Digest of Cases Reported

Topics Appearing in This Digest

A

ACTION ON ACCOUNT.

Statute of Limitations

Where plaintiff entered charges for merchandise sold defendant, credited defendant with payments received, and, at the end of each year, prepared a statement of indebtedness remaining for the year, there was a mutual and open account and statute of limitations providing that for an action for balance due on a mutual and open account, the cause of action accrues at the time of the last item in the account applied, not general six-year statute of limitations, so that items entered by plaintiff more than six years before suit and claimed by plaintiff were not barred. (6 TTC § 307) George N. Market, Inc. v. Peleliu Club, 6 T.T.R. 458.

Burden of Proof

Without some showing by defendants offsetting prima facie case for money claimed due, established by billings, plaintiffs' claims would be sustained, and plaintiffs were not required to support the billings by invoices, other documents or any other evidence. Techong v. Peleliu Club, 6 T.T.R. 275.

Admissions

An admission of "some" indebtedness without naming an amount is an admissible admission against interest, going to prove the fact of indebtedness, and justifies the court in ruling the amount to be one dollar less than the amount claimed. Techong v. Peleliu Club, 6 T.T.R. 275.

Damages—Interest

Interest on amount recovered under claim for amount due was interest at the legal rate, uncompounded, from the billing date to the date of entry of judgment. Techong v. Peleliu Club, 6 T.T.R. 275.

ACTIONS.

Effect of Conviction on Civil Action

Criminal conviction for an act does not preclude recovery in a civil action for harm caused by that act. Dingilius v. Bruno, 6 T.T.R. 474.

Failure to Appear

Where owner of vessel involved in proceeding for condemnation and forfeiture failed to appear and meet his statutory burden of proving that violation made grounds of proceeding was without his knowledge or wilful negligence, court would order vessel condemned and forfeited. (19 T.T.C. § 156) Trust Territory v. Len, 6 T.T.R. 50.

Where owner of vessel involved in proceeding for condemnation and forfeiture failed to appear and meet his statutory burden of proving that violation made grounds of proceeding was without his knowledge or wilful negligence, court would order vessel condemned and forfeited. (19 T.T.C. § 156) Trust Territory v. Hong, 6 T.T.R. 52.

ACTIONS

Defenses—Contrary to Custom or Law

However worthy the reason advanced as justification for an action may be, the action may not be approved when it is contrary to applicable custom or law. Jatios v. Launit, 6 T.T.R. 161.

Penalization of Loser by Winner

A party to litigation may not be penalized by a winning adverse party merely because a controversy was brought to court. Muller v. Muller, 6 T.T.R. 30.

The mere bringing of a suit to determine interests in land is not sufficient justification for termination of whatever rights plaintiff may have in the land. Mojiliong v. Lanki, 6 T.T.R. 381.

ADMINISTRATIVE LAW.

Rules and Regulations—Persons Bound

When a government agency undertakes to follow regulations, whether or not it is required to adhere to them, they must be strictly observed. Christensen v. M.O.C., 6 T.T.R. 346.

Remedies—Exhaustion of Administrative Remedies

Where community action agency's manual made use of various administrative remedies permissive, terminated employee was not required to exhaust them prior to taking the matter to the agency's board of directors, and from there, to the courts upon agency's refusal to honor board's reinstatement order. Ngirasechedui v. Palau Com. Action Agcy., 6 T.T.R. 224.

Review—Facts

Whether charges made against employee under contract with government were valid and, if provable, sufficient to warrant his dismissal, was for the personnel board to decide, not the court. (P.L. 4C-49, Sec. 10, (15)(c)(ii)) Christensen v. M.O.C., 6 T.T.R. 346.

—Conclusiveness of Decision

Where officers of community action agency terminated plaintiff's employment and executive director refused to reinstate him following hearing before the board of directors which resulted in a board order that agency reinstate plaintiff, and, upon being sent a copy of letter by plaintiff to board regarding plaintiff's nonreinstatement, executive director sent board a letter purporting to appeal the board's decision and board considered the letter, upheld its original decision and notified executive director that further appeals be directed to newly seated board or the Office of Economic Opportunity, board's decision on appeal was conclusive and final and plaintiff, who was again refused reinstatement, would be ordered reinstated and paid the salary he lost during his period of unemployment. Ngirasechedui v. Palau Com. Action Agcy., 6 T.T.R. 224.

AGENCY.

Apparent Authority

Where municipal councilman was not the agent of either District Ad-

ministrator or municipal magistrate, there could be no "apparent authority", as an agent of one of the two, to give permission to cut, remove and sell a mahogany tree on government forest preserve. Siksei v. Trust Territory, 6 T.T.R. 83.

APPEAL AND ERROR.

Notice and Filing of Appeal—Effective Date

Appeal is not perfected until filing fee is paid; so that where notice of appeal was filed 31 days after entry of judgment and filing fee was not paid until 52 days after entry of judgment, notice was not effective until 52 days after judgment and was thus untimely under 30-day filing limit statute. (6 TTC § 352) Aldan v. Bank of America, 6 T.T.R. 570.

—Late Filing

Where notice of appeal was filed one day later than 30-day period for filing, and no unusual circumstances warranted exception to rule that late appeal will not be accepted, appeal would be dismissed. (6 TTC § 352) San Nicolas v. Bank of America, 6 T.T.R. 568.

Late Appeal

Late appeal from conviction would not be granted petitioner for habeas corpus where no plain error was demonstrated and there was no appriate authorized procedure for allowing late appeals where plain error is demonstrated; and the only available appeal would be from denial of habeas corpus relief. In re Application of Matagolai, 6 T.T.R. 58.

Motion to Dismiss—Denied

There was no right to preliminary examination of arrested person brought before court competent to try him for offense charged, and habeas corpus was properly denied where denial of preliminary examination was alleged as the ground for seeking it; thus court properly denied motion to dismiss based on alleged denial of right of habeas corpus. (1 TTC § 11; 9 TTC § 108; 12 TTC §§ 202, 204(1)) Borja v. Trust Territory, 6 T.T.R. 584.

Bail Pending Review—When Granted

Whether bail should be granted pending appeal depends upon whether there is a substantial question which should be determined by the appellate court. (12 T.T.C. § 252) Lino v. Trust Territory, 6 T.T.R. 206.

Discretion to Review

District Court judgment placing juvenile in delinquency proceeding in custody of his uncle having been brought to High Court's attention by habeas corpus proceeding, court would exercise its discretion and review the order. (6 T.T.C. § 354) In re Alleged Delinquent Minor, 6 T.T.R. 3.

Scope of Review—Facts

Though court was authorized by statute to review facts, it could not do so where they related to unresolved major conflicts in the evidence; and case would be remanded for resolution of the conflict. Ngiratulemau v. Merei, 6 T.T.R. 245.

—Weight of Evidence

Reweighing evidence is not a function of an appellate court. Rengiil v. Derbai, 6 T.T.R. 181.

It is not the function of the Appellate Division to weigh evidence. Trust Territory v. Miller, 6 T.T.R. 193.

Record on Review—Adequacy

Although pleadings in appeals were so inadequate, incomplete and contrary to the rules for appeals that the court could have justifiably dismissed them, appeals would, in fairness to the parties, be accepted where the fault lay with counsel who carelessly prepared completely inadequate pleadings apparently knowing they would not appear at the appeal hearing. Ngeskesuk v. Solang, 6 T.T.R. 505.

Evidentiary Error—Admission of Evidence

If erroneous admission of evidence is highly prejudicial to an accused, it will be deemed to be "inconsistent with substantial justice" and warrant disturbing a judgment. (6 T.T.C. § 351) Trust Territory v. Miller, 6 T.T.R. 193.

—Hearsay

In dispute over who was rightful holder of chief's title, testimony offered by defendant to effect that plaintiff's sister declared at a public meeting that plaintiff only wanted the title so he could sell the clan lands, not denied by sister, who claimed she could not remember what she said, if hearsay, was not of such a nature as to warrant upsetting judgment for defendant. Rengiil v. Derbai, 6 T.T.R. 181.

—Prejudice

Absent a showing of specific prejudice, evidentiary error does not warrant reversal of a judgment. Rengiil v. Derbai, 6 T.T.R. 181.

Prejudicial Error

Error alone is not sufficient to warrant disturbing a judgment; prejudicial harm must be shown. Trust Territory v. Miller, 6 T.T.R. 193.

Findings and Conclusions

In an appeal on the record, the court will not disturb the findings below unless there is manifest error. Baules v. Ngiraked, 6 T.T.R. 462.

—Weight

Habeas corpus petitioner could not prevail on claim he was entitled to a new trial because in-court identification alleged to be in violation of due process was also allegedly almost the exclusive basis for conviction where trial judge specifically stated basis for conviction and the statement was contrary to petitioner's assertion. In re Application of Matagolai, 6 T.T.R. 58.

Unsupported Judgment—Power of Reviewing Court

That trial court's judgment that defendant held interests in *wato* was without support in testimony before the Master or in the Master's report

did not require either a remand or an opposite determination, on appeal, that plaintiff held the interests, where record allowed an appropriate decision. Labiliet v. Zedekiah, 6 T.T.R. 571.

Adequacy of Counsel

Court would reject habeas corpus petitioner's claim that counsel was incompetent for failure to file an appeal and that petitioner was thus denied due process, where counsel testified that in his opinion nothing in the trial sustained grounds for an appeal and that any appeal without new matter would be frivolous. In re Application of Matagolai, 6 T.T.R. 58.

Presumptions—Opportunity to Appeal

The law presumes knowledge of opportunity to appeal. In re Application of Matagolai, 6 T.T.R. 58.

Denial of knowledge of opportunity to appeal, made by person with ten convictions and jail sentences, was not sufficiently convincing to overcome presumption of knowledge. In re Application of Matagolai, 6 T.T.R. 58.

ARREST.

Elements—Detention

Police detention is an arrest, even though inquiry is only being made to determine whether a charge should be filed. (12 T.T.C. § 68) Trust Territory v. Remengesau, 6 T.T.R. 94.

Illegal Arrest—Harmless Error

There was no reversible error where illegal arrest did not prejudice arrested persons. (12 T.T.C. § 69) Henry v. Trust Territory, 6 T.T.R. 78.

—Subsequent Statements

An illegal arrest does not, by itself, render a confession subsequently obtained during illegal detention inadmissible at trial. Henry v. Trust Territory, 6 T.T.R. 78.

Where police, without warrant or having seen the offense, illegally arrested persons for drinking while under age, but had detected liquor on their breath and arrested them at a "drinking bout", confessions made during the illegal detention were admissible. Henry v. Trust Territory, 6 T.T.R. 78.

Advice of Rights

It was improper for police to ask arrested person who gave her counterfeit bill before they gave her a Miranda warning. (12 T.T.C. § 68) Trust Territory v. Remengesau, 6 T.T.R. 94.

Request for Counsel—Subsequent Statements

An answer of "yes" by an arrested person to question whether he wishes police to send for counsel to come and see him at that time, without more, makes any subsequent statement or confession without presence of counsel inadmissible. Henry v. Trust Territory, 6 T.T.R. 78.

ARREST

Where arrested persons wrote "yes" to form question whether they wished police to send word at that time for counsel to come and see them, and, in answer to question: "if so, whom do you want us to send for?", wrote a public defender's name, and then wrote that they would see counsel later in court and proceeded to write confessions on a sheet of paper headed ". . . having been advised of my rights . . . (I) make the following statement to the police freely and voluntary . . .", their confessions were voluntary and there was a valid waiver of counsel. Henry v. Trust Territory, 6 T.T.R. 78.

Waiver of Counsel

Where arrested persons answered "no" to form question whether they wanted police to send word for counsel to come at that time, and wrote the name of a Public Defender's Representative in answer to next question, which was "if so, whom do you want us to send for?", and then they signed a printed waiver of counsel and wrote thereon that they would see counsel later, there was an understanding and voluntary waiver of counsel and subsequent statements were admissible. Trust Territory v. Remengesau, 6 T.T.R. 94.

ASSAULT AND BATTERY.

Elements

A battery need not be a direct striking blow, but may be indirect. Lino v. Trust Territory, 6 T.T.R. 561.

The application of force constituting a battery need not be a direct striking blow, but may be indirect. (11 T.T.C. § 204) Trust Territory v. Lino, 6 T.T.R. 7.

ASSAULT AND BATTERY WITH A DANGEROUS WEAPON.

Acts Constituting

Where defendant, after severely wounding one man with a machete, asked who among a group of nearby men would stand up and help first man attacked, a man grabbed the machete in an attempt to disarm defendant, and defendant pulled it out of second victim's hand, thereby cutting him, defendant committed assault and battery with a dangerous weapon. (11 T.T.C. § 204) Trust Territory v. Lino, 6 T.T.R. 7.

Intent

Where it appeared from the evidence that defendant charged with aggravated assault in that he drove at and hit another person was so intoxicated as to be incapable of forming the requisite intent, he would be found guilty of lesser included offense, not requiring intent, of assault and battery with a dangerous weapon. Trust Territory v. Jima, 6 T.T.R. 91.

Dangerous Weapon—Automobiles

An automobile is a dangerous weapon, within meaning of statute making assault and battery with a dangerous weapon a criminal offense, when

it is deliberately driven at someone. (11 T.T.C. § 204) Trust Territory v. Jima, 6 T.T.R. 91.

Defenses

Where defendant, who had severely wounded a man, asked a group of nearby men who among them was a friend of wounded man and would help him, that a man grabbed defendant's machete in an attempt to disarm him was a normal response to the situation and such response was not a defense to assault and battery with a dangerous weapon, occurring when defendant pulled the machete from second victim's hand, thereby cutting him. (11 T.T.C. § 204) Trust Territory v. Lino, 6 T.T.R. 7.

