livestock is to put obligation on owner of straying livestock to go after it. (Ponape District Law 3-9-59) *Tuhpwer v. Ioanis*, 2 T.T.R. 357.

MALICIOUS MISCHIEF

Person impounding stray animal may not properly hold it after owner comes for it and shows willingness to take custody of it. (Ponape District Law 3-9-59) Tuhpwer v. Ioanis, 2 T.T.R. 357.

Although obligation is on owner to take initiative in recovering impounded animal and requesting its return, person impounding it cannot deliberately withhold animal or refuse to give it up until payment has been made for damage caused by it. (Ponape District Law 3-9-59) Tuhpwer v. Ioanis, 2 T.T.R. 357.

Burden is on owner to show he requested return of impounded animal in order to stop right of person impounding to hold it longer or charge for its keep thereafter. (Ponape District Law 3-9-59) Tuhpwer v. Ioanis, 2 T.T.R. 357.

Where owner fails to show that he made proper effort to recover pig prior to court hearing as a result of which it was returned, owner is liable for compensation for keep of pig for entire time it was in custody of person impounding it. (Ponape District Law 3-9-59) Tuhpwer v. Ioanis, 2 T.T.R. 357.

M

MALICIOUS MISCHIEF.

Generally

One accused of malicious mischief may show in defense of act, circumstances of justification or excuse. (T.T.C., Sec. 398) Aliwis v. Trust Territory, 2 T.T.R. 223.

Malice

In criminal prosecution for malicious mischief, there is no malice where act is done in good faith and under honest claim of right. (T.T.C., Sec. 398) Aliwis v. Trust Territory, 2 T.T.R. 223.

Where accused, charged with malicious mischief, acts in honest belief that he is owner of property which he injures, malice has not been shown beyond reasonable doubt. (T.T.C., Sec. 398) Aliwis v. Trust Territory, 2 T.T.R. 223.

Where statute defining malicious mischief has been amended to eliminate element of malice, substituting that of mere "unlawfulness," no special malice need be shown thereafter, although criminal statute should not be used as substitute for civil remedies for trespass. (Executive Order No. 84, amending T.T.C., Sec. 398) Aliwis v. Trust Territory, 2 T.T.R. 223.

Where express reference to "malice" has been eliminated from statute covering malicious mischief, previous remarks of court regarding meaning of statute as it stood before amendment, and similar remarks of text writers and other courts, are not directly applicable to amended section so far as malice is concerned. (T.T.C., Sec. 398) Firetamag v. Trust Territory, 2 T.T.R. 413.

MARSHALLS CUSTOM

MARSHALLS CUSTOM.

"Iroij Lablab"

Those holding land rights cannot throw off entirely all *iroij lablab* controls over their land or pick new *iroij lablab* of their own choosing, since this would be inconsistent with Marshallese custom. *Lojob v. Albert*, 2 T.T.R. 338.

Iroij Lablab, see, also, Marshalls Land Law—Iroij Lablab

—Recognition

Where party has once undertaken to support another as *iroij lablab* and has agreed to division of *iroij erik* rights between himself and others, he owes them obligation under Marshallese custom to stand by agreement in absence of good cause for change. *Laibon v. Namilur*, 2 T.T.R. 52.

—Approval of Wills

Under Marshallese custom, where will was approved under system then in force for exercise of *iroij lablab* powers for approval of wills of rights in land on "Jebrik's side" of Majuro Atoll, it effectively cut off adopted son's rights in land. *Lajeab v. Lukelan*, 2 T.T.R. 563.

MARSHALLS LAND LAW.

Generally

Court will neither enlarge nor decrease rights or obligations of *alab* and *dri jermal* under Marshallese custom since rights of both are subject to and dependent on custom. *Mike M. v. Jekron*, 2 T.T.R. 178.

Delegation of Powers

Under Marshallese custom, one who handles details of work of *iroij erik* and *iroij lablab* is subject to obligation to handle these matters as their representative and in accordance with their wishes. *Laibon v. Namilur*, 2 T.T.R. 52.

"Iroij Lablab"—Powers

Under Marshallese custom, *iroij lablab* have power to take away rights in land under them for good cause. *Lajeab v. Lukelan*, 2 T.T.R. 563.

Under Marshallese custom, where there is doubtful situation as to land rights in which *iroij lablab* is expected to make reasonable determination, and his decision is reasonable and fair, it will prevail. *Liema v. Lojwuil*, 2 T.T.R. 345.

Under Marshallese custom, rights of *alab* and *dri jermal* are subject to power and obligation of *iroij lablab* to make reasonable determinations in doubtful cases and to avoid controversies and secure constructive use of land. *Lojob v. Albert*, 2 T.T.R. 338.

Under Marshallese custom, where *iroij erik's* gifts of *alab* and *dri jermal* rights in land are binding, and party acts upon gifts in good faith and develops land and makes substantial improvements thereon,

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his rights cannot be cut off without good cause and consent of person exercising *iroij lablab* powers over the land. *Lobwera v. Labiliet*, 2 T.T.R. 559.

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

—“Jebrik’s Side” of Majuro

Although land on “Jebrik’s side” of Majuro Atoll has no individual *iroij lablab*, it is definitely subject to *iroij lablab* powers, no matter how these are exercised. *Mike M. v. Jekron*, 2 T.T.R. 178.

In exercising *iroij lablab* powers on “Jebrik’s side” of Majuro Atoll, fair procedure should be established, including notice to all parties connected with exercise of these powers. *Joab J. v. Labwoj*, 2 T.T.R. 172.

Under Marshallese custom, those having land rights on “Jebrik’s side” of Majuro Atoll cannot transfer their lands to individual *iroij lablab* without consent of those holding *iroij lablab* powers on “Jebrik’s side” any more than they could if they were under an individual *iroij lablab*. *Lojob v. Albert*, 2 T.T.R. 338.

Government still has right to come in and supervise exercise of *iroij lablab* rights on “Jebrik’s side” of Majuro Atoll if it ever decided to change its position not to do so. *Lojob v. Albert*, 2 T.T.R. 338.

Iroij lablab powers on “Jebrik’s side” of Majuro Atoll belong to the government, the *iroij erik* on that “side,” and the group (*droulul*) holding property rights there. *Joab J. v. Labwoj*, 2 T.T.R. 172.

As a practical matter, *iroij lablab* powers on “Jebrik’s side” of Majuro Atoll are vested in the *iroij erik* on that “side” and group (*droulul*) holding property rights there. *Joab J. v. Labwoj*, 2 T.T.R. 172.

Under Marshallese custom, *iroij erik* alone cannot permanently change rights in land on “Jebrik’s side” of Majuro Atoll, since they have obligation to consult *droulul* or those properly authorized to represent *droulul*. *Lojob v. Albert*, 2 T.T.R. 338.

Under Marshallese custom, where there is dispute within *bwij* as to who is rightful *iroij erik*, there is no proper basis for one claiming to be *iroij erik* to take away party’s *alab* and *dri jermal* rights because of party’s failure to recognize him as such, and these rights have not yet been determined. *Emoj v. James*, 2 T.T.R. 48.

Where one party claiming to be *alab* of certain land on “Jebrik’s side” of Majuro Atoll has approval of majority of *iroij erik* on that side, including *iroij erik* whose land is involved, he may temporarily act as *alab*. *Lojob v. Albert*, 2 T.T.R. 338.

Under Marshallese custom, disestablishment of *alab* and *dri jermal* cannot properly be made by an *iroij erik* without action of *iroij lablab* or those holding *iroij lablab* rights in the land. *Emoj v. James*, 2 T.T.R. 48.

For purpose of exercising *iroij lablab* powers on “Jebrik’s side” of Majuro Atoll, Jebrik’s *droulul* consists of those holding property rights

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there, including all those holding *alab* or *dri jermal* rights. *Lojob v. Albert*, 2 T.T.R. 338.

In attempting to exercise *iroij lablab* powers on "Jebrik's side" of Majuro Atoll, statement signed by four of eight *iroij erik* and seven members of committee for *droulul*, stating that *dri jermal* has made many troubles, but making no mention of cutting off his rights, is insufficient to constitute exercise of the *iroij lablab* power to cut off such rights. *Joab J. v. Labwoj*, 2 T.T.R. 172.

In regard to land on "Jebrik's side" of Majuro Atoll, same weight will be given to decisions of *iroij erik* on that "side" and *droulul* holding property rights there as to decisions of an individual *iroij lablab*, provided *iroij erik* and *droulul* develop fair and practical method of operation which will be clearly understandable, generally known to those concerned, and will take into consideration all factors individual *iroij lablab* is expected to and will result in responsible decisions at least as definite as those expected of individual *iroij lablab*. *Joab J. v. Labwoj*, 2 T.T.R. 172.

For purpose of exercising *iroij lablab* powers on "Jebrik's side" of Majuro Atoll, the 20-20 is not considered to be same thing as Jebrik's *droulul*. *Lojob v. Albert*, 2 T.T.R. 338.

For purpose of exercising *iroij lablab* powers on "Jebrik's side" of Majuro Atoll, there must be a meeting of whole *droulul*, and not merely meeting of the 20-20. *Lojob v. Albert*, 2 T.T.R. 338.

In exercising *iroij lablab* powers on "Jebrik's side" of Majuro Atoll, *droulul* attempting to delegate these powers must make this delegation definite, at a meeting of which whole *droulul* has adequate notice and in which all members have reasonable opportunity to participate. *Lojob v. Albert*, 2 T.T.R. 338.

Landowners of "Jebrik's side" of Majuro Atoll who oppose right of 20-20 to speak for whole of Jebrik's *droulul* in exercise of *iroij lablab* powers have not by their actions gone out of the *droulul*, and should not be denied their rights to notice of meetings and to be heard. *Lojob v. Albert*, 2 T.T.R. 338.

"Iroij Elap"—Powers

Under Marshallese custom, disposition of *dri jermal* and *alab* rights are matters to be taken up with *iroij elap*, whose decision on the matter will control within wide limits. *James R. v. Albert Z.*, 2 T.T.R. 135.

Where evidence indicates *iroij elap* in Marshall Islands disapproved of municipal council's action to establish party as *alab*, and council acted contrary to local custom and there was no good reason for change of original *alab*, attempted change is of no legal effect. *Ejkel v. Kon*, 2 T.T.R. 44.

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Under Marshallese custom, even if *alab* agrees with another to divide up her rights in land over which she is *alab*, such agreement would not divide land unless and until approved by *iroij elap*. James R. v. Albert Z., 2 T.T.R. 135.

Attempt by Marshall Islands municipal council to establish party as *alab*, contrary to local custom, does not bind or limit *iroij elap* in exercise of his power. Ejkel v. Kon, 2 T.T.R. 44.

“Alab”

Under Marshallese custom, mere bringing of suit to determine rights in certain *wato* does not constitute good cause for cutting off party's *alab* rights in other *wato*. Lobwera v. Labiliet, 2 T.T.R. 559.

—Establishment

Under Marshallese custom, establishment of *alab* cannot be upset by those holding subordinate rights in land without action of the *iroij elap*. Jibor v. Tibiej, 2 T.T.R. 38.