Evidence—Admissibility

Admission of machete in evidence in trial of two counts of assault and battery with a deadly weapon, the machete, was not error. (11 TTC § 204) Lino v. Trust Territory, 6 T.T.R. 561.

Damages

Damages for personal injuries arising when defendant struck plaintiff in the face with a bottle would be awarded in the amount of $121.50 general damages, $8.50 special damages, and costs, where medical expenses of $8.50 were proven and plaintiff would have a permanent scar above his right eye and suffered pain for a time. Franklin v. John, 6 T.T.R. 361.

Where defendant, using an *ebakl* (hatchet knife) inflicted five and one-half inch cut to the bone of plaintiff's left leg, severing arteries and veins, medical officer testified there was total and permanent paralysis of the leg, the leg was paralyzed three years later at time of suit, plaintiff was hospitalized 36 days and later sent to Guam for treatment of the paralysis, and plaintiff lived on a subsistence economy by raising pigs, fishing, cutting and selling copra and construction work, $1,000 for pain and suffering was not unreasonable, and $300 for loss of earning capacity, though speculative, would not be disturbed where defendant did not object. Olouch v. Dulei, 6 T.T.R. 431.

B

BAIL AND RECOGNIZANCE.

Generally

Court must construe incidents and effects of release on bail in accord with principles developed in the United States where bail was well understood there and entirely foreign to Micronesian customs. Mad v. Trust Territory, 6 T.T.R. 550.

Pending Appeal—Murder

Trial court may grant bail pending appeal of a life sentence for murder, the execution of which has been suspended pending the appeal. Mad v. Trust Territory, 6 T.T.R. 550.

BAILMENTS

BAILMENTS.

Duty Owed

The duty owed under a bailment for the sole benefit of the bailee is greater than ordinary care. Obak v. Tulop, 6 T.T.R. 240.

BILLS AND NOTES.

Promissory Notes—Construction

Promissory notes are to be construed like other contracts; they are to be interpreted in the light of what the parties intended. Odell v. Micronesian Const. Co., Inc., 6 T.T.R. 109.

Whether or not agreement for repayment of promissory note by stock of borrower or cash specified it, repayment by stock would have to be with stock of cash or book value equal to that owed, not par value. Gelzinis v. Lagoon Aviation Inc., 6 T.T.R. 404.

In interpreting promissory note and agreement for exchange of stock for assets, the court's duty was to ascertain not what the parties may have secretly intended as distinguished from what the words used in their agreement and note expressed, but rather, the meaning of the words used. Odell v. Micronesian Const. Co., Inc., 6 T.T.R. 109.

—Persons Liable on Note

When a maker of a note signs as an agent or in a representative capacity, he is not personally liable on the note. Gelzinis v. Lagoon Aviation Inc., 6 T.T.R. 404.

—Interest on Overdue Payment

Where promissory note recited specific due date, holder's claim for interest prior to that date would be rejected. Odell v. Micronesian Const. Co., Inc., 6 T.T.R. 109.

—Burden of Proof

In a suit on a promissory note, claimant has burden of proving an affirmative balance. Odell v. Micronesian Const. Co., Inc., 6 T.T.R. 109.

—Weight of Evidence

In suit on promissory note, court would not accept plaintiff's unsupported figures of principal and interest due and reject all of defendant's testimony to the contrary. Odell v. Micronesian Const. Co., Inc., 6 T.T.R. 109.

BOUNDARIES.

Surveys—Purpose

Resurvey of land was governed by former survey, as the object of a resurvey is to furnish proof of location of last lines or monuments, not dispute the correctness of, or govern as against, a former survey. Alik v. Trolii, 6 T.T.R. 317.

Ascertainment—Size of Tract

The size of the area which boundary lines are presumed to encompass is the least dependable of all the methods of ascertaining the boundary lines. Alik v. Trolii, 6 T.T.R. 317.

Boundary Disputes—Particular Disputes

Where 1955 government survey sought to locate boundaries established by prior Japanese survey, and 1967 or 1968 survey by District Land Title Officer ran the lines over again between the 1955 survey markers, the procedure conformed with law, and where, based on those lines, defendant's occupancy was on plaintiff's land rather than adjoining government land, defendant would be ordered to surrender possession and occupancy and remove his buildings. Alik v. Trolii, 6 T.T.R. 317.

C

CIVIL PROCEDURE.

Limitation of Actions—Promise to Pay

The bar to suit created by six-year statute of limitations for an action to recover balance due on a mutual or open account, or upon a cause of action upon which partial payments have been made, can be removed by a promise to pay, partial payment or an acknowledgment of the debt from which a promise can be inferred. (6 TTC § 307) Techong v. Peleliu Club, 6 T.T.R. 275.

Although claim for money due, based on completed items of account, was asserted after applicable statute of limitations had run out, the bar of limitations was removed as to the amount ultimately proven to be due where defendants acknowledged that it was true they owed some sum of money, but alleged it was not true that the sums stated in the complaint were the sums owed as of the date stated in the complaint. (6 TTC § 307) Techong v. Peleliu Club, 6 T.T.R. 275.

Class Actions—Maintainability

The hearing of a motion for summary judgment in favor of persons bringing a class action constitutes a determination by the court that the action is maintainable, and neither the territory nor federal rules require a prior determination that a class action is maintainable. (Rules Civil Procedure, Rule 5) Kingzio v. The Bank of Hawaii, 6 T.T.R. 334.

—Joinder

In class action by homestead entrymen claiming full compliance with requirements necessary to conveyance of the land to them and seeking such conveyance, joinder of all class members, or deferring resolution of the case until each was given individual notice, was not necessary and was impractical, for the fact and law questions were common to the class, the exact size of the class was not made known to the court, though it was approximately 200 persons, and they would not have to accept the deeds should they choose not to. Cruz v. Johnston, 6 T.T.R. 354.

Process—Service

Service of temporary restraining order, obtained ex parte, upon defendants' attorney, was service upon defendants. Madrainglai v. Emesiochel, 6 T.T.R. 435.

Largely because the method of service of ex parte temporary restraining order through police left room for dispute as to what service had been obtained, individual defendants would not be punished for ignoring the order, even though they were unquestionably in contempt of court; but corporate defendant was not entitled to such leniency and would be fined. Madrainglai v. Emesiochel, 6 T.T.R. 435.

Complaint—Issues Raised

Where complaint and answer dealt primarily with disputes over ownership of one parcel of land, plaintiff could not complain that Master to whom the case was referred decided ownership of seven parcels, because question of ownership of the seven parcels was injected into the case by plaintiff, who claimed their ownership in his complaint for ejectment from one parcel. Llecholech v. Blau, 6 T.T.R. 525.

Captions

That pleading was labeled "complaint" rather than "mandamus", which it was more nearly in the nature of, was not significant. Ngirasechedui v. Palau Com. Action Agcy., 6 T.T.R. 224.

Under the rule that it is immaterial what a pleading is labeled, for the court must give effect to its substance, motion to dismiss which was actually an answer in which the prayer asked for dismissal for failure to state a cause of action would be considered as such; and the case thus being at issue by complaint and answer, court could consider plaintiff's motion for summary judgment and defendant could not successfully claim the motion was not timely in view of his "motion to dismiss". Christensen v. M.O.C., 6 T.T.R. 346.

Motion to Dismiss—Tests

On a motion to dismiss, the material and relevant factual allegations of the complaint are to be regarded as true. Guerrero v. Johnston, 6 T.T.R. 124.

Witnesses—Refreshment of Memory

Where witness who was clearly reluctant to testify often answered "I don't know", and was each time reminded of prior conference with prosecutor at which witness had given the information sought at trial, and witness then gave the information sought, and leading questions were twice used, there was no error. Lino v. Trust Territory, 6 T.T.R. 561.

—Duration of Memory

Testimony as to conferences witnesses to assault and battery with a dangerous weapon had with prosecutor was not made inadmissible by fact offense occurred a long time before trial, as only the weight to be given the testimony was affected. Lino v. Trust Territory, 6 T.T.R. 561.

—Impeachment

Witness could be impeached by use of leading questions eliciting a prior inconsistent statement. Lino v. Trust Territory, 6 T.T.R. 561.

Reopening of Case—Grounds

Where judgment for plaintiff was on plaintiff's motion for summary judgment and was proper, and there was no trial, defendants were not entitled to testify, or to have case reopened due to their counsel's alleged failure to give his clients an opportunity to be heard in a trial. (Rules Civil Procedure, Rule 18(e)(6)) Sechesuch v. Kebik, 6 T.T.R. 467.

Where defendants failed to appeal, they lost the right of appeal and could not successfully assert denial of right of appeal as basis for motion to reopen. (Rules Civil Procedure, Rule 18(e)(6)) Sechesuch v. Kebik, 6 T.T.R. 467.

Unrequested Relief or Decisions

Where, in the past, members of defendant's lineage had lost an ejectment action against plaintiff regarding land plaintiff, by present action, sought to have defendant, who was in privity with plaintiffs in prior action as they were of the same lineage, ejected from, court could and would, on basis of evidence submitted, and regardless of the label given the complaint, settle the ownership question by treating the action as one for quiet title. Watanabe v. Ngirumerang, 6 T.T.R. 269.

Damages—Proof

Damages for wrongful use and occupancy of land the subject of ejectment action were waived where plaintiff asked for them in complaint but presented no evidence as to the amount of her loss, which could have been shown by proving rental value or value of crops defendant used the land to raise. Kliu v. Sasao, 6 T.T.R. 450.

CONSTITUTIONAL LAW.

Applicable Law

United States decisions relating to and defining due process are applicable to the Trust Territory. Tolhurst v. M.O.C., 6 T.T.R. 296.

Self-Incrimination

The privilege against self-incrimination renders a defendant's silence and refusal to take the stand neutral in effect with respect to the judgment of the trier of fact. Trust Territory v. Miller, 6 T.T.R. 193.

Miranda Warning

Where, following homicide at which defendant, one of the police officers attempting to quell a disturbance, was present, another officer was sent to find defendant and obtain his gun, and officer found defendant, asked for and was given the gun, and did not take defendant into custody, arrest him or interrogate him, defendant was not entitled to a Miranda warning and evidence connected to the gun would not be stricken for failure to give one. (12 TTC § 68) Trust Territory v. Bruno, 6 T.T.R. 635.

Right to Counsel

That juvenile charged in delinquency proceeding with assault and battery was not represented by counsel or advised he had a right to counsel,

and made no understanding waiver of counsel, at hearing held with juvenile, his mother and assistant district prosecutor present, was alone sufficient to vacate order placing him in his uncle's custody. In re Alleged Delinquent Minor, 6 T.T.R. 3.

—Appeals

A defendant is not entitled as a matter of right to assistance of counsel to prosecute an appeal. In re Application of Matagolai, 6 T.T.R. 58.

An indigent defendant in a criminal case has a right to court appointed counsel at all stages of the proceedings, including an appeal. (1 TTC § 4) In re Application of Matagolai, 6 T.T.R. 577.

Statutes allowing indigents free counsel at trial should not be read to impliedly bar free counsel for an appeal, and under the Trust Territory Code Bill of Rights an indigent has the right to free counsel for an appeal. (1 TTC § 4; 12 TTC §§ 68, 151(2)) In re Application of Matagolai, 6 T.T.R. 577.

Where convicted indigent knew he had a right to appeal, but did not know how to assert it, and his counsel refused to appeal unless indigent could show him new evidence justifying an appeal, indigent was denied his right to court appointed counsel on appeal; and where time for appeal passed and new counsel filed for habeas corpus, denial of the writ would be reversed insofar as the writ sought the right to appeal. (1 TTC § 4) In re Application of Matagolai, 6 T.T.R. 577.

Compelling Court Attendance

It is not a denial of constitutional privileges to compel an accused to appear in court. In re Application of Matagolai, 6 T.T.R. 58.

Public Trial and Confrontation of Witnesses

Where record showed appellant was present and testified at hearing before Land Title Officer, that her testimony was reduced to writing, which appellant signed under oath, that many additional witnesses gave statements similarly made and that notice of the hearing was given by posting in Palauan and English, there was no denial of due process, even though there was no cross-examination. Baules v. Ngiraked, 6 T.T.R. 462.

Due Process

The interpretation and meaning of the due process and equal protection clauses of the United States Constitution are the same as the interpretation and meaning of the Trust Territory Code Bill of Rights due process and equal protection clauses. (1 TTC §§ 4, 7) Di Stefano v. Di Stefano, 6 T.T.R. 312.

—Hearing

Where defendant's motion to vacate injunction pendente lite was made without notice to plaintiff, plaintiff's motion to vacate order granting defendants' motion would be granted, for grant of motion to vacate the injunction when plaintiff had no notice and opportunity to resist the motion was a denial of due process. (Trust Territory Rules Civ. Proc. 7) Madrainglai v. Emesiochel, 6 T.T.R. 604.

In resolving land dispute, *iroij lablab* was required by law to conduct an investigation and make a determination in accordance with fair play, a minimum requirement being that both sides be given an opportunity to present their case; and where *iroij* did not investigate, two of the three disputants were not present when the third, whom she ruled in favor of, appeared before her, and her daughter prepared the determination and signed it for her, her decision could have no weight or influence with the court, which would allow her a chance to resolve the dispute prior to resolution in court. Enos v. Ankeir, 6 T.T.R. 595.

—Appeals

An appeal is not an essential of due process. In re Application of Matagolai, 6 T.T.R. 58.