Under Marshallese custom, establishment of *alab* cannot be later upset on basis of facts which were in existence at time of establishment unless there is clear showing these facts were fraudulently concealed in some manner. Jibor v. Tibiej, 2 T.T.R. 38.

Once *alab* has been definitely established under Marshallese custom, and establishment has been accepted by all those concerned at the time, it cannot be upset years later on basis of facts which were in existence at time of establishment. Jibor v. Tibiej, 2 T.T.R. 38.

Under Marshallese custom, where party recognized as *alab* by those having property rights of *iroij lablab* in lands in question is half brother of former *alab*, decision is reasonable and fair and should prevail. Jonjen v. Debrum, 2 T.T.R. 336.

—Succession

Claim to *alab* rights based solely on fact claimant is son of former *alab* is contrary to Marshallese custom, since *alab* rights do not descend that way as matter of course. Jonjen v. Debrum, 2 T.T.R. 336.

Under Marshallese custom, although an *alab's* son may reasonably expect to serve as acting *alab*, he must act as *alab's* representative and in accordance with her wishes. James R. v. Albert Z., 2 T.T.R. 135.

—Obligations

Under Marshallese custom, those acting for *alab* have obligation to see that their actions are in accord with their authority and do not exceed it. Mike M. v. Jekron, 2 T.T.R. 178.

—Limitation of Powers

Under Marshallese custom, an *alab* acting alone cannot cut off *dri jermal* rights or give away *alab* rights. James R. v. Albert Z., 2 T.T.R. 135.

Under Marshallese custom, if *dri jermal* acts wrongfully towards *alab*, this does not justify those acting for *alab* in trying to stop workers

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sent by *dri jermal* without further consultations. Mike M. v. Jekron, 2 T.T.R. 178.

“Dri Jermal”

Under Marshallese custom, if *alab* cuts excessive amounts of copra, matter should be taken up by *dri jermal* with *alab* or with *iroij erik* and those having *iroij lablab* powers over the land. Mike M. v. Jekron, 2 T.T.R. 178.

Under Marshallese custom, if *dri jermal* is sick and unable to work land himself, he should be allowed, on reasonable notice, to send members of household or others closely connected with him to work for him. Mike M. v. Jekron, 2 T.T.R. 178.

—Establishment

Under Marshallese custom, where adopted daughter of *iroij erik* receives *alab* rights in land and also is expected to look out for her brother by adoption, he is considered to have *dri jermal* rights in land under her, along with her relatives by blood who have been actually using land for some time. Beklur v. Lijablur, 2 T.T.R. 556.

—Obligations

Under Marshallese custom, if *alab* cuts excessive amounts of copra, this does not justify *dri jermal* in withholding *alab's* share of copra nor in ceasing to contribute food to *alab's* family. Mike M. v. Jekron, 2 T.T.R. 178.

—Revocation of Rights

Under Marshallese custom, *dri jermal* rights which would otherwise continue indefinitely can only be cut off by *iroij lablab* or those having *iroij lablab* rights in land. Joab J. v. Labwoj, 2 T.T.R. 172.

Under Marshallese custom, *dri jermal* rights which would otherwise continue indefinitely cannot be cut off by *iroij erik* alone. Joab J. v. Labwoj, 2 T.T.R. 172.

Whether *dri jermal's* failure to fulfill his obligations is serious enough to warrant cutting off his rights should be considered in first instance by those having *iroij lablab* powers, and not by court. Joab J. v. Labwoj, 2 T.T.R. 172.

Whether or not party is responsible for actions of those under her who grossly disregarded their obligations to acting *alab*, party's *dri jermal* rights of long standing cannot be cut off by *alab* without action of *iroij elap*. Taina v. Namo, 2 T.T.R. 41.

Under Marshallese custom, party's sustained disregard of his obligations as adopted son constitutes good cause for cutting off his rights as *dri jermal* of land in question. Lajeab v. Lukelan, 2 T.T.R. 563.

Municipal Council

Although municipal (atoll) councils of Marshall Islands are often consulted as to various local situations and as to immediate determinations on land matters outside their powers, they may not legally make

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determination which interferes with controlling local custom. Ejkel v. Kon, 2 T.T.R. 44.

"Kabijukinen" Land

Under Marshallese custom, if land is traditional family or *kabijukinen* land, *alab* rights pass down in family *bwij*. Beklur v. Lijablur, 2 T.T.R. 556.

"Kitre"

Under Marshallese custom, an *iroij erik* and his wife are free to arrange that *alab* rights in *kitre* should pass down to their adopted daughter. Beklur v. Lijablur, 2 T.T.R. 556.

Under Marshallese custom, where land is given by individual to his wife as *kitre*, other members of her *bwij* acquire no property rights therein. Beklur v. Lijablur, 2 T.T.R. 556.

Use Rights

Under Marshallese custom, where party has only revocable permission to work *wato*, any buildings he puts up are at his own risk if he does not wish to remove them. Lobwera v. Labiliet, 2 T.T.R. 559.

Under Marshallese custom, where party has revocable permission to work *wato* and there is no express agreement as to other compensation, benefit which person obtains from temporary use of land is only compensation he can reasonably expect for development of land. Lobwera v. Labiliet, 2 T.T.R. 559.

Under Marshallese custom, both *alab* and *dri jermal* have obligation of cooperation and of mutual consideration for reasonable needs of each other. Mike M. v. Jekron, 2 T.T.R. 178.

Parties holding *alab* and *dri jermal* rights in same land are under continuing obligation of cooperation with each other and with the *iroij elap*. Taina v. Namo, 2 T.T.R. 41.

Under Marshallese custom, *alab* and *dri jermal* retain their respective positions pending action of *iroij elap*, and each is obligated to respect rights of the other in any buildings, trees or other property he may lawfully have on *wato*. James R. v. Albert Z., 2 T.T.R. 135.

MORTGAGES.

Generally

As matter of public policy and to promote justice and fair dealing, courts look beyond terms of mortgage document to real nature of transaction as one of security and not of purchase. Iyar v. Sungiyama, 2 T.T.R. 154.

Recording

Where mortgage is recorded after default in payment of secured debt, unrecorded gift of use rights in mortgaged land is subordinate to mortgage so far as areas covered may overlap, provided mortgagee

MORTGAGES

had no notice of gift at time mortgage contract was entered into. (T.T.C., Sec. 1023(b)) *Iyar v. Sungiyama*, 2 T.T.R. 154.

Foreclosure

Court action for foreclosure of mortgages prevents injustice which may be caused if land is allowed to pass automatically to mortgagee upon default in payment, regardless of how much more land may be worth than amount due on mortgage. *Iyar v. Sungiyama*, 2 T.T.R. 154.

Where court action is brought on default of mortgage debt, court will enable mortgagee to obtain payment of amount due within reasonable time, but prevent him from taking over property for far less than its fair worth. *Iyar v. Sungiyama*, 2 T.T.R. 154.

Voluntary agreement of all parties involved in mortgage transaction will obtain substantially same result as foreclosure of mortgage through court action, provided agreement is entered into understandingly after default has occurred. *Iyar v. Sungiyama*, 2 T.T.R. 154.

—Palau

Under present Trust Territory law, court action regarding foreclosure of mortgages in Palau District would have to be brought in the High Court. (T.T.C., Sec. 123) *Iyar v. Sungiyama*, 2 T.T.R. 154.

Unless and until some other method or methods of foreclosure are provided by express written enactment, mortgages of land in Palau District may be foreclosed only through court action. *Iyar v. Sungiyama*, 2 T.T.R. 154.

Japanese law regarding foreclosure of mortgages of land in Palau District remains in full force and effect except as changed by express written enactment of Trust Territory. (T.T.C., Sec. 24) *Iyar v. Sungiyama*, 2 T.T.R. 154.

Where no court action has been brought in Palau to foreclose mortgage, mortgagee has no present right to possession of land beyond that to which mortgagor and any persons claiming under her have consented and subject to her right of equity of redemption. *Iyar v. Sungiyama*, 2 T.T.R. 154.

—Sale

Where court action is brought on default of mortgage debt, mortgaged property may be ordered sold and proceeds applied first in payment of amount due on mortgage and balance given to mortgagor or those claiming under him. *Iyar v. Sungiyama*, 2 T.T.R. 154.

MOTOR VEHICLES.

Generally

Under many statutes making non-compliance with motor vehicle regulations an offense, neither intent to violate nor knowledge of violation constitutes element of offense. *Senip v. Trust Territory*, 2 T.T.R. 227.

NEGLIGENT DRIVING

Operator's License

American employee of Trust Territory is "non-resident" within meaning of statute permitting such persons to drive motor vehicles upon highways of Trust Territory under authority of license from home state when it is in his immediate possession. (T.T.C., Sec. 812(b)) Day v. Trust Territory, 2 T.T.R. 421.

Brakes

Every motor vehicle when operating on highways of Trust Territory must be equipped with safe brakes in good working order. (T.T.C., Sec. 813(b)) Senip v. Trust Territory, 2 T.T.R. 227.

Neither intent to violate law nor knowledge of defective brakes is essential element of offense of driving with faulty brakes, and court must only determine whether or not defendant operated vehicle with defective brakes. (T.T.C., Sec. 813(b)) Day v. Trust Territory, 2 T.T.R. 421.

Where accused operated vehicle while brakes were inadequate to control movement, finding of guilt of statutory offense will be sustained. (T.T.C., Sec. 813(b)) Senip v. Trust Territory, 2 T.T.R. 227.

Thirty days imprisonment for violation of statute requiring working brakes may be excessive when accused was unaware of defect. (T.T.C., Sec. 813(b)) Senip v. Trust Territory, 2 T.T.R. 227.

Injuring Vehicle

Crime of injuring vehicle is limited to situation in which person willfully breaks, injures, tampers with, or removes any part or parts of vehicle. (T.T.C., Sec. 815(f)) Itelbong v. Trust Territory, 2 T.T.R. 595.

Where accused is charged with crime of injuring vehicle, and implication is he caused injury carelessly and without any conscious purpose to inflict it, court will set aside verdict and new trial on charge will not be required. (T.T.C., Sec. 815(f)) Itelbong v. Trust Territory, 2 T.T.R. 595.

MUNICIPALITIES.

Generally

Municipalities are subordinate not only to any constitution under which organized, but also to laws of state or territory creating them and to Bill of Rights in Trust Territory Code. Mesechol v. Trust Territory, 2 T.T.R. 84.

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NEGLIGENT DRIVING.

See, Reckless Driving

PALAU CUSTOM

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PALAU CUSTOM.

Clans

Where clan is very important to public of South Palau, heads of that clan may speak for other "corners" (lineages) of clan although there is no presumption that heads of Palauan clans may do this generally. *Medaliwal v. Irewei*, 2 T.T.R. 546.

—Membership

Under Palau custom, where party is member of clan through his father or through paternal line, he is "weak member" of clan. *Louch v. Mengelil*, 2 T.T.R. 121.

Under Palau custom, appointment by court or other authority of formal conservator or guardian for clan member who is weak-willed is not provided for. *Tecekii v. Ngoryakl*, 2 T.T.R. 411.

Under Palau custom, "weak member" of clan is entitled to dry land, taro patch and Palauan money, and nothing more. *Louch v. Mengelil*, 2 T.T.R. 121.