—Dismissal of Employee

Where Micronesian Occupational Center employee had more than a year left on two-year employment contract, he had a property interest protected by procedural due process, and since the minimum level of procedural due process protection requires a hearing of some type and employee was dismissed on 15 days' notice without opportunity for a hearing, he was denied procedural due process. Tolhurst v. M.O.C., 6 T.T.R. 296.

Employee employed pursuant to contract with government had an interest in continued employment which was protected by due process of law, and could not be dismissed from employment, whether or not for valid reasons, by action which was arbitrary, discriminatory and a denial of fundamental property interests protected by the Trust Territory Code. (1 TTC § 4) Christensen v. M.O.C., 6 T.T.R. 346.

Dismissal of employee under contract to government, as of 15 days after receipt of letter of dismissal, was a denial of due process in that he was not given an opportunity to reply to the charges even though regulations which the government purported to follow allowed such opportunity, and he was entitled to reinstatement or, in the alternative, damages for breach of contract. Christensen v. M.O.C., 6 T.T.R. 346.

—Remedies for Deprivation

If conviction was a nullity because it was based on in-court identification which denied due process, the most petitioner for habeas corpus could expect would be a new trial, and he would not be entitled to be set free. In re Application of Matagolai, 6 T.T.R. 58.

Residency Requirements—Divorce

The Trust Territory is not a state of the United States and for many purposes is considered a foreign state or territory under United States administration; and its citizens are not citizens of the United States; thus, while the territory must insure equal protection and freedom of migration within the territory under the TTC, it is under no obligation to insure to non-citizens the right to immigrate at will, and residency requirement of two years to file for divorce could not be attacked as a denial of the rights to travel and equal protection. (39 TTC § 202) Hamrick v. Hamrick, 6 T.T.R. 252.

CONSTITUTIONAL LAW

—Ripeness of Issue

The Trust Territory's need to resolve conflicting decisions in the Trial Division of the High Court and in the Mariana Islands District Court on constitutionality of two-year residency requirement for divorce is urgently compelling; therefore, although a conclusive federal court decision resolving conflicts on the residency requirement issue among the United States District Courts could be accepted as persuasively compelling in the Trust Territory, the High Court should not be compelled to await for such a conclusive decision, and Trial Division would refer to Appellate Division the question, raised by instant case, whether the two-year residency requirement denies due process, equal protection or any other right guaranteed residents by the Trust Territory Code Bill of Rights. Di Stefano v. Di Stefano, 6 T.T.R. 312.

Right to Travel

The right of interstate travel applied under the Equal Protection Clause is not applicable in the Trust Territory. Di Stefano v. Di Stefano, 6 T.T.R. 312.

CONTRACTS.

Statute of Frauds

There is no statute of frauds in the Trust Territory, and a transfer of land may be oral and still be effective. Llecholech v. Blau, 6 T.T.R. 525.

Construction—Vagueness

The court would not prepare a new contract where the terms of oral contract to build a house were so uncertain that there was no enforceable contract; but where the house was already built, the party for whom it was built would not be allowed the benefit of it without being required to pay for it, and builder was entitled to the value of the improvements or the cost of labor and materials, whichever was less. Ngiruchelbad v. Ngirasewei, 6 T.T.R. 259.

—Particular Agreements

In suit for balances due under promissory note plaintiff held against defendant and agreement for exchange of plaintiff's stock in defendant for certain assets in Koror, Yap and Guam, under which plaintiff was to assume the known liabilities at Koror and Yap, additional liabilities, at Truk and Saipan, would not be applied to reduce the stock's value and thus wipe out the balance due on the note, because the Truk and Saipan liabilities were not applicable to the value of the Koror, Yap and Guam assets transferred since neither Truk nor Saipan assets were transferred, and because one liability had ceased to be a legal liability as a statute of limitations had run out against it. Odell v. Micronesian Const. Co., Inc., 6 T.T.R. 109.

In suit on promissory note issued by defendant corporation, and for balance due under agreement whereby plaintiff exchanged stock in defendant for certain of defendant's assets, court would not rewrite a

contract for the parties by following defendant's suggestion that stock's fair value be recalculated downward and thus wipe out the remaining indebtedness on the note. Odell v. Micronesian Const. Co., Inc., 6 T.T.R. 109.

Oral Contracts—Proof

Where building contractor orally agreed to limit labor cost to $2,000, and could not substantiate billing for more than that, claim for that part of billing in excess of the agreed upon amount must fail. Ngiruchelbad v. Ngiraingas, 6 T.T.R. 521.

In action for balance due on oral contract to build house, where plaintiff testified the cost of labor and materials was not to go over $11,000, and defendant testified the limit was $6,000, the evidence was at a stalemate, that being all there was, and plaintiff failed in his burden of proving his claim by a preponderance of the evidence. Ngiruchelbad v. Ngirasewei, 6 T.T.R. 259.

Evidence of oral agreement that prior, written, nonnegotiable note was to be repaid in either cash or stock of borrower, a corporation, was not barred by parol evidence rule in action to recover on the note. Gelzinis v. Lagoon Aviation Inc., 6 T.T.R. 404.

Terms—Mutual Agreement

When one party to a contract reasonably means one thing, and the other reasonably understands differently, there is no contract; the parties have said different things. Ngiruchelbad v. Ngirasewei, 6 T.T.R. 259.

—Clarity

Before there can be a contract, the terms must be definite and understood, so that they can be agreed on. Ngiruchelbad v. Ngirasewei, 6 T.T.R. 259.

—Binding Terms

Where plaintiff claimed $11,364.83 was due for reconstruction costs, and admitted on cross-examination that the contract price for the work had been fixed at "not to exceed" $10,000, plaintiff was limited by the agreement, even though the costs and billing exceeded the agreed upon amount. Techong v. Peleliu Club, 6 T.T.R. 275.

Mistake—Mutual Mistake

Where parties to oral contract to build house each testified that a different maximum cost was agreed on, one claiming it was $11,000 and the other claiming it was $6,000, and there was no other evidence on the issue, court had the power to set aside the agreement on grounds of mutual mistake. Ngiruchelbad v. Ngirasewei, 6 T.T.R. 259.

Breach

Where purchaser of new auto through bank loan switched insurance protecting bank to another firm, as allowed by the financing agreement, but did not comply with agreement in that he failed to give the policy to the bank until the last payment, did not have an endorsement in

bank's favor, and did not purchase insurance for the last six months of the loan, he was in substantial default; but there was no harm where he made all the payments, and his failures could be treated as technical and due to lack of experience and understanding of his obligations. Lizama v. Bank of America, 6 T.T.R. 54.

—Damages

In suit for amount claimed due under a construction contract, filed after completion of the work and demand made by billing, interest on amount recovered should be from the date work was completed and billing made, the theory being that interest is a part of the damages for breach of contract by nonpayment and the date of the loss is the completion and billing date. Techong v. Peleliu Club, 6 T.T.R. 275.

Mutual Breach or Fault

Where purchaser of new auto with 30-month bank loan failed, through lack of experience and understanding, to notify bank he was switching loan insurance from bank's company to another after first year of loan, as allowed by financing agreement, and failed to give policy with endorsement in bank's favor to bank and to purchase insurance for last six months of loan, and bank was apparently indifferent to purchaser's lack of sophistication and renewed insurance for the rest of the loan, and bank could prove that it purchased the last six months' insurance, but not that it purchased insurance for the second year, and purchaser was refused title upon demand for it after making all payments on time, on the ground he owed bank for the insurance bank purchased, both parties were at fault and purchaser would be ordered to pay last six months' insurance purchased by bank, bank to then turn over title to the vehicle to purchaser. Lizama v. Bank of America, 6 T.T.R. 54.

Rescission

Rescission is permissible for mutual mistake in the terms, or fraud in the inducement, of a contract. Odell v. Micronesian Const. Co., Inc., 6 T.T.R. 109.

Rescission requires that the parties be restored to their original position, and promissory note plaintiff held against defendant, together with agreement whereby plaintiff would exchange stock in defendant for certain of defendant's assets, would not be rescinded where it could not be said that assets received were still intact and returnable. Odell v. Micronesian Const. Co., Inc., 6 T.T.R. 109.

Offsetting Credits

Liabilities plaintiff was obligated to assume under agreement for exchange of plaintiff's stock in defendant for certain of defendant's assets, but which defendant paid, would be held to constitute an offsetting credit against balance due on promissory note plaintiff held against defendant. Odell v. Micronesian Const. Co., Inc., 6 T.T.R. 109.

Costs and Attorney Fees Provisions

Where note sued upon provided for reasonable attorney fees in the event of a collection suit, plaintiff's claim that a twenty-five percent fee was reasonable would be rejected and court would, in its discretion and in absence of evidence as to value of services, fix a fee of five percent of the amount due on the note. Odell v. Micronesian Const. Co., Inc., 6 T.T.R. 109.

Usury

A right of action created by statute need not exist before usurious interest can be recovered, and where statute only allows the usurious interest as an offsetting credit when a borrower sues a lender, borrower may sue at common law for recovery of usurious interest. (33 TTC §§ 251, 252) Kingzio v. The Bank of Hawaii, 6 T.T.R. 334.

Interest is not an element of usury. (33 TTC § 251) Kingzio v. The Bank of Hawaii, 6 T.T.R. 334.

Usury, being a criminal offense, is against public policy, and thus a usurious loan is a contract which will not be enforced; so that plaintiffs to whom bank made loans at usurious rates were entitled to recover all interest paid, since one may sue to recover that which was paid under an unenforceable contract. (33 TTC §§ 251–253) Kingzio v. The Bank of Hawaii, 6 T.T.R. 334.

Bank intended the consequences of its acts in making usurious loans; its collection of usurious interest was the intended result. (33 TTC § 251) Kingzio v. The Bank of Hawaii, 6 T.T.R. 334.

"Add on" method of computing interest on loans made by bank sued by borrowers who claimed usurious interest was charged, was in violation of usury statute limiting interest to one percent per month on the balance due, where the interest for each month's payment was calculated on the entire amount of the loan without taking into account the diminishing balance due. (33 TTC § 251) Kingzio v. The Bank of Hawaii, 6 T.T.R. 334.

Promissory note for $5,000 loan, providing for payment of 15% interest in 12 equal monthly installments ($750 total interest) was usurious where statute allowed maximum of one percent per month on the balance due, which amounted to $500 for the loan in question. (33 TTC § 251) Gelzinis v. Lagoon Aviation Inc., 6 T.T.R. 404.

COURTS.

High Court

The Trial Division of the High Court is bound by the rulings of the Appellate Division. Watanabe v. Ngirumerang, 6 T.T.R. 269.

The Trial Division of the High Court is bound by the Appellate Division's decisions, which it may not under any circumstances change or reverse. Ladrik v. Jakeo, 6 T.T.R. 389.

—Function of Trial Division

Trial Division of the High Court is not an advocate in the administration of justice and must concern itself not with mere tactical advantage

to be permitted one party or the other, but with the ascertainment and declaration of truth, and it cannot knowingly permit the truth to lie hidden. Trust Territory v. Lucas, 6 T.T.R. 614.

District Court—Jurisdiction

Wife's action against her husband for specific performance of alleged promise to transfer land depended upon what interest, if any, wife had in the land, which had been conveyed to the husband only and which wife claimed a one-half interest ownership of; and District Court properly dismissed for want of jurisdiction due to statute providing District Court did not have jurisdiction where title to or interest in land was involved. (5 TTC § 101) Taisakan v. Taisakan, 6 T.T.R. 283.

In action for specific performance of promise to transfer land, statute providing District Court had no jurisdiction where title to or interest in land was involved could not be avoided by first granting the alternative relief of money damages equal to the value of the land and then ordering transfer of the land in satisfaction of the judgment, for when money judgment is satisfied through execution, the attached property is sold and the purchase payment is transferred to the judgment creditor. (5 TTC § 101; 8 TTC §§ 1, 55, 61(3)) Taisakan v. Taisakan, 6 T.T.R. 283.

—Small Claims

Small claims cases are intended to be handled by the parties without representation. Ngirmenganged v. Ngirakimim, 6 T.T.R. 185.

—Representation of Parties

District court judges should not permit individuals to impose upon their time and duties by coming before them unrepresented and ill-advised and uninformed, and the court should insist that they obtain representation if the proceedings go further than the entry of a small claims judgment. Ngirmenganged v. Ngirakimim, 6 T.T.R. 185.

Rules

A rule of court can neither abrogate nor modify substantive law. Trust Territory v. Lucas, 6 T.T.R. 614.

Clerks of Court—Powers and Duties

Clerk of Courts office personnel should under no circumstances advise litigants or potential litigants how or what to plead, though they may, time permitting, accommodate litigants by typing and translating their pleadings. Ngirmenganged v. Ngirakimim, 6 T.T.R. 185.

Master's Report

Where, in action for damages for personal injuries suffered as result of defendant's assault with an *ebakl* (hatchet knife), the case was referred to a Master and both parties agreed to his recommendations, it was Trial Division's duty to determine whether the Master's fact findings and the law applicable thereto supported the proposed decision. Olouch v. Dulei, 6 T.T.R. 431.

Power to Issue Writs

Under federal statute authorizing administrative agency designated by the President to provide for the judicial authority necessary for the civil administration of the Pacific Trust Territory, until Congress shall further provide for the government of the territory, High Court is not one "established by Act of Congress" within meaning of federal statute granting all such courts power to issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. (28 U.S.C. §§ 1651(a), 1681(a)) Lajuan v. Makroro, 6 T.T.R. 209.

Prohibition

A writ of prohibition may be issued against an inferior court only when such court has exceeded or abused its jurisdiction. Lajuan v. Makroro, 6 T.T.R. 209.

Defense plea of res judicata, no matter how well founded, did not deprive Trial Division of jurisdiction, and writ of prohibition would not issue against Trial Division barring it from proceeding further in action in which it denied a motion to dismiss based upon claim of res judicata. Lajuan v. Makroro, 6 T.T.R. 209.

Enforcement of Orders

The court has a duty to issue appropriate orders regardless of its physical power to enforce them, and whether or not the court is without power to enforce its orders directed to the High Commissioner, it should not abdicate its responsibility to find and declare the law. Cruz v. Johnston, 6 T.T.R. 354.

"Stare Decisis"

The Trial Division of the High Court and the District Courts are bound by the decisions of the Appellate Division of the High Court, and are required to abide by them, until the decisions are changed by subsequent Appellate Division decision or appropriate legislative action. Marbou v. Termeteet, 6 T.T.R. 68.

CRIMINAL LAW.

Rights of Accused—Presumption of Innocence

Since the presumption of innocence remained throughout the trial, and since only the burden of going forward with the evidence, not the burden of proof, shifted at end of prosecution's case, lower court properly denied motion for mistrial made on grounds presumption of innocence was not overcome at close of prosecution's case, and denial of mistrial did not place burden of proof on defendant. Rasa v. Trust Territory, 6 T.T.R. 535.

Bill of Particulars

Defendant charged with criminal trespass and disturbing the peace was entitled to a bill of particulars stating exact location of house where alleged offenses took place, the exact time thereof, the names and addresses of all who were present and the precise manner in which, and

means by which, defendant allegedly committed the offenses. Trust Territory v. Lucas, 6 T.T.R. 614.

Pre-Trial Procedure—Discovery

Trial judges have inherent power to permit pre-trial discovery motion and hearing, irrespective of rules of court regarding the matter. Trust Territory v. Lucas, 6 T.T.R. 614.

Criminal procedure rule providing that "upon motion of the accused at any time after the filing of the information, complaint, copy of citation, or other statement of charges, the court may order the prosecutor to permit the accused to inspect and copy or photograph designated books, papers, documents, or tangible objects obtained from or belonging to the accused, or obtained from others by seizure or by process, upon a showing that the items sought may be material to the preparation of his defense and that the request is reasonable", is archaic, not in harmony with current authorities and violates existing substantive law. Trust Territory v. Lucas, 6 T.T.R. 614.

Any and all statements of witnesses contained in police reports, but not the reports themselves, are discoverable. Trust Territory v. Lucas, 6 T.T.R. 614.

One accused of a crime is entitled to discovery of pre-trial statements made by him. Trust Territory v. Lucas, 6 T.T.R. 614.

Defendant was entitled to discovery of the written or recorded statements of witnesses who were to testify, and of witnesses who were not to testify if their statements tended to exculpate defendant. Trust Territory v. Lucas, 6 T.T.R. 614.

Defendant was entitled to inspect all physical evidence, including photos, held by the prosecution, if the evidence was not otherwise available to defendant and did not consist of internal government documents or material made non-discoverable by law. Trust Territory v. Lucas, 6 T.T.R. 614.

Defendant's motion for discovery of all evidence held by the prosecution which was either favorable to defendant or relevant to his guilt was too broad in scope and would be denied. Trust Territory v. Lucas, 6 T.T.R. 614.

Whether arresting officer's original notes should be produced is for the sound discretion of the trial court. Trust Territory v. Lucas, 6 T.T.R. 614.

An arresting officer's original notes are generally to be regarded as his work product and they are discoverable prior to trial only in the most unusual circumstances and only upon motion and order. Trust Territory v. Lucas, 6 T.T.R. 614.

Though an arresting officer's notes are discoverable prior to trial only in the most unusual circumstances, if he testifies, defendant may inspect the notes and use those inconsistent with the testimony for impeachment purposes, even though the notes or the statements therein are not used by the officer or the prosecution. Trust Territory v. Lucas, 6 T.T.R. 614.

Arresting officer's original notes were not discoverable at time of motion for bill of particulars, and were not discoverable at all in the absence of

a clear showing that they should be produced. Trust Territory v. Lucas, 6 T.T.R. 614.

Trial Procedure—Reopening Trial

Where an essential point has been omitted in a criminal prosecution and it appears evidence on the point is available, the trial may be reopened, or the case remanded, for the taking of additional evidence; but in either event, the accused is not entitled to an acquittal. Ngiracheluolu v. Trust Territory, 6 T.T.R. 86.

Burden of Proof—Reasonable Doubt

Where evidence is exclusively circumstantial, rule that proof of guilt of a crime must be established beyond a reasonable doubt should be applied more stringently. Trust Territory v. Miller, 6 T.T.R. 193.

—Alibi

The burden of proving an alibi is on the one asserting it. Trust Territory v. Ngirmang, 6 T.T.R. 117.

Evidence—Motion to Suppress

Hearing on motion to suppress evidence in criminal trial, in which information leading to determination to revoke suspension of prior sentence was obtained, was not a criminal trial. Trust Territory v. Singeo, 6 T.T.R. 71.

—Circumstantial Evidence

In a criminal case, circumstantial evidence may be fully as satisfactory as, and will sometimes outweigh, direct testimony. Ngiracheluolu v. Trust Territory, 6 T.T.R. 86.

A crime may be proved beyond a reasonable doubt by purely circumstantial evidence. Ngiracheluolu v. Trust Territory, 6 T.T.R. 86.

—Hearsay Exceptions

In prosecution for kidnapping and rape, conversations between perpetrators of the crimes, overheard by raped girl and overheard the morning after the offense occurred by girl who lived at house where perpetrators assembled and discussed what had happened, admonished each other not to talk about the events and voiced their concern over being discovered together by police a few hours after the offense, at which time one of them had been arrested, were properly admitted in evidence under exceptions to the hearsay rule relating to conspirators. (Rules of Evidence, Rule 63) Trust Territory v. Ngirmang, 6 T.T.R. 117.

—Opinion

In trial of defendant whose passenger was killed in accident occurring when defendant attempted to pass another vehicle, court erred in allowing witness' statement that he believed the two drivers were racing to stand, but it was not reversible error where there was similar testimony not objected to and the inadmissible statement was not contradicted. Rasa v. Trust Territory, 6 T.T.R. 535.

—Acts and Statements of Conspirators

Conspirator's statements are admissible even though the charge and trial are not for conspiracy. Trust Territory v. Ngirmang, 6 T.T.R. 117.

When several persons conspire to commit a crime, the acts and declarations of any of them during and in furtherance of the conspiracy are admissible as substantive evidence against any conspirator. Trust Territory v. Ngirmang, 6 T.T.R. 117.

—Decedents' Acts and Statements

That some of the statements of conspirators testified to in prosecution for kidnapping and rape were made by an accused who took his life before trial did not preclude admissibility of the statements. Trust Territory v. Ngirmang, 6 T.T.R. 117.

—Obtained in Violation of Rights of Person Arrested

The name of a person who may be a witness or even who becomes a defendant is not evidence subject to suppression as fruit from a poisonous tree; for such information, though improperly obtained in absence of a Miranda warning, is at most harmless error because there is no possibility that the information might contribute to conviction of the person named. (12 T.T.C. § 69) Trust Territory v. Remengesau, 6 T.T.R. 94.

Witnesses—Manner of Testifying

Judge's statement that defendant's narrative style of giving testimony indicated he was giving a preconceived story, and that the testimony should follow a question and answer pattern, not objected to at trial, was not prejudicial or an abuse of discretion. Rasa v. Trust Territory, 6 T.T.R. 535.

In-Court Identification—Propriety

Accused could be identified in court while sitting at defense counsel's table. In re Application of Matagolai, 6 T.T.R. 58.

It was not a denial of due process for victim to identify accused in court where her only view of him at the time of the offense was from the rear. In re Application of Matagolai, 6 T.T.R. 58.

It was not a denial of due process for victim to identify accused in court without making a pre-trial identification. In re Application of Matagolai, 6 T.T.R. 58.

—Weight

The weight to be given in-court identification is for trier of fact, is procedural, and does not go to the question of fair trial embodied in due process. In re Application of Matagolai, 6 T.T.R. 58.

—Harmless Error

If conviction depended upon evidence other than in-court identification which allegedly violated due process, the admission of the identification was harmless procedural error at most, not a denial of due process. In re Application of Matagolai, 6 T.T.R. 58.

Prejudicial Statements—Judges

Judge's statement, before formally announcing judgment, that he would prepare a written judgment so as to give defense counsel "an opportunity to sink his teeth into an appeal", was not prejudicial. Rasa v. Trust Territory, 6 T.T.R. 535.

Sentence—Suspension

Trial court may suspend part of a mandatory life sentence. (11 TTC § 1459) Mad v. Trust Territory, 6 T.T.R. 550.

Suspended Sentence—Violation of Conditions

A hearing to determine whether suspension of a sentence should be revoked for breach of conditions of suspension is not an adversary or criminal proceeding, but, rather, is in the nature of an administrative hearing intimately involved with rehabilitation. Trust Territory v. Singeo, 6 T.T.R. 71.

Confession and seizure, under resulting search warrant, of stolen merchandise, were admissible in hearing on question whether suspension of probationer's prior sentence should be revoked, even if they might have been excluded in a trial on criminal charges for failure to give a Miranda warning. Trust Territory v. Singeo, 6 T.T.R. 71.

Under statute providing that a subsequent conviction has effect of revoking suspension of execution of sentence for a prior offense unless the court otherwise directs, a subsequent conviction is not mandatory. (11 T.T.C. § 1459) Trust Territory v. Singeo, 6 T.T.R. 71.

Statute providing that subsequent conviction of one on a suspended sentence has effect of revoking suspension unless court otherwise directs means that court has discretion to remand offender to jail to serve all or part of the suspended portion of the sentence, try offender for current offense and impose a sentence for that offense should conviction be had, or hold an evidentiary hearing to determine whether any conditions of suspension have been broken and if so, order revocation of the suspension. (11 T.T.C. § 1459) Trust Territory v. Singeo, 6 T.T.R. 71.

In prosecution for burglary and grand larceny wherein, upon hearing on motion to suppress, for failure to give Miranda warning, any confession, statement or evidence obtained as a result of statements, it became known that accused was subject to a suspended thirteen-year sentence for prior convictions of burglary and grand larceny, the court and the attorneys for both sides were derelict in their duties for not bringing the situation to light before trial began, but it would be a needless waste of time to start over again with a hearing on an order to show cause why suspension of sentence should not be revoked where the evidence would be the same as that already before the court on motion to suppress, and whether suspension of sentence should be revoked could properly be determined following hearing on motion to suppress. Trust Territory v. Singeo, 6 T.T.R. 71.

CRIMINAL LAW

Costs—Detention

In the absence of a statute to the contrary, defendants in criminal prosecution could not be held liable for the costs of detaining them, whether before or after their conviction. Trust Territory v. Hsu, 6 T.T.R. 40.

Appeals—Stay of Sentence

Trial court had power to grant stay of execution of mandatory life sentence pending appeal. Mad v. Trust Territory, 6 T.T.R. 550.

—Scope of Review

Trial court's determination that the facts conformed to provisions of criminal statute was not for redetermination by appellate court. Potocki v. Trust Territory, 6 T.T.R. 38.

—Findings

Trial court's findings were not clearly erroneous, and thus would not be set aside, where there was substantial evidence to support them. (6 TTC § 355(2)) Rasa v. Trust Territory, 6 T.T.R. 535.

Alibi—Proof

An alibi need not be proven by either a preponderance of the evidence or beyond a reasonable doubt. Trust Territory v. Ngirmang, 6 T.T.R. 117.

—Weight and Sufficiency

In prosecution for kidnapping and rape, alibi offered as only defense raised no doubt as to guilt and was inadequate where girl was abducted in the early evening, dropped off near her home between 11 p.m. and midnight, and there was a minimum period of 9:30 p.m. to 10:30 p.m. for which there was no corroborating testimony that defendants were at club they claimed to have been at from 9:00 p.m. to midnight. Trust Territory v. Ngirmang, 6 T.T.R. 117.

Intent—Intoxication

Intoxication is not an excuse for commission of a crime, but is a matter to be considered in connection with criminal intent. Trust Territory v. Jima, 6 T.T.R. 91.

Principal and Accessory

In prosecution for kidnapping and rape of girl by four men, defense argument that victim's testimony did not conclusively show she was raped by all four men was precluded by statute removing distinction between principals and accessories before the fact. (11 T.T.C. § 2) Trust Territory v. Ngirmang, 6 T.T.R. 117.

Negligence—Degree

When a statute penalizes negligence as a criminal offense, the degree of negligence that is slight, ordinary or gross does not enter into the elements of the offense. Potocki v. Trust Territory, 6 T.T.R. 38.

—Fact Question

Whether accused was negligent, as defined by negligent driving criminal statute, was a question of fact for the trial court. (83 T.T.C. § 551(1)) Potocki v. Trust Territory, 6 T.T.R. 38.

CUSTOM.

Conflict With Law

No custom, however long and generally it has been followed, can nullify the plain purpose and meaning of a statute. (1 T.T.C. §§ 14, 102) Trust Territory v. Lino, 6 T.T.R. 7.

When custom of forgiving one who has offended or harmed you conflicts with the law it must give way to the law. (1 T.T.C. §§ 14, 102) Trust Territory v. Lino, 6 T.T.R. 7.

Custom of forgiving one who has offended or harmed you may not be applied in a criminal case, for the law requires punishment of anyone convicted of a statutory offense. (1 T.T.C. §§ 14, 102) Trust Territory v. Lino, 6 T.T.R. 7.

The desire of the victim of a crime not to have the perpetrator punished because the victim has forgiven him under a custom will not be allowed to affect the enforcement of any applicable criminal statute. (1 T.T.C. §§ 14, 102) Trust Territory v. Lino, 6 T.T.R. 7.