Lineage

Where important Palauan clan is permitted to speak for other lineages within clan, consents of clan's male and female heads are sufficient in connection with sale of lineage land. *Medaliwal v. Irewei*, 2 T.T.R. 546.

—Membership

Under Palau custom, individual who was born into lineage is not considered to have dropped out of or have been excluded from lineage even though he has lived on other land and acquiesced for many years in possession and control of lineage land by another. *Medaliwal v. Irewei*, 2 T.T.R. 546.

—Burial Platform

Self-respect of Palauan lineage requires that platform where large number of lineage members are buried and space adjoining it for lineage house be preserved in some manner for lineage use. *Ngesengaol v. Torual*, 2 T.T.R. 275.

Under Palau custom, strong leaders of lineage who may have implied authority to give individual ordinary property of lineage cannot give to him as his individual land that area including stone platform where large number of lineage members are buried. *Ngesengaol v. Torual*, 2 T.T.R. 275.

Under Palau custom, in order for lineage to give to individual as his individual land, land area including stone platform where large number of lineage members are buried, there must be express consent or clear acquiescence of all adult members of lineage. *Ngesengaol v. Torual*, 2 T.T.R. 275.

PALAU CUSTOM

Under Palau custom, where there is evidence of opposition to transfer of lineage land to individual as his individual land, and there is no clear evidence that opposition was withdrawn, individual is under obligation to preserve for benefit of lineage stone (burial) platform and sufficient land adjoining it for lineage house. *Ngesengaol v. Torual*, 2 T.T.R. 275.

Family Obligations—Civil Liability

Where party fails to cite any case arising out of automobile accident in which any person other than wrongdoer has been ordered to pay damages resulting from wrong, plaintiff fails to prove alleged Palau custom by which relatives of wrongdoer are liable for judgments against him. *Basilus v. Rengiil*, 2 T.T.R. 430.

Adoption

Where adoption is effected in accordance with recognized Palau custom, it will be confirmed as of date of customary adoption. (T.T.C., Sec. 715) *In Re Iyar*, 2 T.T.R. 331.

Adoption under Palau custom is very different from adoption by court under Trust Territory Code or provisions of statutes for adoption usual in United States. *Olekeriil v. Basilus*, 2 T.T.R. 198.

Adoption under Palau custom does not cut off all of natural mother's connection with and rights over child. *Olekeriil v. Basilus*, 2 T.T.R. 198.

Under Palau custom, natural mother is expected to exercise her right to custody if child is not getting along with mother by adoption. *Olekeriil v. Basilus*, 2 T.T.R. 198.

Under Palau custom, natural mother retains right to revoke adopting mother's right to custody at any time. *Olekeriil v. Basilus*, 2 T.T.R. 198.

Under Palau custom, adopting mother has no right to custody in nature of lien on child to secure anything that may be due her. *Olekeriil v. Basilus*, 2 T.T.R. 198.

Variation in names of those concerned with adoption of child will not bar confirmation of customary Palauan adoption authorized by Trust Territory law. (T.T.C., Sec. 715) *In Re Iyar*, 2 T.T.R. 331.

Where natural mother takes possession of child without notifying adopting mother, and acts without degree of politeness called for under Palau custom, natural mother is nevertheless entitled to retain possession and custody of child. *Olekeriil v. Basilus*, 2 T.T.R. 198.

Children's Money

Under Palau custom, matter of children's money is essentially separate matter from *olmesumech* and, if not decided upon at meeting where *olmesumech* is considered, may be taken up later. *Ngeskesuk v. Moleul*, 2 T.T.R. 188.

Under Palau custom, children's money is matter to be claimed by proper relative of divorced wife and not by wife herself. *Ngeskesuk v. Moleul*, 2 T.T.R. 188.

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Under Palau custom, children's money is payable in Palauan money or property and not in American money. *Ngeskesuk v. Moleul*, 2 T.T.R. 188.

Divorce

Statements in American law books, to effect that divorce decree cuts off obligations between husband and wife not provided for in connection with it, are not properly applicable to group obligations under Palauan custom. *Itelbang v. Gabrina*, 2 T.T.R. 194.

Divorce, see, also, Domestic Relations—Divorce; Truk Custom—Divorce

—“*Olmesumech*” and Food Money

Where two people are living in good faith under Palauan system of society, court should seldom, if ever, grant alimony in American sense of word as payment by one divorced spouse to other for her or his support. *Itelbang v. Gabrina*, 2 T.T.R. 194.

Where there is court divorce in Palau Islands between persons living in good faith under Palauan system of society, and decree says nothing about *olmesumech* or food money, these obligations under customary law are not affected. *Itelbang v. Gabrina*, 2 T.T.R. 194.

Olmesumech and food money due under Palau custom should be handled as separate matter from divorce so far as courts are concerned. *Itelbang v. Gabrina*, 2 T.T.R. 194.

Trust Territory courts should not consider Palau customary obligations of *olmesumech* or food money in divorce case. *Itelbang v. Gabrina*, 2 T.T.R. 194.

Court action for determination as to *olmesumech* or food money due under Palau custom should be entertained only at instigation of person authorized under custom to represent wife in such negotiations. *Ngeskesuk v. Moleul*, 2 T.T.R. 188.

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. *Ngeskesuk v. Moleul*, 2 T.T.R. 188.

Matters of *olmesumech* and food money under Palau custom are essentially different from alimony since they involve relatives of both husband and wife. *Itelbang v. Gabrina*, 2 T.T.R. 194.

Under Palau custom, *olmesumech* and food money are matters which should be determined by meeting of relatives of wife and relatives of husband. *Ngeskesuk v. Moleul*, 2 T.T.R. 188.

Matters of *olmesumech* or food money in connection with divorce in Palau should be handled in separate action by wife's relatives authorized under law to receive money, if settlement through traditional channels proves impossible without use or threat of violence. *Itelbang v. Gabrina*, 2 T.T.R. 194.

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Same opportunity should be given to settle matter of *olmesumech* and food money through traditional channels after court divorce as after divorce under Palau custom. *Itelbang v. Gabrina*, 2 T.T.R. 194.

Under Palau custom, *olmesumech* and food money, if any, are due to same extent and under same circumstances after court divorce as after divorce under local custom. *Itelbang v. Gabrina*, 2 T.T.R. 194.

Under Palau custom, *olmesumech* and food money, if any, do not go to divorced wife as matter of right. *Ngeskesuk v. Moleul*, 2 T.T.R. 188.

Under Palau custom, if claim for food money is not brought up at traditional meeting of relatives of wife and relatives of husband, such claim is waived. *Ngeskesuk v. Moleul*, 2 T.T.R. 188.

Trust Territory courts should only consider matters of amounts due for *olmesumech* or food money under Palau custom after all reasonable efforts have been made to determine them through traditional channels, short of use or threat of violence. *Ngeskesuk v. Moleul*, 2 T.T.R. 188.

Trust Territory courts should not entertain actions for *olmesumech* or food money due under Palau custom until traditional meeting is held and there is failure to reach agreement after honest and diligent effort to do so, or it is shown that husband's relatives are avoiding or preventing such meeting. *Ngeskesuk v. Moleul*, 2 T.T.R. 188.

Under Palau custom, if *olmesumech* is approved by person authorized under custom to represent wife and person authorized to represent husband, and paid to person authorized to represent wife, without any claim for food money having been advanced, matters of both *olmesumech* and food money are ended so far as both sides are concerned. *Ngeskesuk v. Moleul*, 2 T.T.R. 188.

Marriage

Concept of responsibilities surrounding marriage under Palauan system of society is very different from that usual in United States. *Ngeskesuk v. Moleul*, 2 T.T.R. 188.

Marriage, see, also, Domestic Relations—Marriage—Custom; Truk Custom—Marriage

Widows

Where Palauan widow does not present money promptly at funeral meeting following husband's death as she should under Palau custom, her rights and her husband's children's rights are not absolutely barred if she does in fact produce money a few days later, and division of interests in it is made or acquiesced in, in accordance with Palau custom. *Ililau v. Idub*, 2 T.T.R. 28.

If there is substantial doubt that Palauan money was presented by widow to deceased husband's family at funeral meeting and that division of interests was agreed upon or acquiesced in, in accordance with Palau custom, parties are entitled to have facts determined on proper evidence at new trial. *Ililau v. Idub*, 2 T.T.R. 28.

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Widower—"Chelebechiil"

There is nothing in Trust Territory law which will relieve party from burden involved in honest determination as to *chelebechiil* under Palau custom. *Ngirngerak v. Ngirangeang*, 2 T.T.R. 182.

Under Palau custom, determination made at meeting between relatives of wife and relatives of husband as to *chelebechiil*, if honestly arrived at, finally determines rights and obligations of each side as against the other. *Ngirngerak v. Ngirangeang*, 2 T.T.R. 182.

Under Palau custom, where honest determination is made as to *chelebechiil* at meeting between relatives of wife and relatives of husband, individual member of one side has no right to claim from opposite side a revision of the agreement. *Ngirngerak v. Ngirangeang*, 2 T.T.R. 182.

Installment Sales

If purchaser of boat elects to pay for boat in accordance with contract, he is to be given credit for difference between value of mortgaged boat taken by seller under terms of agreement, and cost of necessary repairs made by seller to boat purchased under contract after it had been in seller's possession. *Ngiramulei v. Rideb*, 2 T.T.R. 370.

Palau custom with regard to purchase of boats on installment basis applies also to purchase of engines. *Secharmidal v. Ueda*, 2 T.T.R. 390.

Under Palau custom, if party purchases canoe or boat and takes boat in advance of payment, and later finds he no longer wants boat and returns it, he must pay for use rental of boat. *Ngiramulei v. Rideb*, 2 T.T.R. 370.

Under Palau custom, seller of engine is entitled to hold back as rental a fair part of money he has received toward purchase price of engine when buyer fails to pay whole purchase price. *Secharmidal v. Ueda*, 2 T.T.R. 390.

Under Palau custom, thirty dollars is fair amount to be withheld by seller of engine when buyer who has failed to pay whole purchase price has used engine for over one year. *Secharmidal v. Ueda*, 2 T.T.R. 390.

"Ocheraol"

Under Palau custom, payment by owner of house to builder of sum of money agreed upon at *ocheraol*, and return of part of sum by builder to owner as sign of satisfaction with payment, customarily concludes all issues in dispute. *Madris v. Ilab*, 2 T.T.R. 351.

Mere fact that policeman accompanies builder of house to traditional Palauan *ocheraol* does not put owner of house under duress to agree to higher payment for house than he would have otherwise. *Madris v. Ilab*, 2 T.T.R. 351.

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Generally

Palau custom is not sole criterion to be considered concerning title to land in Palau. *Ngiruhelbad v. Merii*, 2 T.T.R. 631.

Chief's Title Land

Under Palau custom, transfer of chief's title land of lineage cannot be made without consent of all strong senior members of lineage, including strong senior members not actually related to it by blood. *Medaliwal v. Irewei*, 2 T.T.R. 546.

—Sale

Palau custom regarding sale of chief's title land of clan was amended by Japanese Administration to extent of permitting such sales if necessary consents are obtained. *Medaliwal v. Irewei*, 2 T.T.R. 546.

Under Palau custom, attempted sale by individual lineage member of chief's title land is not effective until necessary consents are obtained. *Medaliwal v. Irewei*, 2 T.T.R. 546.