D

DEEDS.

Recordation—Necessity

Failure to record an effective and valid land transfer does not make it ineffective. Llecholech v. Blau, 6 T.T.R. 525.

A land transfer need not be recorded to be effective; the only purpose of the recordation statute is to protect purchasers against prior transfers. (57 TTC § 11202) Llecholech v. Blau, 6 T.T.R. 525.

—Ineffective Deeds

Recordation of ineffective deed does not give it any effectiveness. Llecholech v. Blau, 6 T.T.R. 525.

Grantor's Interest

Deed of land to plaintiff by relatives of owner of the land, four or more years after owner's death, was not effective, because the relatives had no interest in the land. Llecholech v. Blau, 6 T.T.R. 525.

Witnesses

Irrespective of whether deed was an invalid fraud due to apparently forged witness signatures, the deed was of no validity where the witnesses signed with no knowledge or understanding of the contents. Maidesil v. Remengesau, 6 T.T.R. 453.

DOMESTIC RELATIONS.

Divorce—Jurisdiction

To grant a divorce, a court must have jurisdiction over the res, or marriage, which follows the domicile of the spouses. (39 TTC § 202) Hamrick v. Hamrick, 6 T.T.R. 252.

Where statute required two years' residence to file for divorce, it was not within court's discretion to violate it in favor of husband suing wife, a Guam domiciliary, for divorce even though he had been in the Trust Territory for only eight months, merely because wife did not contest the action and even requested the entry of a default against her and the decision would thus not be subject to collateral attack. (39 TTC § 202) Hamrick v. Hamrick, 6 T.T.R. 252.

E

ELECTIONS.

Governing Law

Registration of voters for, and conduct of, municipal election was properly carried out under the provisions of the municipal charter and ordinances, rather than under code title relating to election of Congress of Micronesia. (T.T.C., Title 43) Benavente v. Ada, 6 T.T.R. 45.

Election Officials—Powers and Duties

Election officials have a positive duty to insure that all qualified electors have an opportunity to vote. Benavente v. Ada, 6 T.T.R. 45.

Due Process

Failure of election officials to perform positive duty to insure that all qualified electors have an opportunity to vote would constitute a denial of due process. Benavente v. Ada, 6 T.T.R. 45.

Irregularities

Although generally, an election should not be voided in absence of a factual showing that the results might be changed if all who were entitled to vote, but could not for some reason, were permitted to do so, the rule is not absolute, and there are certain discriminatory practices which, apart from demonstrated injury or inability to do so, so affect the processes of the law as to be stricken down as invalid. Benavente v. Ada, 6 T.T.R. 45.

Where it was clear from the record that the votes of those persons who were eligible to vote, but were allegedly prevented from doing so due to inability to arrange transportation for election officials, could not have affected the results of the election, election would not be set aside. Benavente v. Ada, 6 T.T.R. 45.

EQUITY.

Laches

Under the rule of "stale demand", attempt to take control of land in possession of sons whose father had recently died after living on and

working the land for forty years, with the sons also doing so the last part of such period, on the ground that the land had been sold to claimant prior to such forty-year period, would be too late to be effective. Kio v. Puesi, 6 T.T.R. 12.

Where persons validly deeded land lived on and worked the land, and person claiming title under defective deed did not live on and work the land, claimant to the land could not successfully assert laches on part of those validly deeded the land. Jonathan v. Jonathan, 6 T.T.R. 100.

EVIDENCE.

Burden of Proof

Where bank failed to prove purchase of insurance protecting bank in regard to second year of auto loan, it could not recover cost of premium from purchaser, who had, as allowed by financing agreement, purchased the second year's insurance with another firm without giving bank required notice. Lizama v. Bank of America, 6 T.T.R. 54.

Weight

The weight or probative value of evidence is for the trier of fact. In re Application of Matagolai, 6 T.T.R. 58.

Hearsay

Generally, hearsay may not be allowed to lift itself by its own boot-straps to the level of competent evidence. Trust Territory v. Miller, 6 T.T.R. 193.

—Statements Exonerating Others

An out-of-court confession by a defendant, exonerating a co-defendant, is inadmissible hearsay. Trust Territory v. Miller, 6 T.T.R. 193.

Best Evidence

Where bank's loan records conflicted with deposition of bank officer, court must, in deciding motion for summary judgment, accept the records, not what officer said about the loans. Kingzio v. The Bank of Hawaii, 6 T.T.R. 334.

Self-Serving Declaration

Out-of-court statement by co-defendant in murder trial, exculpatory as to herself and tending to accuse her co-defendant, was a self-serving declaration and would not have been admissible in her own behalf. Trust Territory v. Miller, 6 T.T.R. 193.

Declarations Against Interest

In action for balance due on mutual and open account, letter from president of defendant club to plaintiff, stating he shared plaintiff's concern with the amount of money the club owed plaintiff and that the amount had been unpaid for four years, was a clear and unqualified acknowledgment of the debt. George N. Market, Inc. v. Peleliu Club, 6 T.T.R. 458.

EVIDENCE

Extra-Judicial Statements—Impeachment

Extra-judicial statement by a party-opponent may be used against him as an admission if it is inconsistent with the facts. Trust Territory v. Miller, 6 T.T.R. 193.

G

GIFTS.

Promise—Enforceability

Promise, without consideration therefor, to make a gift, was unenforceable. Ngirutoi v. Iluches, 6 T.T.R. 517.

H

HABEAS CORPUS.

Availability of Writ

Habeas corpus will not ordinarily lie where there is an adequate remedy at law. Iyar v. Mariana Is. Dist. Police Chief, 6 T.T.R. 401.

Habeas corpus is not a substitute for appeal to search for procedural error. In re Application of Matagolai, 6 T.T.R. 58.

A challenge to the constitutionality of a statute can best be determined by full orderly appellate consideration, not by a petition for a writ of habeas corpus. (9 T.T.C. § 101) In re Application of Hsu, 6 T.T.R. 27.

Application for writ of habeas corpus would be refused where orderly procedures, including the right to appeal, were present. (9 T.T.C. § 101) In re Application of Hsu, 6 T.T.R. 27.

Determination of a prisoner's guilt is not a function of habeas corpus. In re Application of Matagolai, 6 T.T.R. 58.

Habeas corpus is not a substitute for trial, and petition for habeas corpus by person awaiting criminal trial, on ground certain statements were taken from him by police in violation of his rights and erroneously admitted at preliminary examination to determine whether he would be held for trial, would be denied where the issue could be adequately decided at trial. Iyar v. Mariana Is. Dist. Police Chief, 6 T.T.R. 401.

That as a result of answers given in response to questioning by police without Miranda warning, search of vessel was made and contraband found below, did not warrant grant of writ of habeas corpus where magistrate who had called police had already seen other contraband in plain view on vessel's deck, which alone warranted detention and was sufficient to make out criminal offense. In re Application of Hsu, 6 T.T.R. 42.

Jurisdictional Error

Habeas corpus reaches only jurisdictional error, and does not reach procedural error. In re Application of Matagolai, 6 T.T.R. 58.

Due Process—Burden of Proof

Petitioner for habeas corpus had burden of proving that he was denied due process of law because he was denied adequate and effective assistance of counsel. In re Application of Matagolai, 6 T.T.R. 58.

HOMESTEADS.

Homesteading Regulations

Homestead law provision that High Commissioner may "waive any requirement, limitation or regulation relating to homesteads" does not allow waiver of specific statutory provisions, such as time within which he must convey property after a homesteader becomes eligible for it, but rather, refers to administrative regulations of district administrators and land advisory boards. (11 TTC § 211) Cruz v. Johnston, 6 T.T.R. 354.

Homestead Deed From Government

Statutory provision that "High Commissioner shall issue the deed of conveyance within two years of the time the homesteader becomes eligible", shown by legislative history to have been enacted to enable homesteader to go to court to demand issuance of the deed, for which there had previously been no time limit, was clearly mandatory, not directory. (67 TTC § 208) Cruz v. Johnston, 6 T.T.R. 354.

Where homesteaders had complied with requirements necessary to the conveyance of the land to them, High Commissioner could not refuse conveyance on the grounds of inadequate surveys and unreliable description of the lands. (67 TTC § 208) Cruz v. Johnston, 6 T.T.R. 354.

Government, which lost class action for conveyance of homesteader deeds and proceeded to issue deeds giving a lesser interest than previously issued deeds and referring to probable survey deficiencies, would be required to issue deeds similar to those previously issued. Cruz v. Johnston, 6 T.T.R. 485.

HOMICIDE.

Murder Generally—Burden of Proof

The rule that a murder conviction cannot be had unless guilt is proven beyond a reasonable doubt applies to the whole and every material part of the case, including the act and manner of the killing, the reason for it and its commission. Trust Territory v. Miller, 6 T.T.R. 193.

—Malice

The malice necessary to a murder conviction is merely an inference from the facts surrounding the killing. Trust Territory v. Miller, 6 T.T.R. 193.

Murder in Second Degree—Presumption of Guilt

Although presumption of guilt of some offense arose where defendant on trial for first degree murder had made out false affidavit regarding victim's death, there was no evidence proving how the death occurred,

and it could not reasonably be said that presumption of guilt presumed defendant guilty of the second degree murder of which he was found guilty. Trust Territory v. Miller, 6 T.T.R. 193.

—Malice

A conviction of second degree murder requires a finding that the killing was malicious as well as unlawful and wilful. Trust Territory v. Miller, 6 T.T.R. 193.

—Hearsay

In trial resulting in second degree murder conviction, it was error for court to rely on out-of-court exculpatory statements, admissible only for impeachment purposes, for the necessary substantive evidence of the elements of the crime. Trust Territory v. Miller, 6 T.T.R. 193.

Out-of-court statement by co-defendant in murder trial, exculpatory as to herself and tending to accuse her co-defendant, was inadmissible hearsay where admitted through witness to whom the statement was made, and admission in evidence was error of such magnitude as to require reversal of judgment convicting her co-defendant of second degree murder. Trust Territory v. Miller, 6 T.T.R. 193.

Where defendant on trial for murder of man he had been stranded on boat with had stated by affidavit that man had fallen overboard at night and that strong current made rescue probably impossible and too risky, and man was later found dead in forward hold of boat as a result of a bullet in the back of the head, testimony of conversations in which defendant stated, in essence, what he had stated in the false affidavit was admissible under exception to hearsay rule. Trust Territory v. Miller, 6 T.T.R. 193.

—Evidence Held Insufficient

Second degree murder conviction could not stand where the evidence did not show, or warrant the inference, that appellant fired fatal shot. Trust Territory v. Miller, 6 T.T.R. 193.

Where two men and a woman were stranded for two months on a boat that had run aground on a reef, one of the men and the woman were rescued, the next day the man, defendant, stated in an affidavit that the other man fell overboard at night and was last seen face down being carried away by a current so strong as to make rescue probably impossible and too risky, and a few days later the man was found dead in the forward hold of the grounded boat as a result of being shot in the back of the head, all of the evidence was circumstantial and there was no direct evidence bearing upon what actually happened; and though it was established beyond a reasonable doubt that death was due to accident, negligence or homicide, it was not established beyond a reasonable doubt which was the case and conviction of second degree murder would be reversed. Trust Territory v. Miller, 6 T.T.R. 193.

Murder by Torture—Elements of Offense

Under statute providing that "every person who shall unlawfully take the life of another with malice aforethought by poison, lying in wait,

torture, or any other kind of wilful, deliberate, malicious, and premeditated killing," shall be guilty of first degree murder, there did not have to be an intent to kill, but only an intent that the victim suffer for purposes of vengeance, extortion or some other evil propensity, where unlawful killing of allegedly unfaithful wife with malice aforethought by torture was charged; and the torture made other evidence of premeditation unnecessary. (11 TTC § 751) Mad v. Trust Territory, 6 T.T.R. 550.

Involuntary Manslaughter—Elements

Involuntary manslaughter is the taking of the life of another, without malice, in the commission of an unlawful act not amounting to a felony, or in the commission of a lawful act which might produce death, in an unlawful manner, or without due care and circumspection. Rasa v. Trust Territory, 6 T.T.R. 535.

Government, in involuntary manslaughter prosecution, was not required to prove that defendant's acts were the sole proximate cause of death; it was sufficient if they were one of the proximate causes and there was no efficient intervening cause. Rasa v. Trust Territory, 6 T.T.R. 535.

—Burden of Proof

Where a trier of fact has a reasonable doubt that a homicide was justifiable or excusable, the trier of fact must give the defendant the benefit of the doubt and acquit him. Trust Territory v. Bruno, 6 T.T.R. 635.

—Evidence

In trial in which defendant was found guilty of involuntary manslaughter, motion, at close of prosecution's case, to dismiss, was properly denied where evidence allowed inference that defendant had committed four acts not amounting to a felony, namely: speeding, unsafe passing, negligent driving and reckless driving, and that these acts proximately caused or contributed to auto accident in which defendant's passenger was killed. Rasa v. Trust Territory, 6 T.T.R. 535.

—Particular Cases

Where police officer shot and killed person at disturbance police were attempting to quell, rocks had been thrown at police, one officer testified he was threatened with a machete, police officer had left, gone home and returned with a gun, and he testified he fired at a tree to scare the troublemakers after a rock passed over his head, but that he could not see the end of his rifle, homicide was not justifiable as one in which necessary force was used to compel submission of an arrested person, nor excusable as one not strictly willful or intentional and done by accident or misfortune, or while doing a lawful act by lawful means, and that defendant was guilty of involuntary manslaughter. (11 TTC § 754) Trust Territory v. Bruno, 6 T.T.R. 635.

Where defendant and a companion entered restaurant, had a beer can thrown at them by one of four men sitting together, none of whom they

knew, left the restaurant and were about to leave the area in a truck when each was attacked with fists by one of the four men and objects were thrown at the truck, and the other two men were a few feet away and did not attempt to fight with defendant and his companion, and the two attackers took the truck keys and one attempted to pull defendant's companion from the truck, as a matter of law, the attack was completely senseless and defendant was entitled to defend himself, but where, after stabbing his attacker, he stabbed the two men standing by, killing the third man stabbed, his response was not reasonably necessary for the defense of either him or his companion and exceeded the defense permitted by law and defendant was guilty of manslaughter. Trust Territory v. Lanzanas, 6 T.T.R. 165.

—Sentence

Two hundred and fifty dollar fine and suspended two-year sentence for involuntary manslaughter, well below the maximum allowable sentence, were within court's discretion, and the fine was not excessive, or the sentence cruel and unusual punishment. (1 TTC § 6; 11 TTC § 754) Rasa v. Trust Territory, 6 T.T.R. 535.

Judge's statement, in reciting conditions of suspension of two-year sentence for involuntary manslaughter by automobile, that a traffic violation would automatically revoke the suspension, was surplusage and without legal effect, simply an admonition. Rasa v. Trust Territory, 6 T.T.R. 535.

Presumptions—Guilt

Presumption that accused was guilty of a criminal offense arose from his false statement that homicide victim accidently drowned, together with fact body was found a few days later, concealed, death having been caused by a gunshot wound in the back of the head. Trust Territory v. Miller, 6 T.T.R. 193.

Self-Defense—Elements

Self-defense is an excuse or justification for homicide only where defendant was in imminent danger of death or great bodily harm or had reasonable grounds to believe and in good faith did believe he was in such peril that the killing was necessary to avoid the peril. Trust Territory v. Lanzanas, 6 T.T.R. 165.

Defense of self-defense as justification for homicide loses its validity once the danger of imminent death or great bodily harm ceases, and once the immediate danger is passed, the person attacked is not justified in pursuing and killing his attacker. Trust Territory v. Lanzanas, 6 T.T.R. 165.

—Assault With Fists

An assault with fists may, under some circumstances, be sufficient to provide the necessary reasonable grounds for believing that killing in self-defense is necessary to preserve oneself or another from death or great bodily harm. Trust Territory v. Lanzanas, 6 T.T.R. 165.

I

INFANTS.

Juvenile Delinquency Proceedings—Nature of Proceedings

Juvenile delinquency proceedings are not criminal proceedings. (15 T.T.C. § 3) In re Alleged Delinquent Minor, 6 T.T.R. 3.

—Right to Counsel

In Marshall Islands District at least, it shall be mandatory that, as of time of instant decision, a juvenile in a delinquency proceeding be represented by counsel. (Rules of Proc. for Juvenile Delinquency Proceedings, Rule 6(3)) In re Alleged Delinquent Minor, 6 T.T.R. 3.

—Disposition

In a juvenile delinquency proceeding, the court must adjudicate the juvenile delinquent or non-delinquent, and an adjudication of delinquency must be made upon findings of fact proved by at least the fair weight of the evidence as clearly as is required in ordinary civil actions. In re Alleged Delinquent Minor, 6 T.T.R. 3.

Following a determination of delinquency, the court must consider custody, supervision and schooling and, upon evidence received or ordered to be received, make findings and order the disposition of the delinquent in his best interests. In re Alleged Delinquent Minor, 6 T.T.R. 3.

Case dealing with sentence in criminal proceedings was not applicable to habeas corpus proceeding for release of juvenile from custody, on grounds that, *inter alia,* judgment order imposed sentence which was contrary to the criminal case. In re Alleged Delinquent Minor, 6 T.T.R. 3.

Where Code limited confinement of juvenile to the maximum allowable for the criminal offense made the basis of the delinquency proceeding, that juvenile was ordered placed in custody of his uncle for a longer period was not a basis for issuing a writ of habeas corpus. (15 T.T.C. § 6) In re Alleged Delinquent Minor, 6 T.T.R. 3.

Order in juvenile delinquency proceeding, placing juvenile in his uncle's custody, would be set aside where there was no finding of delinquency on any ground and neither the record nor the judgment showed that the lower court took evidence on, considered, and made findings regarding, disposition of the child in his best interests. In re Alleged Delinquent Minor, 6 T.T.R. 3.

Delinquent Child—Action Against

The only permissible action against a juvenile believed to have committed a crime is as a juvenile offender; the government may then, if the juvenile is sixteen or older, move that he be tried as an adult, but must defer to the court's discretion. Marbou v. Termeteet, 6 T.T.R. 68.

INFANTS

—Trial as Adult

The court has discretion to decide whether an alleged juvenile offender over sixteen years of age shall be tried as an adult upon government's motion. Marbou v. Termeteet, 6 T.T.R. 68.

INJUNCTIONS.

Nature and Purpose

An injunction pendente lite maintains the status quo to prevent change of conditions until the court can decide the case on its merits. Madrainglai v. Emesiochel, 6 T.T.R. 604.

Restraining Orders—Tests

Order restraining action of High Commissioner would not be issued where plaintiffs did not establish with reasonable certainty that they would prevail on the merits at the final hearing on a permanent injunction. Guerrero v. Johnston, 6 T.T.R. 124.

Preliminary Injunction—Discretion of Court

Grant or denial of a temporary injunction rests in the sound discretion of the court, based upon the several determinative elements. Madrainglai v. Emesiochel, 6 T.T.R. 440.

—Bond

Where defendant seeking injunction bond showed no potential damage as result of granting temporary injunction, bond would be denied. Madrainglai v. Emesiochel, 6 T.T.R. 440.

—Tests or Grounds for Granting

Elements to be considered before a temporary injunction decision can be made are whether plaintiff has a substantial chance of prevailing on the merits, relative importance of asserted rights, the acts sought to be enjoined, irreparability of injury resulting from denial of relief, potential harm to the enjoined party, and balancing of damages and conveniences generally. Madrainglai v. Emesiochel, 6 T.T.R. 440.

—Merits of the Case

Determination going to the merits of the case would not be resolved in proceeding to determine whether temporary injunction should be issued. Madrainglai v. Emesiochel, 6 T.T.R. 440.

—Potential Harm

Where it appeared that private foreign corporation with no interest in a certain property, though interest was sought to be shown, would enter and occupy the land, clear it and build structures, interest of plaintiff in the land, as member of municipality which had been given the land by the territorial government, would be irreparably harmed were corporation to proceed, so that only adequate remedy would be a temporary injunction. Madrainglai v. Emesiochel, 6 T.T.R. 440.

INTEREST.

Accounts Due

Where, in action for balance due on mutual and open account, plaintiff's annual statement of account notified defendant that interest would be charged on the unpaid balance, interest would be allowed by the court. George N. Market, Inc. v. Peleliu Club, 6 T.T.R. 458.

Unliquidated Claims

When there is an issue as to whether an unliquidated claim is involved, the modern and more fair rule is that interest will be allowed on the amount recovered, and from the date of the loss, as against the old rule that it should not be permitted unless the claim is liquidated, so that it is not necessary to decide the issue whether the claim is liquidated. Techong v. Peleliu Club, 6 T.T.R. 275.

J

JUDGMENTS.

Summary Judgment—Nature and Purpose

Summary judgment should be employed when a trial would serve no useful purpose, the court drawing its conclusion as to the ultimate fact from the undisputed facts. Christensen v. M.O.C., 6 T.T.R. 346.

—Identity of Parties

In action involving title dispute, motion for summary judgment on ground title had been decided in a prior action would be denied where the parties were different. Sechesuch v. Kebik, 6 T.T.R. 232.

—Issues

Where there was no material issue of fact to be tried, summary judgment was appropriate. Christensen v. M.O.C., 6 T.T.R. 346.

—Lack of Fact Issues

In action claiming title to land, plaintiff's motion for summary judgment would be granted where defendants' pleadings made no claim to title and defendants did not offer to establish title. Sechesuch v. Kebik, 6 T.T.R. 232.

"Res Judicata"

Court decision made in 1962, that predecessor of defendant in present proceeding was acting *alab*, would not be reopened in 1974 at the instance of successor of plaintiff in 1962 action, who sought to establish that he had *alab* and *dri jerbal* rights; however, there were too many important questions of Marshallese land law involved to permit a complete refusal to reconsider "loose ends" in the 1962 decision, particularly, what, if any, rights present defendant acquired by inheritance from the acting *alab*, a question for the *droulul* in the first instance, which would be given an opportunity to decide it before court would do so. Jekron v. Kalbok, 6 T.T.R. 601.

Where prior judgment had held that land from which plaintiff in present suit sought to have government and its lessees ejected belonged to government and not plaintiff in present suit, the ejectment action was barred by *res judicata*. Rekewis v. Trust Territory, 6 T.T.R. 422.

In action involving issue who had *iroij erik* rights in *wato* defendant had been determined to have *iroij erik* rights in as against a different person in a prior case, res judicata did not apply, because the parties opposing defendant in instant case were different. Amon v. Lokanwa, 6 T.T.R. 413.

In action involving claims to a *wato*, although rights in an adjoining *wato* were litigated by the same parties and the facts of the two cases were substantially if not decisively similar, res judicata did not apply, because the opinion in the prior case indicated no factual relationship between the two suits. Labiliet v. Zedekiah, 6 T.T.R. 19.

Prior ejectment action against present plaintiff, by person other than present defendant, in which present plaintiff was held to be the owner of the land, was not res judicata with respect to present defendant, against whom plaintiff brought ejectment action, because the parties were different and there was no privity between present defendant and plaintiff in prior action. Kliu v. Sasao, 6 T.T.R. 450.

Erroneous Wording

Where a part of written judgment contained erroneous and inappropriate words, but the findings were fully supported by the record and the court correctly decided the case, there was no reversible error. Lino v. Trust Territory, 6 T.T.R. 561.

Stay of Execution—When Granted

Petition for stay of execution of judgment pending appeal would be denied where counsel failed to accompany request with a statement clearly indicating that there was a substantial question of law. (Rules of Criminal Procedure, Rule 32e) Lino v. Trust Territory, 6 T.T.R. 206.

Relief From Judgment—Generally

Relief from an order or judgment for new facts or for newly discovered evidence, and relief for "any other reason justifying relief" are mutually exclusive. (Trust Territory Rules Civ. Proc. 18(a), (e)(2), (6)) Madrainglai v. Emesiochel, 6 T.T.R. 604.

—Time for Motion

Where rule of civil procedure allowed relief from judgment for mistake, newly discovered evidence or fraud by a party if motion is made within one year, and allowed relief by motion based on any other reason to be made within a reasonable time, a reasonable time would, because of the one year limitation for the specific grounds, be considered to include a period of more than one year. (Rules Civil Procedure, Rule 18(e)) Adelbeluu v. Tuchermel, 6 T.T.R. 265.

—New Evidence

Motion for relief from order granting temporary injunction, on ground of "new facts", was inappropriate and should not have been granted where the "new facts" consisted of counsel's conclusions. Madrainglai v. Emesiochel, 6 T.T.R. 604.

—Misleading Statements

Motion for relief from stipulated judgment, made almost three and one-half years after entry of judgment, alleging that the judgment was entered as a result of misleading statements by the defendant, was within one year limitation for grounds based on fraud, mistake or newly discovered evidence, rather than the reasonable time limitation for motion made for any other reason, and motion would be denied where it did not appear movant would be any better off were the judgment vacated and a trial held. (Rules Civil Procedure, Rule 18(e)) Adelbeluu v. Tuchermel, 6 T.T.R. 265.

Collateral Attack

That judgment order was based upon former Trust Territory Code section and should, rather, have recited provisions of code then in effect did not warrant disturbing the order. (T.T.C., Sec. 432; 11 T.T.C. § 6; 15 T.T.C. §§ 4, 6) In re Alleged Delinquent Minor, 6 T.T.R. 3.

L

LABOR RELATIONS.

Exhaustion of Administrative Remedies

Where question involved was a strictly legal one not involving employer agency's expertise or requiring for its decision the development of other factual or legal issues, court had jurisdiction of action by merit system employee attacking his dismissal from government employment, even though employee had not exhausted his permissive administrative remedies. Tolhurst v. M.O.C., 6 T.T.R. 296.

Work Hours

Employment contract provisions that workday and week may vary and every effort would be made to maintain a reasonable five day workweek, in absence of showing of bad faith or fraud, merely obligated employer government to not arbitrarily extend the workweek beyond five days, but did not prevent a six or seven day week if the government, in good faith, found it necessary. Nelson v. Trust Territory, 6 T.T.R. 385.

Overtime Compensation

There is a presumption that all services by an employee similar to those for which he was employed are covered by the agreed salary, and to overcome the presumption and become entitled to overtime the employee must show an express agreement, or an implied promise to pay, for extra compensation. Nelson v. Trust Territory, 6 T.T.R. 385.

An agreement for payment for overtime only applies upon proof employer requested overtime work. Nelson v. Trust Territory, 6 T.T.R. 385.

Where employment contract set annual salary, did not set hours of work per week and did not provide for overtime pay, and government, the employer, proved that prior to the contract it had told employee duty hours as boys dormitory counselor would be 5 P.M. to 8 A.M. Monday through Friday and all day Saturday and Sunday, plaintiff claiming 113 hours of work in an average week and seeking overtime failed to prove he worked more than the contract called for, or that he was entitled to overtime. Nelson v. Trust Territory, 6 T.T.R. 385.

Dismissal or Discipline of Employee

Government employee dismissed on 15 days' notice should have been given 90 days in which to improve his performance, in accordance with personnel manual and employee handbook. Christensen v. M.O.C., 6 T.T.R. 346.