Under Palau custom, sale of chief's title land of small lineage requires consent of one who is important member of lineage. *Medaliwal v. Irewei*, 2 T.T.R. 546.

Clan Ownership

Regardless of whether Palauan clan or one of groups within it formerly owned land, or whether it was abandoned by former owners, development of land by individual member gives him strong claim to it in any division of land clan might make. *Rekewis v. Ngirasewei*, 2 T.T.R. 536.

Under Palau custom, "weak member" of clan may be assigned as administrator over clan or family land. *Louch v. Mengelil*, 2 T.T.R. 121.

—Use Rights

Prior to Japanese land survey in Palau, reference to clan or lineage land as having been "given" to individual actually meant individual was given right to use land. *Ucherbelau v. Ngirakerkeriil*, 2 T.T.R. 282.

Statements about "giving" of clan or lineage lands in Palau Islands prior to Japanese land survey are not presumed to mean ownership as individual land was given. *Ucherbelau v. Ngirakerkeriil*, 2 T.T.R. 282.

Statements regarding "giving" of clan or lineage lands in Palau Islands prior to Japanese survey are presumed to mean that individual was given only right to use land as long as he lived and fulfilled his obligations to clan or lineage in question. *Ucherbelau v. Ngirakerkeriil*, 2 T.T.R. 282.

Under Palau custom, party who "goes out of the clan" may forfeit use rights in land belonging to clan. *Ihengeland v. Sechelong*, 2 T.T.R. 409.

Under Palau custom, party who "goes out of the clan" and forfeits use rights in land belonging to clan may reasonably hope to be given

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use of some clan land upon resuming to fulfill clan obligations and showing intention in good faith to continue to do so. *Ilangland v. Sechelong*, 2 T.T.R. 409.

1. Palau Land Law—Clan Ownership—Use Rights

Under Palau custom, clan or lineage is justified in putting party off land belonging to it when party fails to cooperate with or show respect to widow of person formerly in possession of land. *Rivera v. Ngcheed*, 2 T.T.R. 279.

—Reversionary Rights

Where clan loans land to village for school purposes and clan establishes that condition under which possession of land was to be returned has taken place, clan still owns land and is entitled to possession. *Rubash v. Trust Territory*, 2 T.T.R. 80.

Where party is given land to administer for clan, and he sells land to Japanese Navy, with authorization of clan, control of land is not thus lost or relinquished by clan. *Louch v. Mengelil*, 2 T.T.R. 121.

—Transfer

Under Palau custom, consent of strong member of clan is normally required for transfer of lineage land if member is able to give it personally. *Techekii v. Ngoriyaki*, 2 T.T.R. 411.

Under Palau custom, attempts by head of clan to sell lineage land with consent of all available strong members of clan, except one who is weak-willed, is within his powers. *Techekii v. Ngoriyaki*, 2 T.T.R. 411.

Under Palau custom, effective alienation of land by "weak member" of clan requires consent and approval of chief title and other important members of clan. *Louch v. Mengelil*, 2 T.T.R. 121.

Lineage Ownership—Use Rights

Where individual lineage member has possessed and controlled lineage land for long period of time, with acquiescence of important lineage members, he may continue to do so unless and until lineage, with approval of male and female heads of clan, makes some other arrangement. *Medaliwal v. Irewei*, 2 T.T.R. 546.

Under Palau custom, where parties plant trees on land belonging to lineage with acquiescence of lineage, they are entitled to use trees and to go on premises for that purpose as long as trees bear reasonably well or until lineage arranges with parties to acquire ownership of trees. *Ibetang v. Sked*, 2 T.T.R. 454.

Municipality in Palau which assumes control of community plantation under American Administration succeeds to whatever rights in land community formerly held under its traditional leaders, and municipality has no greater rights than community held. *Tabelual v. Magistrate Omelau*, 2 T.T.R. 540.

Where lineage lends land to municipality for coconut plantation for approximate number of years coconut trees bear well, lineage is held to

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have consented to such use of land for as long as trees originally planted bear well enough to be of economic value. *Tabelual v. Magistrate Omelau*, 2 T.T.R. 540.

Individual Ownership

Individually owned land had no place in Palau customary law, but was introduced by German Administration. *Ngiruhelbad v. Merii*, 2 T.T.R. 631.

Concept of individual land ownership was introduced in Palau Islands in order to get away from complications and limitations of Palau custom. *Orrukem v. Kikuch*, 2 T.T.R. 533.

Purpose of introducing individual land ownership in Palau was to get away from complications of matrilineal clan and lineage systems. *Ngiruhelbad v. Merii*, 2 T.T.R. 631.

In case of individual land in Palau Islands, lineage or clan from which it came retains no control over it. *Orrukem v. Kikuch*, 2 T.T.R. 533.

Failure of owner of individual land in Palau Islands to live up to traditional obligations to lineage or clan from which land came does not in and of itself impair or limit his ownership of land. *Orrukem v. Kikuch*, 2 T.T.R. 533.

Use Rights

Although there was formerly no concept in Palau Islands of vested use rights in land, chiefs are now required to have good reason for making re-assignments of use rights. *Ngerdelolek Village v. Ngerchol Village*, 2 T.T.R. 398.

Well accepted limitation on use rights in Palau Islands is chief's right to direct that any part of village lands be used for things reasonably considered to be public use, without compensation to persons previously using that part of land. *Ngerdelolek Village v. Ngerchol Village*, 2 T.T.R. 398.

Use rights in land assigned by village in Palau cannot be changed without good reason but may be changed when public interest so requires, including providing space reasonably required for present-day municipal needs. *Ngerdelolek Village v. Ngerchol Village*, 2 T.T.R. 398.

Under Palau custom, party who has been given permission to use part of land leased by individual from government has no greater right in such land than he would have if it were clan or lineage land. *Rivera v. Ngcheed*, 2 T.T.R. 279.

Under Palau custom, one may be allowed to plant on lands unused by owner, and although plantings belong to person making them, ownership of land itself is not transferred. *Ibetang v. Sked*, 2 T.T.R. 454.

Where lease of land in Palau is binding on heirs, legal representatives and assigns of both parties, and deceased lessee's only surviving brother expresses wish that all rights under lease go to lessee's widow, latter has right to act in deceased's place and terminate permission to use part of land which was granted by deceased to third party. *Rivera v. Ngcheed*, 2 T.T.R. 279.

PALAU LAND LAW

Six months is sufficient time for removal of substantial buildings of party whose permission to use land has been revoked, in accordance with common practice in Koror. *Rivera v. Ngcheed*, 2 T.T.R. 279.

Japanese Survey—Presumptions

Japanese land survey in Palau confirmed individual title to land. *Ngiruhelbad v. Merii*, 2 T.T.R. 631.

Determinations made in official Japanese land survey of 1941, while not conclusive, are entitled to great weight. *Osima v. Rengiil*, 2 T.T.R. 151; *Ucherbelau v. Ngirakerkeriil*, 2 T.T.R. 282.

Burden is on party who disputes determination made in Japanese land survey to show that it is wrong. *Osima v. Rengiil*, 2 T.T.R. 151; *Ucherbelau v. Ngirakerkerkiil*, 2 T.T.R. 282.

Where party fails to sustain burden of showing that determination made in Japanese land survey of Palau Islands was wrong, presumption arising from listing in survey controls question of ownership. *Osima v. Rengiil*, 2 T.T.R. 151.

Where Palauan clan acquiesced in listing of land in Japanese survey as member's individual land, presumption arising from survey report is controlling. *Rekewis v. Ngirasewei*, 2 T.T.R. 536.

—Rebuttal

While determinations made in official Japanese land survey in Palau Islands are entitled to great weight, they are not absolutely conclusive. *Louch v. Mengelil*, 2 T.T.R. 121.

Presumption arising from listing of land in Palau Islands in official Japanese land survey of 1941 as government land may be effectively rebutted. *Rubash v. Trust Territory*, 2 T.T.R. 80.

Where land is listed in Japanese land survey as party's individual land, such listing may be shown to be incomplete. *Ngesengaol v. Torual*, 2 T.T.R. 275.

Where party's claim to land in Palau is based upon inheritance of individual property from one who acknowledged, in connection with Japanese land survey, that he was administering land for lineage, party's claim must fail. *Medaliwal v. Irewei*, 2 T.T.R. 546.

Where evidence is clear and specific that lineage land was loaned to community and that negotiations for loan were public, presumption arising from listing of land in Japanese survey as community land is successfully rebutted. *Tabelual v. Magistrate Omelau*, 2 T.T.R. 540.

PARTNERSHIP.

Contribution

Where business is terminated, there may be ground for accounting between contributors. *Hanako v. Maria*, 2 T.T.R. 326.

Where work has been performed as part of contribution to business, and there is no intent to charge separately, court will not award separate payment for work performed. *Hanako v. Maria*, 2 T.T.R. 326.

PONAPE LAND LAW

PONAPE CUSTOM.

Gifts of Land

Under Ponape custom, gift of land outright to wife in preference to son by previous marriage is unusual. *Pampilona v. Ponpeiso*, 2 T.T.R. 59.

PONAPE LAND LAW.

German Land Title

Since German land reform of 1912, *Nanmarki* does not have power to cut off rights of heir of landowner or rights of transferee of landowner and then proceed to give land to another as reward or compensation for care rendered deceased. *Manasa v. John*, 2 T.T.R. 63.

—Approval of Transfer

Present successor of German Governor for purpose of approving land dispositions on Ponape Island is District Administrator of Ponape District. *Liui v. Higgins*, 2 T.T.R. 218.

—Vacancy in Title

When there has been no designation of ownership of land on Ponape Island by *Nanmarki* or District Administrator, and there are no lawful heirs, there is vacancy in legal title, the filling of which rests with *Nanmarki* or District Administrator. *Liui v. Higgins*, 2 T.T.R. 218.

Where there is vacancy in legal title to land on Ponape Island, right of possession is controlled by worth of claims to it. *Liui v. Higgins*, 2 T.T.R. 218.

Where both parties to action were formerly permitted to use land of deceased on Ponape Island, and there is vacancy in title, they may continue to use land until vacancy in title is filled. *Liui v. Higgins*, 2 T.T.R. 218.

—Women's Rights

Trust in land for benefit of a woman was against clear policy of German land law in effect on Ponape Island. *Makdalena v. Ligor*, 2 T.T.R. 572.

Under German land law in effect in 1948, women could neither inherit nor hold land in Ponape. *Makdalena v. Ligor*, 2 T.T.R. 572.

Although at present oldest daughter inherits land on Ponape Island in absence of any son who is living or has left issue living, this was not true prior to 1957, and enabling law of 1957 does not have retroactive effect. (Ponape District Order No. 9-57) *Liui v. Higgins*, 2 T.T.R. 218.

Government officials may consider orally expressed intention to transfer title to land on Ponape Island and subsequent law permitting inheritance by daughter, but they are not bound by them. *Liui v. Higgins*, 2 T.T.R. 218.

PONAPE LAND LAW

—Succession

Under German land law in effect on Ponape Island, eldest brother of land holder was entitled to succeed to German title where deceased left no sons. *Makdalena v. Ligor*, 2 T.T.R. 572.