—Notice and Reply

Statute providing that an employee being dismissed be given a written notice at least 10 working days before the effective date of the dismissal, and Trust Territory personnel regulation requiring that an employee be given 30 days from receipt of letter of proposed action to reply and that no decision be made during that period, were not in conflict. (P.L. 4C–49, Sec. 10, (15)(b)(ii)) Tolhurst v. M.O.C., 6 T.T.R. 296.

Where personnel regulation required that employee receiving letter of proposed disciplinary action be given 30 days to reply and that no decision be made during that time, and Micronesian Occupational Center employee had been given an employee handbook which stated an employee given an unsatisfactory performance rating must be allowed 90 days to improve, and center's director and Acting Director of Department of Education, claiming to be following regulations, dismissed the employee on 15 days' notice, the dismissal was improper and employee was entitled to either 30 days in which to reply or 90 days in which to improve. Tolhurst v. M.O.C., 6 T.T.R. 296.

—Hearing

Where employee of government-run federally-funded aging program had a clear expectation of continued employment so long as the program was federally approved, funds were available, and his behavior was good, he had an interest in continued employment protected by procedural due process and was entitled to a hearing affording him opportunity to meet charges against him prior to dismissal. (1 TTC § 4) Curly v. Government, 6 T.T.R. 409.

—Grounds

Where government employee's continued employment depended on good behavior he could be dismissed only for cause. Curly v. Government, 6 T.T.R. 409.

—Defenses

Where government employee was given a satisfactory rating on March 30, suspended on May 2, reinstated on May 17 with suspension

revoked, withdrew his appeal of the suspension, and was dismissed on May 23, effective in 15 days, on nine grounds, all of which were known to the authorities prior to suspension and all but two of which were known of prior to the satisfactory performance rating, estoppel and waiver applied to bar the nine charges. Tolhurst v. M.O.C., 6 T.T.R. 296.

—Reinstatement

Where government employee improperly dismissed would be ordered reinstated with payment of back pay, such pay should be offset by other income earned during period of dismissal. Curly v. Government, 6 T.T.R. 409.

Dependent's Benefits

Petitioner, an employee of the Trust Territory Government, resident alien of the United States, and citizen of Canada, who had begun naturalization proceedings, was not a United States national or citizen and was thus not entitled to educational benefits for dependents of contracting employees who are United States citizens, whether or not nationals were entitled to such benefits. Tolhurst v. Trust Territory, 6 T.T.R. 330.

LANDLORD AND TENANT.

Leases—Foreigners

Private real property may not be leased to foreign corporation desiring to operate a school thereon without prior approval of the lease by the High Commissioner, and if his approval is not endorsed on the lease, the lease is prima facie invalid. (1 TTC § 13) Madrainglai v. Emesiochel, 6 T.T.R. 440.

LAND REGISTRATION.

Record

When making inquiries regarding title to land, and when recording claims, holding hearings and making findings and adjudications to be submitted to a land commission, land registration teams should treat the determination of every claim as if it will be appealed, and prepare the record accordingly, so that the court will have an adequate record on which it can review the administrative proceedings. (67 TTC § 115) Kumangai v. Ngiraibiochel, 6 T.T.R. 217.

Prior Determinations—High Court

Former High Court judgment on ownership of land was binding on Land Commission in commission's proceeding to determine who owned the land. (67 TTC § 112) Ngeskesuk v. Solang, 6 T.T.R. 505.

Parties

With respect to statute allowing appeal from a determination of ownership by a land commission to be taken by any party aggrieved by the determination, anyone who appears in the commission records as a claimant or one contesting a claim is a party, though under certain circumstances a party need not be named in the administrative pro-

ceedings, as when he is a member of a class, such as a clan or lineage, which appeared through a representative. (67 TTC § 115) Kumangai v. Ngiraibiochel, 6 T.T.R. 217.

Person who did not appear before the land registration team or the land commission was not a party of record in ownership proceedings and therefore had no right of appeal. (67 TTC § 115) Turou v. Etibek, 6 T.T.R. 514.

Appeal From Commission—Standing

In appeals from determinations of ownership made by a land commission following hearings by a land registration team, where appellants had neither filed claims with, nor contested claims before, the land registration team, but it appeared, on appeal, that they might have an interest in the land, and their asserted interest had not been put forward due to a misunderstanding and to lack of familiarity, on the part of all involved, with procedures to be followed before the land registration team and land commission, cases would be remanded for determination of whether appellants had an interest in the land, and if it were found they did, they would be aggrieved and entitled to appeal. (67 TTC § 115) Kumangai v. Ngiraibiochel, 6 T.T.R. 217.

Where record on appeal from land commission was inadequate and did not show who had appeared before the registration team, and the team members and claimants were inexperienced in establishing a record for appeal, and the statutory notice of hearing before the registration team did not actually reach appellant and the other claimants, court would, though appellant never appeared before the registration team and was not shown to be a party and aggrieved, as required by statute to appeal, remand for determination of claimants' claims. (6 TTC § 355; 67 TTC § 115) Arriola v. Arriola, 6 T.T.R. 287.

—Alternative Relief

Relief from a land commission determination is obtainable only by appeal, and not by declaratory judgment or default judgment. Arriola v. Arriola, 6 T.T.R. 287.

LARCENY.

Intent

Where appellant convicted of petit larceny thought municipal councilman could authorize him to cut, remove and sell a mahogany tree on government forest preserve, and councilman had no authority to do so, and District Administrator directive placed authority in himself and municipal magistrate, intent and all other elements of larceny were present. Siksei v. Trust Territory, 6 T.T.R. 83.

—Proceeding at One's Own Peril

Appellant found guilty of petit larceny cut, removed and sold a mahogany tree from a government forest preserve at his own peril where directive of District Administrator put removal of trees under control of himself and magistrates and appellant gained permission from neither, relying

instead on permission from municipal councilman who appellant claimed had apparent authority to give permission. Siksei v. Trust Territory, 6 T.T.R. 83.

Evidence—Circumstantial Evidence

Grand larceny conviction could be had upon circumstantial evidence which trial judge believed far outweighed defendant's direct denial that he took the money and statement that he won money found in his possession in a dice game. Ngiracheluolu v. Trust Territory, 6 T.T.R. 86.

—Sufficiency

Where evidence at grand larceny trial showed defendants knew pig belonged to another, that pig had a value twice that of the minimum required for grand larceny, that defendants, having no right to do so, took it without owner's consent, and that defendants cooked the pig and ate it, making it difficult to conceive of a clearer case of permanent conversion, there was no reasonable doubt as to guilt. (11 TTC § 852) Trust Territory v. Elias, 6 T.T.R. 364.

Grand Larceny—Complaint

In prosecution for grand larceny, it was not reversible error to fail to state, in complaint, the kind and denomination of stolen bills, or to fail to state that such was not known, where it was impossible to allege and prove anything but the total amount missing from previous day's receipts of store. Ngiracheluolu v. Trust Territory, 6 T.T.R. 86.

—Sufficiency of Evidence

In grand larceny prosecution, strong circumstantial evidence that money recovered from defendant was part of stolen money, together with fact trial judge did not accept defendant's testimony as to how he obtained the money, sustained finding that money recovered from defendant was part of the stolen money. Ngiracheluolu v. Trust Territory, 6 T.T.R. 86.

M

MANDAMUS.

High Commissioner

High Commissioner is subject to mandamus with respect to a mandatory statute relating to a ministerial duty. Cruz v. Johnston, 6 T.T.R. 354.

MARSHALLS CUSTOM.

Disputes—Settlement by Courts

When an *iroij lablab* is unable to make a determination between conflicting claims which he is empowered to settle under the custom, it becomes the obligation of the court to examine the claims. Korabb v. Nakap, 6 T.T.R. 137.

"Alab"—Children

An *alab's* children are, under the custom, his nephews and nieces as well as his natural children. Janre v. Labuno, 6 T.T.R. 133.

MARSHALLS CUSTOM

"Iroij Erik"—Challenge to Authority

That members of family challenged their *iroij erik's* determination of right to money paid upon lease of land did not entitle *iroij erik* to penalize them by refusing to distribute any money to them. Muller v. Muller, 6 T.T.R. 30.

Succession to Titles—"Iroij" Titles Generally

Membership in a royal *bwij* is necessary for holders of *iroij* titles. Amon v. Lokanwa, 6 T.T.R. 413.

MARSHALLS LAND LAW.

Generally

Under the feudal system of land tenure prevailing in the Marshall Islands there are always three and usually four rights or ownership interests in land, all of which benefit from the produce from the land, even though the product is generally obtained by the sole efforts of the *dri jerbal*, who shares a portion of the income from the sale of copra with the *alab*, whose principal duty is management of the land, and with the *iroij erik* or *iroij lablab* and with both in the eastern chain. Lijablur v. Kendall, 6 T.T.R. 153.

Rental or other income from land is "contract" or custom income, whereas payment for loss of a business on the land and the goodwill and future earnings of the business represents damages for a tort or a taking by eminent domain. Lijablur v. Kendall, 6 T.T.R. 153.

Holder of *dri jerbal* interests in leased *wato* was entitled to share in the rental payment, but was not entitled to share in the damages paid the *alab* for the loss of business he had on the land. Lijablur v. Kendall, 6 T.T.R. 153.

It is traditional land law in the Marshall Islands that the *iroij lablab*, or the *iroij elap*, in the western chain, must approve of or acquiesce in any transfer of land interest before it is valid, and if lineage land is to be transferred, the approval of the *iroij erik*, *alab* and *dri jerbal* must also be obtained, prior to obtaining the approval of the *iroij lablab* or *iroij elap*. Ladrik v. Jakeo, 6 T.T.R. 389.

Questions of First Impression—Determination

In the absence of any custom or traditional law applicable to question of first impression whether *dri jerbal* was entitled to share in money paid *alab* for loss of *alab's* business located on land leased by Government, court would look to any analagous traditional practices or, in the alternative, apply American common law under authority of statute. (1 T.T.C. § 103) Lijablur v. Kendall, 6 T.T.R. 153.

Lineage Ownership—Inheritance

Lineage land is inherited horizontally from the oldest to the youngest persons in the oldest to youngest *bwij*. Janre v. Labuno, 6 T.T.R. 133.

Generally, under Marshallese custom, succession to title and interest in land proceeds horizontally within the *bwij*, not vertically, to the youngest

member of the *bwij* in the same generation as the prior titleholder, and title does not descend to a titleholder's children until all members of one or more *bwij* have died. Lenekem v. Lidrik, 6 T.T.R. 327.

Under traditional Marshallese custom, property rights are passed on at death from mothers, not fathers, until all matrilineal lines in all *bwij* having interest in the lands have been extinguished, at which point patrilineal inheritance begins. Lebeiu v. Motlock, 6 T.T.R. 145.

"Jebrik's Side" of Majuro

Purchasers of land on "Jebrik's side" of Majuro Atoll were bound by custom requiring holders of *iroij lablab* authority to approve land transfers, and they could not change *iroij lablab* authority over the land and "go out" of "Jebrik's side" to place the land under authority of another *iroij lablab*. Ladrik v. Jakeo, 6 T.T.R. 389.

—Transfers

Any change in the special arrangement made by the Japanese regarding land transfers on "Jebrik's side" of Majuro Atoll, continued in effect by 1 TTC § 105, which the Appellate Division held itself to be bound by, is for the legislative authority, not the courts. Ladrik v. Jakeo, 6 T.T.R. 389.

Property on "Jebrik's side" of Majuro Atoll may not be transferred without the approval of either the Government of the Trust Territory, the *iroij eriks* or the group holding property rights on that side. Jatios v. Launit, 6 T.T.R. 161.

Attempt to transfer *dri jerbal* interests in land on "Jebrik's side" of Majuro Atoll without obtaining required approval could not be justified by argument that the *alab* had sought to terminate transferor's *dri jerbal* interest. Jatios v. Launit, 6 T.T.R. 161.

Holder of *dri jerbal* interests in land on "Jebrik's side" of Majuro Atoll could not transfer such interests without the approval of the *iroij eriks* on "Jebrik's side", or the Trust Territory Government, or the *droulul* of Majuro Atoll. Jatios v. Launit, 6 T.T.R. 161.

In dispute over *iroij erik* interests in *wato*, petition of all *iroij eriks* on "Jebrik's side" except defendant and his associate, seeking to cut off defendant's interests in his lands for failure to follow custom and court decisions, was too serious to decide as an incident to a land dispute; and in interests of fairness and custom the *iroij eriks* and the 20-20 should give defendant a hearing and then decide the matter, after which the court will be in a position to act. Amon v. Lokanwa, 6 T.T.R. 413.

—Succession

Plaintiff was bound by the law as to ownership, and successorship to ownership, of interests in *wato* on "Jebrik's side" of Majuro. Labiliet v. Zedekiah, 6 T.T.R. 571.

—"Droulul"

The *droulul* of Jebrik's side of Majuro Atoll consists of all *iroij eriks* and *alabs* of all *wato* on Jebrik's side and has the only authoritative *iroij lablab* power for Jebrik's side, under a system of committee control begun by the Japanese administration and, under international law principles, followed by the American administration as the successor sovereign. Jekron v. Kalbok, 6 T.T.R. 601.

Interests Taken by Government—Distribution of Compensation

Holders of interests in land taken by the Government are entitled to share, in accordance with their interests, in any compensation paid for the taking. Lijablur v. Kendall, 6 T.T.R. 153.

Business on Land

Under Marshallese custom, when a person lives on and sells copra from land, he is expected to make food contributions to both the *alab* and the *iroij*, as well as sharing a small portion of copra sales with them, and in the event he operates a business on the land, the practice is continued. Lokar v. Latak, 6 T.T.R. 375.