Under German land title, if owner of land on Ponape Island dies without leaving any heirs as listed on document, successor is chosen by *Nanmarki* and Governor. *Liui v. Higgins*, 2 T.T.R. 218.

—Wills

Under system of land ownership introduced by German Government in 1912, land on Ponape Island could not be disposed of by will, until law was changed in 1957. (Ponape District Order No. 9-57) *Liui v. Higgins*, 2 T.T.R. 218.

Land held under German land title could not be disposed of by oral will prior to 1957. (Ponape District Order No. 9-57) *Liui v. Higgins*, 2 T.T.R. 218.

Inheritance

Inheritance laws enacted by Ponape District Legislature in 1957 and 1959 are not retroactive. (Ponape District Order No. 8-57; Ponape District Law 3-17-59) *Makdalena v. Ligor*, 2 T.T.R. 572.

Obligation to Support

Under Ponape custom, it is usual to give land to someone who is not a blood relative in return for years of support. *Pampilona v. Ponpeiso*, 2 T.T.R. 59.

Approved transfer of land under Ponape system of land tenure in consideration of agreement to support may be revoked upon gross failure of grantee to comply with agreement. *Pampilona v. Ponpeiso*, 2 T.T.R. 59.

Upon agreement to support, grantor of land on Ponape has no right to revoke gift at his pleasure any time during remainder of life without showing cause for revocation beyond his own wish where grantees have been in possession for some years, since attempted revocation is contrary to system of private land ownership in Ponape. *Pampilona v. Ponpeiso*, 2 T.T.R. 59.

Transfers to Women

Although Japanese changed Ponape land law by permitting transfers to women, with proper consents, law of succession to land was not changed until 1951 when provision was made for inheritance by women. (Ponape District Order No. 8-57) *Makdalena v. Ligor*, 2 T.T.R. 572.

Widow's Rights

Under Ponape custom, it is usual to allow widow to stay on deceased husband's land until she dies or remarries. *Pampilona v. Ponpeiso*, 2 T.T.R. 59.

PONAPE LAND LAW

Under Ponape custom, where son has shown some consistent interest in assisting father after latter's remarriage, court will find that grant of land to widow was only life estate. *Pampilona v. Ponpeiso*, 2 T.T.R. 59.

Ngatik—Gifts

Under Ngatik custom, when land is given by one close relative to another, there is implied condition that relative receiving gift will honor donor and, if necessary, support him in old age. *Sonten v. Epel*, 2 T.T.R. 215.

Under Ngatik custom, condition of honor and support owing to donor relative from donee of land will pass down to heirs of donee. *Sonten v. Epel*, 2 T.T.R. 215.

Under Ngatik custom, where donee of land or his heirs have violated condition of honor and support owing to donor, donor is entitled to revoke gift. *Sonten v. Epel*, 2 T.T.R. 215.

—Inheritance

Under Ngatik custom, illegitimate child does not inherit land from father as matter of right. *Seson v. Edwin*, 2 T.T.R. 568.

Pingelap

Land law on Pingelap is different from that on Ponape Island and neighboring islands and is unique. *Kelemend v. Mak*, 2 T.T.R. 55.

Where donor transfers land to another in 1926 and donee does not fail in any obligation to donor, and then donor attempts transfer of land to third party who is not resident of Pingelap, second transfer is not authorized by Pingelap system of land law and is of no legal effect. *Kelemend v. Mak*, 2 T.T.R. 55.

—Family Ownership

Although Pingelap land is referred to as belonging to individual, it is regarded as essentially a family asset to be made available to members of family on Pingelap in proportion to their needs. *Kelemend v. Mak*, 2 T.T.R. 55.

Under Pingelap land system, land within family is subject to adjustment years after donor has died according to respective needs of different branches of family on Pingelap at time. *Kelemend v. Mak*, 2 T.T.R. 55.

—Taro Patch

Under Pingelap custom, it is usual for one who is making outright gift of taro patch to give some dry land with it. *Ens v. Alisina*, 2 T.T.R. 362.

Under Pingelap custom, where four rows of taro are given without dry land, evidence supports finding that gift of use of rows was conditional on donee continuing to take care of donor, and upon breach of condition, donor has right to retake taro rows. *Ens v. Alisina*, 2 T.T.R. 362.

PROPERTY

PROPERTY.

See Real Property

PUBLIC HEALTH.

Sanitation Regulations

Since violations of Trust Territory law regarding sanitation constitute independent crimes, there is no need to bring such offenses under any of crimes set forth in Chapter Six of Code. (T.T.C., Sec. 618) *Zakios v. Trust Territory*, 2 T.T.R. 102.

Sanitarian's belief that there was violation of statute does not do away with need for proof of violation by accused in criminal case. *Zakios v. Trust Territory*, 2 T.T.R. 102.

Where criminal prosecution is brought at request of District Sanitarian, government must prove beyond reasonable doubt all essential elements of the crime. *Zakios v. Trust Territory*, 2 T.T.R. 102.

Where government relies on violation of Trust Territory law regarding sanitation, accused is entitled to notice of charge, to require proof of charge, and reasonable chance to defend against it or show mitigating circumstances. (T.T.C., Sec. 618(a) and (b)) *Zakios v. Trust Territory*, 2 T.T.R. 102.

In order to show violation of Trust Territory law regarding sanitation, government must show that failure to comply with notice from Sanitarian left condition for which accused was responsible, and which violated provisions of law. (T.T.C., Sec. 618) *Zakios v. Trust Territory*, 2 T.T.R. 102.

PUBLIC LANDS.

Succeeding Sovereign

Any interest previously owned or held by Japanese Government in any land in Trust Territory is vested in predecessor of Alien Property Custodian of Trust Territory. (Vesting Order, September 27, 1951; Interim Regulations 4-48, 6-48, 3-50) *Ngikleb v. Trust Territory*, 2 T.T.R. 139; *Catholic Mission v. Trust Territory*, 2 T.T.R. 251.

PUBLIC NUISANCE.

Generally

Exact limits of legal meaning of nuisance cannot be stated or explained on any comprehensive basis. (T.T.C., Sec. 408) *Zakios v. Trust Territory*, 2 T.T.R. 102.

All crimes are not necessarily public nuisances, and every unlawful act in violation of written law does not necessarily constitute a public nuisance. (T.T.C., Sec. 408) *Zakios v. Trust Territory*, 2 T.T.R. 102.

Trust Territory law regarding maintenance of a nuisance, in referring to "a condition of things which is prejudicial to the health, safety, property, sense of decency or morals of the people of the Trust Territory",

REAL PROPERTY

applies only to a public nuisance, sometimes called a common nuisance. (T.T.C., Sec. 408) *Zakios v. Trust Territory*, 2 T.T.R. 102.

Sanitation Regulations

Every violation of Trust Territory law regarding sanitation does not necessarily create a public nuisance. (T.T.C., Secs. 408, 618) *Zakios v. Trust Territory*, 2 T.T.R. 102.

In order for violations of Trust Territory law regarding sanitation to create public nuisance and to warrant conviction of maintaining a nuisance, nuisance itself must be proved. (T.T.C., Secs. 408, 618) *Zakios v. Trust Territory*, 2 T.T.R. 102.

Failure to comply with Sanitarian's notice is clearly insufficient, in and of itself, to constitute public nuisance. (T.T.C., Secs. 408, 618) *Zakios v. Trust Territory*, 2 T.T.R. 102.

Public nuisance involved in violation of Trust Territory law regarding sanitation would have to arise from condition created by accused's failure to comply with Sanitarian's notice. (T.T.C., Secs. 408, 618) *Zakios v. Trust Territory*, 2 T.T.R. 102.

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REAL PROPERTY.

Boundaries

In case of conflict in description of boundaries of land, monuments, either natural or artificial, will ordinarily control all other calls. *Tellei v. Ngodrii*, 2 T.T.R. 450.

Descriptions of courses and distances and quantity will, in case of conflict, be controlled by and yield to description of natural object, landmark or permanent artificial monument. *Tellei v. Ngodrii*, 2 T.T.R. 450.

In construing deeds, quantity is least reliable of all descriptive particulars. *Tellei v. Ngodrii*, 2 T.T.R. 450.

Quantity description in deed must yield to monuments, natural or artificial, and to courses and distances, unless there is clear intent to convey certain quantity. *Tellei v. Ngodrii*, 2 T.T.R. 450.

Where parties claim quantity substantially greater than that mentioned in grants to them, they cannot rely upon intent to convey certain quantity. *Tellei v. Ngodrii*, 2 T.T.R. 450.

Where owners of adjoining land reach mutual acceptance of same point on land sketch, their agreement controls position of corner in dispute. *Tellei v. Ngodrii*, 2 T.T.R. 450.

Where boundary lines of adjoining landowners are not definitely known or their location is in dispute, owners may establish lines by written or oral agreement or by mutual recognition of and acquiescence in certain line as true boundary line. *Tellei v. Ngodrii*, 2 T.T.R. 450.

REAL PROPERTY

If adjoining landowners act fairly and honestly in agreeing as to boundaries when neither is sure of exact location of boundary lines, agreement is to be given effect notwithstanding they may have been mistaken as to location of line. *Tellei v. Ngodrii*, 2 T.T.R. 450.

Crops

In order to determine fair value of growing crop at time of transfer of land, costs and value of labor involved in maturing, harvesting and marketing of crop must be deducted from final price for which it might have been sold. *Ngirkelan v. Trust Territory*, 2 T.T.R. 72.

Gifts

In order to sustain gift of land, evidence must be clear and convincing. *Kanoten v. Manuel*, 2 T.T.R. 3.

To sustain gift of land, there must be evidence free from personal interest and not equivocal in character that property was delivered to donee during donor's lifetime. *Kanoten v. Manuel*, 2 T.T.R. 3.

Use Rights—Reversionary Interests

Where use of land in Truk Atoll for church services has been discontinued for over twenty years, missionary use for which land was given has been discontinued and use rights conditioned thereon are terminated. *Andrew v. Otto*, 2 T.T.R. 441.

Lost Grant

American courts have held that principle of presumption of grant of land may arise from possession for length of time analagous to that of statute of limitations for land actions. *Kanser v. Pitor*, 2 T.T.R. 481.

Principle of "lost grant" applies in Trust Territory and assumes oral grant of land where persons who heard grant have died or forgotten about it, making it hard to prove existence of grant years later. *Kanser v. Pitor*, 2 T.T.R. 481.

In Trust Territory, when possession of land extends for thirty to forty years, presumption of grant is very strong and is applied against government. *Kanser v. Pitor*, 2 T.T.R. 481.

Where person has held uninterrupted possession of land while exercising rights of ownership, presumption is that land was lawfully transferred to him unless inconsistent facts are proved. *Kanser v. Pitor*, 2 T.T.R. 481.

Quiet Title—Presumption of Ownership

Long and undisturbed occupancy and use of land raise presumption of lawful origin of ownership. *Naoro v. Inekis*, 2 T.T.R. 232; *Ei v. Inasios*, 2 T.T.R. 317; *Kanser v. Pitor*, 2 T.T.R. 481.

Presumption of ownership is in party who has long had possession of land in Truk, and anyone challenging ownership has burden of proof in overcoming presumption. *Rochunap v. Yosochune*, 2 T.T.R. 16.

REAL PROPERTY

Evidence of exclusive possession of property for at least twenty-two years is given greater plausibility than recital of what was told witnesses by persons long deceased. *Rochunap v. Yosochune*, 2 T.T.R. 16.

—Laches

Actions in equity to quiet title should only aid those who have been active in pressing their claims. *Kanser v. Pitor*, 2 T.T.R. 481.

Where party's claim to land is based upon old matter, it must be presumed that adverse party's predecessors in interest and possession had been given rights which they purported to have. *Tamaggimed v. Bathin*, 2 T.T.R. 499.

If person of full age and sound mind owns land, it is expected that he will assert claim to it in manner clear to anyone openly and peaceably using land. *Ei v. Inasios*, 2 T.T.R. 317.

Where party claiming land has let matter rest so long that other persons or their predecessors in interest have been in possession under claim of ownership for long time, it is presumed that other persons' predecessors were given rights they have purported to exercise. *Nakas v. Upuili*, 2 T.T.R. 509.

If person believes he owns land and stands by for many years and raises no objection to someone else using it, on theory that other person is using it for person who believes he owns it, person claiming ownership should obtain definite acknowledgment of ownership by words or acts of user at intervals of less than twenty years, and if he cannot obtain acknowledgment, he should bring matter to court for determination. *Nakas v. Upuili*, 2 T.T.R. 509.

Where plaintiff shows no good excuse for waiting over twenty years after becoming of age before bringing suit to quiet title, court will not grant relief. *Seson v. Edwin*, 2 T.T.R. 568.

When person of full age and sound mind stands by for twenty years or more and lets someone else openly and actively use land under claim of ownership, person who stands by will lose rights he may have had in land, and courts will not assist him in regaining them. *Kanser v. Pitor*, 2 T.T.R. 481.

Where neither party claiming land nor any of their predecessors in interest have been in open, active possession for twenty years before bringing action, question of whether claim is barred will be considered separately either at pre-trial conference or by trial of that issue, before court will consider merits of claim. *Kanser v. Pitor*, 2 T.T.R. 481.

Sales

Attempted subsequent gift of land by vendor after sale to third party is of no legal effect. *Poulis v. Meipel*, 2 T.T.R. 245.

Subsequent Holders

Heirs and transferees take land subject to agreements and admissions against interest properly made by their predecessors in interest under laws and customs as they then stood. *Kanser v. Pitor*, 2 T.T.R. 481.

RECKLESS DRIVING

RECKLESS DRIVING.

Generally

Under terms of statute or ordinance, reckless driving generally denotes operation of automobile under such circumstances as to show willful or reckless disregard of consequences. (T.T.C., Sec. 815(b) (2)) Day v. Trust Territory, 2 T.T.R. 421.

One may not drive vehicle on Trust Territory highway carelessly and heedlessly in wilful or wanton disregard of rights and safety of others, or without due caution at speed or in manner so as to endanger or be likely to endanger person or property. (T.T.C., Sec. 815(b)) Senip v. Trust Territory, 2 T.T.R. 227.

Fault

Mechanical failure of brakes where driver was not aware of defect is insufficient to sustain conviction for reckless driving. (T.T.C., Sec. 815(b)(2)) Senip v. Trust Territory, 2 T.T.R. 227.

Negligence

Ordinarily something more than mere negligence in operation of automobile is necessary to constitute offense of reckless driving. (T.T.C., Sec. 815(b)(2)) Day v. Trust Territory, 2 T.T.R. 421.

Rule in civil actions that violation of statute is negligence per se is not applicable in criminal prosecution for reckless driving. (T.T.C., Sec. 815(b)(2)) Senip v. Trust Territory, 2 T.T.R. 227.

Rule in some jurisdictions that violation of statute is negligence per se is not applicable in criminal prosecution for reckless driving, since issue of contributory negligence is not involved. (T.T.C., Sec. 815(b) (2)) Day v. Trust Territory, 2 T.T.R. 421.

RESIDENCE.

Generally

Terms "domicile" and "residence", although often used synonymously, are more frequently held not to be convertible, and have been distinguished. Day v. Trust Territory, 2 T.T.R. 421.

Whether "residence" and "domicile" are synonymous depends on purpose and intent with which word is used, including context in which it is employed. Day v. Trust Territory, 2 T.T.R. 421.

In construction of legislation using term "residence," courts look primarily to legislative purpose as well as to context. Day v. Trust Territory, 2 T.T.R. 421.

When "residence" is used to denote something more than mere physical presence, intent is material. Day v. Trust Territory, 2 T.T.R. 421.

"Residence" may mean something from mere temporary presence to the most permanent abode. Day v. Trust Territory, 2 T.T.R. 421.

SALES.**Repossession of Goods**

As a general rule, seller is not entitled as matter of right, where title to goods has passed from him to buyer, to retake possession of goods sold on credit on sole ground that buyer failed to make payment as promised. *Ngiramulei v. Rideb*, 2 T.T.R. 370.

STATUTES.**Construction**

Courts have obligation to give effect to laws as made by legislative authorities and not to read into such law exemptions which may seriously hamper their enforcement. *Recheungel v. Trust Territory*, 2 T.T.R. 517.

Under rules of statutory construction, court looks to law when statute was enacted to see for what it was intended as a substitute, and defects in old law sought to be remedied by new statute. *Ngiruhelbad v. Merii*, 2 T.T.R. 631.

In interpreting remedial statutes, special effort is made to avoid technical construction of language used and to give fair construction so as to promote justice in interests of the public good. *Madris v. Ilab*, 2 T.T.R. 351.

Rule of substantial unanimity in regard to validity of municipal ordinances, although providing substantial protection as social matter against widespread abuses, proceeds, on entirely different theory from that of Trust Territory Code. *Mesechol v. Trust Territory*, 2 T.T.R. 84.

Where district order containing prohibitions and restrictions with regard to use of liquor is approved, and subsequent congress resolution provides for licensing of liquor distributors without making reference to previous district order, prohibitions and restrictions of district order still control except as to actions covered by licenses issued in compliance with resolution, and any actions not so covered may still be prosecuted under district order. *Temengil v. Trust Territory*, 2 T.T.R. 31.

Presumption of Validity

In passing upon validity of local ordinances, Trust Territory courts will make allowances for local conditions and for exercise of wide discretion by those having legislative power. *Mesechol v. Trust Territory*, 2 T.T.R. 84.

Validity of municipal ordinance should be determined by its substance and not its form, and not alone by what has been done but by what may be done under its provisions. *Mesechol v. Trust Territory*, 2 T.T.R. 84.

Constabulary Rules and Regulations

Rules and Regulations of Insular Constabulary have force and effect of law. (T.T.C., Sec. 242) *Fontana v. Trust Territory*, 2 T.T.R. 616.

TAXATION

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TAXATION.

Generally

Courts must allow wide discretion to be exercised by legislative authority in determining what taxation is best and what distinctions should be made. *Mesechol v. Trust Territory*, 2 T.T.R. 84.

Taxation is not expected to be exactly equal. *Mesechol v. Trust Territory*, 2 T.T.R. 84.

Tax legislation must be reasonably certain, there should be evident intent to adjust burden with fair and reasonable degree of equality, and general operation of legislation should carry out this intent. *Mesechol v. Trust Territory*, 2 T.T.R. 84.

In order to comply with Trust Territory law granting power of taxation, local tax must be somehow shown to be payable in amount of money that is reasonably definite. (T.T.C., Sec. 1143) *Mesechol v. Trust Territory*, 2 T.T.R. 84.

Payment in Labor

Intent of Trust Territory law granting power of taxation is to give taxpayer choice as to whether he will pay local taxes in cash or in labor. (T.T.C., Sec. 1143) *Mesechol v. Trust Territory*, 2 T.T.R. 84.

Practical option must be given taxpayer to pay municipal tax whether in money or in labor that is at least roughly fair equivalent to it. *Mesechol v. Trust Territory*, 2 T.T.R. 84.

Reasonable amount of unpaid service may be required of able-bodied persons subject to reasonable alternatives, in connection with payment of taxes. *Mesechol v. Trust Territory*, 2 T.T.R. 84.

Unlimited amount of labor may not be demanded of able-bodied persons in community in connection with payment of taxes. *Mesechol v. Trust Territory*, 2 T.T.R. 84.

Reasonable requirement of labor of able-bodied persons in community with moderate alternatives, in connection with payment of taxes is quite different from requirement of fifteen days labor a month with apparently no alternative as matter of right. *Mesechol v. Trust Territory*, 2 T.T.R. 84.

Municipal ordinance which requires adult residents to pay tax of labor in lieu of money represents extreme limit to which Trust Territory courts can reasonably be expected to go in upholding legislation. *Mesechol v. Trust Territory*, 2 T.T.R. 84.

Municipal ordinance purporting to impose tax in labor, and making willful failure to comply with such tax a crime, is in violation of due process clause and Trust Territory law and as administered is in violation of equal protection clause of Trust Territory Code. (T.T.C., Secs. 4, 7, 1143) *Mesechol v. Trust Territory*, 2 T.T.R. 84.

TRUK CUSTOM

Ordinance requiring tax in labor in lieu of money is lacking in essential elements of valid tax and proper exercise of police power, under constitutional provisions similar to those contained in Trust Territory Bill of Rights. *Mesechol v. Trust Territory*, 2 T.T.R. 84.

TORTS.

Defamation

Loss or injury is presumed to result from false accusation of crime which is actionable per se even if not generally believed. *Uto v. Trust Territory*, 2 T.T.R. 209.

Accusation of crime, unconnected with any attempt in good faith to aid in criminal prosecution, is sufficient basis for civil action in which damages can be recovered without proof of injury. *Uto v. Trust Territory*, 2 T.T.R. 209.

Negligence

Fact that one party suffers more damage than the other has no bearing on question of liability for automobile accident. *Etpison v. Indalecio*, 2 T.T.R. 186.

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) *Etpison v. Indalecio*, 2 T.T.R. 186.

In civil action, one cannot be held responsible for negligence unless he had knowledge or reasonably was chargeable with knowledge that act or omission involved danger to another. *Senip v. Trust Territory*, 2 T.T.R. 227.

Even in civil actions, one cannot be held responsible on theory of negligence for injury from act or omission, unless he is reasonably chargeable with knowledge that act or omission involved danger to another. *Day v. Trust Territory*, 2 T.T.R. 421.

—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. *Etpison v. Indalecio*, 2 T.T.R. 186.

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. *Etpison v. Indalecio*, 2 T.T.R. 186.

TRUK CUSTOM.

Adultery

Presumption under Truk custom, that person who has "thrown away" spouse has committed adultery before the "throwing away," is not strong enough to make evidence of "throwing away" sufficient in itself

TRUK CUSTOM

to prove adultery beyond a reasonable doubt on part of one throwing spouse away. *Lornis v. Trust Territory*, 2 T.T.R. 114.

Since parties who are married under Truk custom cannot commit customary crime of adultery with each other, question as to whether intercourse occurred before or after customary divorce from former spouse is of utmost importance in prosecution for adultery. *Lornis v. Trust Territory*, 2 T.T.R. 114.

Marriage—Death of Spouse

Under Truk custom, where wife of deceased landowner remarries and takes children of landowner with her who are then considered children of their step-father, mother should be considered to have broken away from her former husband's family. *Rieuo v. Nochi*, 2 T.T.R. 291.

Marriage, see, also, Domestic Relations—Marriage—Custom; Palau Custom—Marriage

Divorce

In law, divorce in accordance with local Truk custom dissolves marriage just as fully as divorce granted by court. *Miko v. Keit*, 2 T.T.R. 582.

A couple who have been divorced in accordance with local Truk custom are both then legally free to marry someone else so far as the marriage which has been dissolved by the divorce is concerned. *Miko v. Keit*, 2 T.T.R. 582.

Under Truk custom, in order to determine if spouse has actually been thrown away, member of lineage of spouse who feels he or she may have been thrown away, for father of that spouse, should take up matter with other spouse. *Itoko v. Anton*, 2 T.T.R. 477.

Under Truk custom, once one spouse divorces the other, latter has no obligation to return when spouse causing divorce changes her mind. *Tono v. Momo*, 2 T.T.R. 474.

Divorce, see, also, Domestic Relations—Divorce; Palau Custom—Divorce

—Recording

Under Truk custom, marriage may be dissolved by either spouse at any time at will without action by any court, Magistrate or official. (T.T.C., Sec. 714) *Lornis v. Trust Territory*, 2 T.T.R. 114; *Tono v. Momo*, 2 T.T.R. 474; *Itoko v. Anton*, 2 T.T.R. 477.

Reporting of divorces under Truk custom to Municipal Office, or obtaining certificate from Magistrate with regard thereto, is purely voluntary and precautionary matter, and is of no legal significance regarding validity of divorce except as matter of proof. *Itoko v. Anton*, 2 T.T.R. 477.

—Civil Liability

Under Truk custom, where one spouse divorces the other and no good cause is shown therefor, no damages are due her when divorced spouse leaves home and refuses to return, or marries third party. *Tono v. Momo*, 2 T.T.R. 474.

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Where party makes it understood he has divorced spouse under Truk custom, and divorced spouse later marries another, party is not entitled to damages under Truk custom from individual whom divorced spouse later marries. *Itoko v. Anton*, 2 T.T.R. 477.

—Criminal Liability

Under Truk custom, "throwing away" of spouse does not constitute crime. *Lornis v. Trust Territory*, 2 T.T.R. 114.

Torts—Alienation of Affections

If third person has caused breakup of Trukese marriage in order that either of the spouses may marry this third person, such third person is also liable to pay damages to spouse who has been "thrown away" or to his or her lineage or father. *Miko v. Keit*, 2 T.T.R. 582.

Action under Truk custom for damages for breaking up marriage is in nature of action for alienation of affections. *Miko v. Keit*, 2 T.T.R. 582.

Appeal from District Court judgment ordering party to pay damages for breaking up Trukese marriage must be decided on basis of existing Truk custom and its interpretation by court. *Miko v. Keit*, 2 T.T.R. 582.

TRUK LAND LAW.

Evidence of Ownership

Where complainant had rights in land during German times but his actions since then have been inconsistent with Trukese practice as to land ownership, and he has let matter rest for many years, court may find rights to land belong to another. *Ei v. Inasios*, 2 T.T.R. 317.

Where defendant at trial has no interest in land in Truk except as possible heir as son of owner, court will presume that he is acting as representative of his father's interest, particularly where plaintiff has no rights in land. *Kanoten v. Manuel*, 2 T.T.R. 3.

Lineage Ownership—Division

Where party claims that land held by lineage under Truk custom was divided, party must establish division by greater weight of evidence and show that division was consented to by members of lineage. *Kinara v. Tipa*, 2 T.T.R. 8.

—Gifts

Under Truk custom, gift by lineage head of use rights or ownership of lineage property must be consented to by all adult members of lineage or must be acquiesced in by them. *Nitoka v. Neseper*, 2 T.T.R. 12.

Under Truk custom, in transferring lineage land, only consent of adults is needed. *Irons v. Rudo*, 2 T.T.R. 296.

Gifts of land between lineages in Truk result in granting of usufruct rights in perpetuity but not full title. *Joseph v. Onesi*, 2 T.T.R. 435.

Under Truk custom, evidence of use of land for some years in common with other members of lineage is insufficient to establish title. *Nitoka v. Neseper*, 2 T.T.R. 12.

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Under Truk custom, acquiescence by lineage in ownership by donee of land is negated by deprivation of use rights of donee by subsequent lineage head. *Nitoka v. Neseper*, 2 T.T.R. 12.

Under Truk custom, although chief may enforce gift to one of his children of lineage property, lineage may reclaim property upon chief's death unless gift has been stabilized. *Nitoka v. Neseper*, 2 T.T.R. 12.

On larger islands of Truk Atoll, gifts of land honestly made by lineage to *afokur* after 1930 cut off all rights of lineage other than hope of inheritance, unless specific rights were expressly retained by terms of gift. *Poulis v. Meipel*, 2 T.T.R. 245.

—Sales

Under Truk custom, sale of land held by lineage cuts off all rights of lineage and any rights which its *afokur* might reasonably hope to obtain through it in that part of land. *Poulis v. Meipel*, 2 T.T.R. 245.

—Transfers

Under Truk custom, where it is clear that land is owned by lineage, transfer to child of member is not to be presumed but must be established by clear and convincing evidence. *Kinara v. Tipa*, 2 T.T.R. 8; *Nitoka v. Neseper*, 2 T.T.R. 12.

Under Truk custom, transfer to child of member of lineage of lineage land must be consented to by all members or generally acquiesced in by them. *Kinara v. Tipa*, 2 T.T.R. 8.

Under Truk custom, transfer of land in Truk Atoll by lineage to *afokur* carried with it implied obligation on part of children's lineage to make return gift of other land or to present first fruits to their father's lineage, which would still retain certain residual rights in land. *Poulis v. Meipel*, 2 T.T.R. 245.

Individual Ownership—Care of Owner During Last Illness

Under Truk custom, care of sick person for sustained period imposes obligation to be met in some manner, and transfer of individual land to meet such obligation is considered payment rather than as gift. *Irons v. Rudo*, 2 T.T.R. 296.

Caring for the sick during their last illness by anyone outside of person's matrilineal family has long been recognized in Truk as proper ground for transfer of individual land. *Irons v. Rudo*, 2 T.T.R. 296.

Under Truk custom, owner of individual land in Truk Atoll may transfer such land in payment for substantial services in caring for him during his last illness without consent of or notice to his children. *Rieuo v. Nochi*, 2 T.T.R. 291.

Where payment is due under Truk custom for extended care of person in his last illness, that person may transfer individually owned land in payment for care without either obtaining consent of adult children or notifying them of transfer. *Irons v. Rudo*, 2 T.T.R. 296.

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—Distribution Among Children

Under Truk custom, interest of man's children in his individually owned land is greater than mere hope of inheritance. *Irons v. Rudo*, 2 T.T.R. 296.

Under Truk custom, individually owned land in Truk Atoll is considered to be inherited properly by man's children, unless he has specifically made some other disposition of it. *Irons v. Rudo*, 2 T.T.R. 296.

Although court recognizes that equality of treatment between man's children is goal in Trukese society, this is not absolute requirement and does not apply to man's individual land. *Aty v. Sieuo*, 2 T.T.R. 303.

Court will not interfere with or re-adjust distribution of individually owned land in Truk so long as distribution is reasonable from point of view of Truk custom. *Aty v. Sieuo*, 2 T.T.R. 303.

Individual landowner under Truk custom is entitled to exercise wide discretion in making distribution of land in manner he deems best. *Aty v. Sieuo*, 2 T.T.R. 303.

Under Truk custom, owner of individual land may exercise discretion by selecting particular piece of his individual land for particular child. *Aty v. Sieuo*, 2 T.T.R. 303.

Anyone objecting to distribution of individual land by landowner in Truk will have burden of showing that it is entirely unreasonable by Trukese standards. *Aty v. Sieuo*, 2 T.T.R. 303.

Any hardship which results from inequality of distribution of individually owned land in Truk is alleviated by strong obligation of brothers and sisters under Truk custom to cooperate with each other. *Aty v. Sieuo*, 2 T.T.R. 303.

Under Truk custom, rule may be that individual landowner may make any division he deems best of his land in Truk Atoll among his children and descendants of deceased children, so long as it is socially acceptable under Truk custom and does not conflict with any disposition he has previously made of rights in land involved. *Aty v. Sieuo*, 2 T.T.R. 303.

Under Truk custom, owner of individual land in Truk Atoll may give piece of land entirely to one child so long as he has given reasonable attention to demands and needs of other children and descendants of deceased children, taking into consideration lands available for them, and he does not have to obtain affirmative consent of his children before making such gift. *Aty v. Sieuo*, 2 T.T.R. 303.

—Transfers

Under Truk custom, logical successors to land build up equity in land by working it with owner. *Rieuo v. Nochi*, 2 T.T.R. 291.

Under Truk custom, in determining moral, if not legal, right to land after owner's death, how land is used for substantial period and who

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assists owner with his permission in using it is given great weight. *Rieuo v. Nochi*, 2 T.T.R. 291.

Under Truk custom, in at least two situations owner of individual land on Truk Atoll may make disposition of land without consent of his children or notice to them. *Aty v. Sieuo*, 2 T.T.R. 303.

Under Truk custom, consent of all children of individual owner of land, or of all adult children, is not always necessary for transfer of such land. *Aty v. Sieuo*, 2 T.T.R. 303.

Under Truk custom, where consent to transfer of individual land is not required, notification of landowner's children of intended transfer is expected as matter of good practice. *Irons v. Rudo*, 2 T.T.R. 296.

Although court recognizes value of notice during lifetime of those who hope to share in owner's individual land, such notice is not essential to validity of gift of such land under Truk custom. *Aty v. Sieuo*, 2 T.T.R. 303.

In determining whether children's consent is required in father's distribution of land under Truk custom, if failure of children to stay with father is clearly shown to be fault of father, requirement would be different than where it is not fault of father. *Rieuo v. Nochi*, 2 T.T.R. 291.

Under Truk custom, where, after divorce not shown to have been husband's fault, landowner's children have gone with their mother and have shown no further interest in their father or his land until after his death, and landowner's patrilineal family has worked land with him for some years, he may give individual land to matrilineal family without consent or notice to his children. *Rieuo v. Nochi*, 2 T.T.R. 291.

There is some evidence that when land on Truk is given to individual as individual land and not to use under some lineage or group ownership, he may do what he wants with land. *Irons v. Rudo*, 2 T.T.R. 296.

Recording

There is no requirement in Trust Territory that agreements for sale of land be in writing, nor in Truk District that they be reported to municipal office. *Penno v. Katarina*, 2 T.T.R. 470.

German Title Document

German Administration on Truk, in issuing land documents, did not distinguish between individually owned land and land controlled by person as head of group. *Kono v. Mikael*, 2 T.T.R. 466.

Person named in German land document issued in Truk usually was representative of group rather than individual owner. *Kono v. Mikael*, 2 T.T.R. 466.

Reversionary Interest

Under Truk custom, reversionary rights in land are recognized today. *Joseph v. Onesi*, 2 T.T.R. 435.

TRUSTEESHIP

Under Truk Custom, firm attachment to land and long-continuing reversionary rights indicate that inference of complete transfer of ownership is not to be readily drawn. *Joseph v. Onesi*, 2 T.T.R. 435.

Use Rights

Under Truk custom, word "gave" in informal "gift" agreement refers to use rights. *Andrew v. Otto*, 2 T.T.R. 441.

Under Truk custom, evidence of informal "gifts" of land or taro patches for missionary purposes raises inference of indefinite use rights for as long as land is used for missionary purposes specified, with owners retaining reversionary rights if Mission use is discontinued or attempt is made to transfer to non-missionary uses, unless there is definite showing to the contrary. *Joseph v. Onesi*, 2 T.T.R. 435.

Proper inference to be drawn from evidence of informal "gift" of land or permission to use land in Truk Atoll for missionary purposes is that gift is one of indefinite use rights for as long as land is used for missionary purposes specified, but that owners retain reversionary rights and are entitled to reacquire land if Mission use is discontinued. *Andrew v. Otto*, 2 T.T.R. 441.

Fact that close relative of land owner has lived on land for period of years, worked it and received some of its production does not indicate interest in title under Truk custom although it may indicate use-rights. *Kanoten v. Manuel*, 2 T.T.R. 3.

Fact that dwellings have been demolished and family has moved off land indicates that their interest in land on Truk was temporary one. *Kanoten v. Manuel*, 2 T.T.R. 3.

Mortlock Islands

It is so common in Mortlocks to think of rights as family matters that even if only one child's name is mentioned as having use rights in land, court will imply intention to provide for all of donor's children. *If v. Simalet*, 2 T.T.R. 243.

Under Mortlock custom, although two parties may be specifically given obligation to care for and permit use rights in another, such obligation attaches to land and applies equally to parties' brother as their successor to land. *If v. Simalet*, 2 T.T.R. 243.

TRUSTEESHIP.

Administering Authority—Obligations

Although international trusteeship system is not in all respects analogous to legal trust, administering authority of trust territory is expected to act to some extent like a trustee. *Ngodrii v. Trust Territory*, 2 T.T.R. 142.

Administering authority of trust territory is expected to show at least as careful consideration of rights and properties of inhabitants of trust territory as it would for those of its own citizens in same situation. *Ngodrii v. Trust Territory*, 2 T.T.R. 142.

TRUSTEESHIP

Administering authority of Trust Territory assumes obligation under trust of protecting inhabitants of territory against loss of their lands and resources, promoting their well-being, and assuring their just treatment and protection against abuse. (Trusteeship Agreement, Article 6(2); United Nations Charter, Article 73) *Ngodrii v. Trust Territory*, 2 T.T.R. 142.

Inhabitants of trust territory are entitled to rely upon reasonable assurances of officials in responsible positions with regard to matters they are handling. *Ngodrii v. Trust Territory*, 2 T.T.R. 142.

Administering authority of trust territory should not expect to profit, either directly or through one of its officers, from inhabitants' reliance upon assurances of officials in responsible positions. *Ngodrii v. Trust Territory*, 2 T.T.R. 142.

Assurances of government officials are particularly important in area where spoken word carries greater weight than written word with majority of population and when assurance is about such fundamental and reasonable matter as notice of action intended to limit time within which inhabitant may exercise important right. *Ngodrii v. Trust Territory*, 2 T.T.R. 142.

—Powers

Administering authority has full powers of administration, legislation and jurisdiction over Trust Territory. (Trusteeship Agreement, Article 3) *Ngiruhelbad v. Merii*, 2 T.T.R. 631.

TRUSTS.

Obligation of Trustees

One of prime obligations of trustee is to be scrupulously fair and frank with those for whom he is acting and not mislead them or take advantage of their ignorance. *Ngodrii v. Trust Territory*, 2 T.T.R. 142.

Conversion of Trust Property

Party alleging wrongful conversion of trust property has burden of establishing fraudulent conduct by evidence which is strong, clear, positive and convincing. *Kilara v. Opa*, 2 T.T.R. 21.

Where house is moved from one land to another, in clear view and with acquiescence of owner, evidence fails to indicate wrongful conversion of trust property. *Kilara v. Opa*, 2 T.T.R. 21.

—Tracing

Beneficiary of trust may elect to take proceeds of wrongful conversion of trust property. *Kilara v. Opa*, 2 T.T.R. 21.

Only if wrongful converter exchanges converted house directly for land would rightful owner of house be entitled to land as proceeds of wrongful conversion. *Kilara v. Opa*, 2 T.T.R. 21.

If wrongful converter of house delivers house to nephew and then buys land for cash, title to land does not vest in rightful owner of converted house. *Kilara v. Opa*, 2 T.T.R. 21.

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If wrongful converter of house delivers house to nephew and then buys land for cash, rightful owner of house may recover damages for conversion or reclaim his property. *Kilara v. Opa*, 2 T.T.R. 21.

TRUST TERRITORY.

Applicable Law

Administering authority may apply to Trust Territory such laws of United States as it deems appropriate to local conditions and requirements. (Trusteeship Agreement, Article 3) *Sechelong v. Trust Territory*, 2 T.T.R. 526.

Land Law

Land law in effect in Trust Territory in 1941 remains in full force and effect except as changed by written enactment. (T.T.C., Sec. 24) *Ngiruhelbad v. Merii*, 2 T.T.R. 631.

Law concerning ownership, use, inheritance and transfer of land in effect on December 1, 1941, remains in full force and effect except insofar as it is changed by express written enactment. (T.T.C., Sec. 24) *Kanser v. Pitor*, 2 T.T.R. 481.

—Limitations

Land claims barred under usual principles of American law are barred under Trust Territory Code. (T.T.C., Sec. 24) *Kanser v. Pitor*, 2 T.T.R. 481.

Actions for recovery of land in Trust Territory are subject to limitation of twenty years, except that all causes of action existing on May 28, 1951, are deemed to have accrued on that date. (T.T.C., Secs. 316, 324) *Ei v. Inasios*, 2 T.T.R. 317.

Twenty-year limitation on actions involving land or interests therein is not yet applicable in Trust Territory since, for purpose of computing time, any cause of action existing on May 21, 1951, is considered to have accrued on that date. (T.T.C., Sec. 324) *Naoro v. Inekis*, 2 T.T.R. 232.

—Adverse Possession

Adverse possession, under which one can establish ownership by holding adverse possession of land under claim of ownership for period of statute limiting bringing of actions for recovery of land, cannot be applied in Trust Territory until 1971 because present twenty-year limitation went into effect in 1951 and began to run on that date as to causes of action then existing. (T.T.C., Secs. 316, 324) *Kanser v. Pitor*, 2 T.T.R. 481.

—Ownership Disqualification

Where person is disqualified under Trust Territory law from holding rights in land which he has acquired, this is matter of which only government can take advantage. (T.T.C., Sec. 900) *Acfalle v. Aguon*, 2 T.T.R. 133.

As against all persons other than government, one disqualified under Trust Territory law from holding rights in land may continue to

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exercise all rights of ownership unless and until government acts on the matter. *Acfalle v. Aguon*, 2 T.T.R. 133.

W

WILLS.

Holographic

Where holographic will makes no mention of disputed lands and is filed seven years before death of testator, nuncupative will may supersede it. *Ngiruhelbad v. Merii*, 2 T.T.R. 631.

Y

YAP CUSTOM.

Fishing

Under Yap custom, division of *walbuu* rights may vary from village to village because of special agreements. *Yangruw v. Manggur*, 2 T.T.R. 205.

Under Yap custom, *walbuu* rights vary from special nature of their origin and may not apply at all in certain instances. *Yangruw v. Manggur*, 2 T.T.R. 205.

Under Yap custom, *yaraw* type fishing and "small" (individual) fishing are essentially different matters from, and covered by different controls, than *zum ey* fishing. *Yangruw v. Manggur*, 2 T.T.R. 205.

In Palau Village, unless chief of Village is member of group owning *zum ey* rights or entitled to *walbuu* from that area, he has no control or rights in such fishing in any part of Village waters under Yap custom, nor does any high chief in Yap have such rights merely by virtue of being high chief. *Yangruw v. Manggur*, 2 T.T.R. 205.

Under Yap custom, waters of Palau Village suitable for *zum ey* fishing are divided into plots, each owned by various family groups and usually under immediate control of senior competent male member of group, subject to obligation to permit other members of village to cooperate in this type of fishing. *Yangruw v. Manggur*, 2 T.T.R. 205.

No inference should be drawn from opinion relating to *zum ey* fishing rights as to fishing in any other waters or rights in any other kind of fishing. *Yangruw v. Manggur*, 2 T.T.R. 205.

Under Yap custom, there is obligation in some instances to give part of catch from *zum ey* fishing as *walbuu* to senior male member of group owning particular piece of land, such group being different from one "owning" area of shallow water involved. *Yangruw v. Manggur*, 2 T.T.R. 205.

Stone Money

Where one transfers stone money to another, transferor's rights in it are entirely cut off and any effort he may make thereafter to trans-

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fer stone money to third party or to confirm or establish his ownership therein is of no legal effect. *Choo v. Pong*, 2 T.T.R. 262.

Where stone money is given to party as *gidigen* under Yapese custom, his rights in it are held in common with certain of his relatives and not by him alone. *Choo v. Pong*, 2 T.T.R. 262.

Traditional Meeting

Decision of majority of village chiefs confirming gift to individual after discussion by all parties and others in general meeting held in accordance with Yap custom, cuts off any rights other party might once have been considered to have as distant relative of previous owner. *Tamaggimed v. Bathin*, 2 T.T.R. 499.

Under Yap custom, meeting at which only some of parties concerned were represented is of no legal effect in changing previous unanimous decision as to possession of land made by majority of village chiefs of Map Municipality. *Tamaggimed v. Bathin*, 2 T.T.R. 499.

YAP LAND LAW.

Patrilineal Ownership

Under Yap custom, while giving to children of names that come from particular area or are connected with particular land is important indication of intention with regard to inheritance, this does not prohibit express giving of land rights to such children in other areas or lands than those with which their names are associated. *Tamaggimed v. Bathin*, 2 T.T.R. 499.

Although under Yap custom children of divorced couple go with father and lose right to inherit from mother's family, custom does not go to extent of barring express transfer to children of divorced female member. *Tamaggimed v. Bathin*, 2 T.T.R. 499.

Adopted Child

Under Yap custom, even if individual is fully adopted out of family so that she would normally not inherit from it, express transfer of rights to her son is not prohibited. *Tamaggimed v. Bathin*, 2 T.T.R. 499.

"Kel"

Under Yap custom, where party who confiscates land to redress private wrong fails to obtain consent of village leaders and elders, attempted confiscation is invalid and of no legal effect. *Tamaggimed v. Bathin*, 2 T.T.R. 499.

Under Yap custom, in order to sanction confiscation of land to redress private wrong, it is necessary that those seizing land explain their actions to village chiefs and elders and obtain at least their tacit consent to seizure. *Tamaggimed v. Bathin*, 2 T.T.R. 499.

Under Yap custom, where party claims piece of land as *kel*, claim must be based on clearly established intentional wrong. *Tamaggimed v. Bathin*, 2 T.T.R. 499.