—Distribution of Payment for Loss

When a person operates a business on land and none of the other persons holding an interest in the land have a claim to or interest in the business, the other interest holders should not be entitled to share in damages paid for loss of the business. Lijablur v. Kendall, 6 T.T.R. 153.

Leases—Distribution of Income

When land is leased to another to use for business purposes, the rental income is shared by the land interest holders, but the income from the business on the land is not shared. Lijablur v. Kendall, 6 T.T.R. 153.

—"Iroij Erik's" Share

Upon lease of *wato*, *iroij erik* was entitled to retain the *iroij erik* share of the lease money for his own use and distribution as he saw fit, as against claim the money should be distributed among the lineage; but the *iroij erik* was still subject to the general responsibility under custom to take care of his family. Muller v. Muller, 6 T.T.R. 30.

"Iroij Lablab"—Refusal to Recognize

Under the custom, failure to recognize an *iroij lablab* does not, under the proper circumstances, deprive an *alab* or *dri jerbal* of land interests. Risa v. Bokwij, 6 T.T.R. 170.

Defendant was bound under the custom to recognize and comply with *iroij lablab* authority over his land and could not successfully reject all outside authority over the land including the authority of those with *iroij lablab* power. Amon v. Lokanwa, 6 T.T.R. 413.

—Basis for Decisions

A minimum of fair play requires that an *iroij* hear and consider both sides of a controversy before making a decision affecting land interests. Toring v. Lejebeb, 6 T.T.R. 491.

That *iroij lablab* recognized defendant as *alab* because his two predecessors had and he was not about to change any determinations they had made, was insufficient to explain why defendant was entitled to the right if defendant had been erroneously recognized as *alab* in the beginning and plaintiff had not "slept on his rights" and let too much time elapse before asserting his right to be *alab*. Lebeiu v. Motlock, 6 T.T.R. 145.

—Power to Terminate Interest in Land

An *iroij lablab* may not change vested interests in land without good cause. Labiliet v. Zedekiah, 6 T.T.R. 19.

Where an *iroij lablab* has given *morjinkot* land, a successor *iroij lablab* does not have authority to take the land away from a successor *alab*. Labiliet v. Zedekiah, 6 T.T.R. 19.

Before *iroij lablab* could terminate interest of successor to *morjinkot* land, it was necessary for successor to consent to the change, in the absence of good cause for termination. Labiliet v. Zedekiah, 6 T.T.R. 19.

—Approval of Transfer

Any transfer or termination of any land interest, including interest in *ninnin* land, by any title bearer below the *iroij lablab*, including an *iroij erik*, must be approved by the *iroij lablab*. Lanki v. Lanikieo, 6 T.T.R. 396.

—Weight of Decisions

An *iroij lablab's* determinations regarding his lands are entitled to great weight, and it is supposed that they are reasonable unless it is clear that they are not. Lebeiu v. Motlock, 6 T.T.R. 145.

—Overturning Decisions

Where plaintiff was entitled to *alab* rights under custom, but defendant's claim to the rights had been approved by three *iroij lablab* extending back to 1948 and perhaps earlier, whether court would upset the three approvals depended upon the circumstances surrounding the approvals. Lebeiu v. Motlock, 6 T.T.R. 145.

In action over *alab* rights, where inheritance pattern under custom favored plaintiff and there was no evidence that *iroij lablab* since twice succeeded had good cause to remove plaintiff from position of *alab* and install defendant, court would reject the determinations of the three successive *iroij lablabs* that defendant was entitled to be *alab*. Lebeiu v. Motlock, 6 T.T.R. 145.

"Iroij Erik"—Powers

Where there was no *iroij lablab* at the time, statement of *iroij erik* that *alab* suspended for leaving the land had returned and had been restored to his *alab* interests and that his younger sister succeeded to those interests upon his death, was the equivalent, under the custom, of a land interest determination by the *iroij lablab*. Risa v. Bokwij, 6 T.T.R. 170.

Where defendant was given written notice to vacate land he occupied with the consent of plaintiff, who was *alab* and *dri jerbal*, testimony of person taking the place of the *iroij erik*, that *iroij erik* told her he did not want defendant removed, was not a sufficient defense to removal action, for under Marshallese custom *iroij erik* could not allow defendant to stay without obtaining the approval of the *alab* and the members of the *bwij*. Lokar v. Latak, 6 T.T.R. 375.

—Succession

Evidence showed plaintiff was successor to *iroij erik* interests in land, and whatever interests defendant had obtained by self-help, including a court ruling in his favor as against another person, or by default by prior *iroij eriks*, could not change the rightful succession. Amon v. Lokanwa, 6 T.T.R. 413.

"Alab"

Under Marshallese custom, there is only one holder of *alab* interests for a particular parcel of land. Korabb v. Nakap, 6 T.T.R. 137.

—Establishment

Where the only evidence on issue of plaintiff's claimed *alab* and *dri jerbal* interests in land was a government record of a land title officer's determination that someone else was *alab* and plaintiff was *dri jerbal*, the most plaintiff could successfully claim was a *dri jerbal* interest. Mojiliong v. Lanki, 6 T.T.R. 381.

—Powers

Alab could not give lineage land to his daughter in gift as *ninnin* land where there was another person entitled to inherit the land under the custom. Lebeiu v. Motlock, 6 T.T.R. 145.

Where plaintiff, who was *alab* and *dri jerbal* for *wato*, gave defendant and his extended family permission to live on the land, permission could be revoked without cause. Lokar v. Latak, 6 T.T.R. 375.

Where plaintiff, who was *alab* and *dri jerbal* for *wato* defendant and his extended family had been given permission by plaintiff to live on, was offended by defendant's son, who "took" plaintiff's wife without her consent, the defendant, as head of the family, also offended plaintiff and plaintiff had adequate cause under Marshallese custom to remove the family from the land, particularly since cause was not necessary. Lokar v. Latak, 6 T.T.R. 375.

—Obligations

An *alab* is not expected to share income with the *dri jerbal* when the *alab* sells copra or other produce from the land, but the *alab* has some degree of responsibility for the welfare of the *dri jerbal*. Lijablur v. Kendall, 6 T.T.R. 153.

Alab's obligation to protect the welfare of the *dri jerbal* does not require him to make a gift to the *dri jerbal* of a share of the *alab's* sole and separate business. Lijablur v. Kendall, 6 T.T.R. 153.

—Succession

Alab interests of older *bwij* were not permanently cut off and transferred to younger *bwij* when *alab*, from older *bwij*, had his interests suspended when he refused to recognize *iroij lablab* and left the land and plaintiff, from a younger *bwij*, was named to replace him; so that where suspended *alab* returned and resumed exercise of his *alab* interests unchallenged by the person who had replaced him, and then died, his sister was his successor, not the person who had replaced him. Risa v. Bokwij, 6 T.T.R. 170.

Where three related *bwij* which began, as far as instant case was concerned, with three sisters, owned, as lineage land, land in which plaintiff, a male descendant in the matrilineal line of the youngest sister, claimed *alab* rights as against defendant, a female descendant in the patrilineal line of the oldest sister, and plaintiff and defendant were the only living members of their generation and all older generation members had died, and oldest sister's *bwij*, in her children's generation became extinct in the matrilineal line and the smaller *bwij* of the other two sisters were extinct in the generation of the two sisters' children but were not extinct in matrilineal descendants, the *alab* rights passed, upon the end of the oldest *bwij*, to the smaller *bwij*, and where there were no survivors in that generation to take, the rights passed down to the next generation to plaintiff as he was the oldest person in the matrilineal line. Lebeiu v. Motlock, 6 T.T.R. 145.

Where plaintiff claimed that matrilineal line holding *alab* rights to certain land ended with death of the *alab* and that plaintiff, being the oldest member of the patrilineal line, succeeded to the title, but the *iroij lablab* declared defendant the *alab* on the basis of succession list prepared in 1935, and evidence showed the list to be incorrect, presumption that *iroij lablab's* determination was reasonable was overcome and court would declare plaintiff the *alab*. Lota v. Korok, 6 T.T.R. 176.

Because *alab's* two children were adopted, the customary Marshallese pattern that the oldest member of a family, or *bwij*, should hold senior rights, either *alab* or *dri jerbal*, did not apply, and the children were on the same level. Konou v. Makroro, 6 T.T.R. 365.

Upon death of *alab*, his nephew was entitled to the title and to the *alab's* share of proceeds of copra sales made by decedent *alab's* children as *dri jerbal*, who had refused to give nephew the *alab's* share. Lenekem v. Lidrik, 6 T.T.R. 327.

—Conflicting Claims

The rights of *alab* are subject to the power of the *iroij lablab to* make reasonable determination of conflicting claims to entitlement. Korabb v. Nakap, 6 T.T.R. 137.

Designation of an *alab* for certain land, and the right to divide the rights between three claimants to the *alab* position, rested in the *bwij* with the approval of the *iroij*, but island council, as the chosen repre-

sentative of the *bwij*, had authority to divide the *alab* rights between the three in absence of protest or a showing of abuse of discretion. Enos v. Ankeir, 6 T.T.R. 595.

Where land distributed in the 1920's was probably meant to be *ninnin* land, but the extended family had treated it as *kabijuknen* land since 1936, and it had been administered as such with the consent of the family and the *iroij lablab*, court would not, in suit to determine *alab* interests, upset the long continued pattern and would treat the land as *kabijuknen* land. Korabb v. Nakap, 6 T.T.R. 137.

In action to determine *alab* rights in what was probably meant to be *ninnin* land under distribution made in the 1920's but which had, by consent of the extended family and approval of the *iroij lablab*, been treated as *kabijuknen* land since 1936, and which court would continue to treat as *kabijuknen* land rather than upset the long established pattern, subsistence money and payments in lieu of copra income, paid to the family by the government, which had moved the family elsewhere due to operation of Kwajalein missile range, should be distributed as before, but through defendant, who was successor *alab*, rather than through plaintiff, who had been receiving the payments and was next in line to hold the *alab* rights. Korabb v. Nakap, 6 T.T.R. 137.

—Removal

Alab and *dri jerbal* interests of person who failed to recognize and cooperate with his *iroij erik* could not be terminated by the court in the first instance; such decision was for the holders of *iroij lablab* authority to approve or acquiesce in, after which the court would enforce the decision. Lanki v. Lanikieo, 6 T.T.R. 396.

—Children

An *alab's* children are in the direct line of inheritance for *ninnin* land, but not for lineage land. Janre v. Labuno, 6 T.T.R. 133.

"Dri Jerbal"—Establishment

That, under Marshallese custom, daughter inherited her father's *dri jerbal* interest upon his death, was sufficient to establish her interest without reference to father's will, which named daughter as *dri jerbal* but failed to comply with rule that the *droulul* must approve or acquiesce in a will to make it valid and effective on "Jebrik's side" of Majuro Atoll. Konou v. Makroro, 6 T.T.R 365.

—Succession

Where two children had been adopted by *alab*, childrens' *dri jerbal* interests were equal and the daughter of one of them could inherit his interest even though a member of his generation, the other adopted person, was still living, and the interest of daughter and the remaining adopted person were equal, though daughter was obliged by custom to show respect to the remaining adopted person. Konou v. Makroro, 6 T.T.R. 365.

—Revocation of Rights

Where defendant and his people had worked *wato* for half a century, it was not within anyone's power to cut off defendant's *dri jerbal* rights without good cause. Labiliet v. Zedekiah, 6 T.T.R. 571.

—Withdrawal From Land

An *alab* or *iroij erik* may not remove a *dri jerbal* without good cause. Labiliet v. Zedekiah, 6 T.T.R. 19.

When a *dri jerbal*, in good faith, asserts an *alab* interest in himself and recognizes another as *iroij erik*, and a court determines the assertion and recognition to be erroneous, the *dri jerbal* may not be penalized or required to forfeit his interest until he and those claiming through him have been given a reasonable opportunity to perform their obligations under the custom. Labiliet v. Zedekiah, 6 T.T.R. 19.

Dri jerbal rights of defendants who flagrantly disregarded judgment by not recognizing plaintiff as their *iroij erik* and *alab* and failing to cooperate with plaintiff under the custom would be terminated, and defendants ordered off the land. Amon v. Tobeke, 6 T.T.R. 36.

"Julobiren ne" Land—Generally

Julobiren ne land is land belonging to the chief alone. Labiliet v. Zedekiah, 6 T.T.R. 19.

"Kabijuknen" Land—"Alab" Rights

Alab rights in *kabijuknen* land are inherited from the oldest to youngest *bwij* through the living, oldest to youngest members of each *bwij;* and when one generation in the matrilineal line has died out, the *alab* interests go to the oldest member of the oldest *bwij* in the next younger generation. Korabb v. Nakap, 6 T.T.R. 137.

Extended family may upset pattern of succession to *alab* rights in *kabijuknen* land and substitute a special arrangement, with the approval of the *iroij lablab*. Korabb v. Nakap, 6 T.T.R. 137.

"Kotra" Lands—Generally

Kotra lands are lands belonging to the chief alone. Labiliet v. Zedekiah, 6 T.T.R. 19.

"Mare" Land—Generally

Mare land is land given in gift by an *iroij lablab* to a warrior for bravery in battle. Labiliet v. Zedekiah, 6 T.T.R. 19.

"Mo" Land—Generally

Mo land is land belonging to the chief alone. Labiliet v. Zedekiah, 6 T.T.R. 19.

"Morjinkot" Land—Generally

Morjinkot land is land given as a gift by an *iroij lablab* to a warrior for bravery in battle. Labiliet v. Zedekiah, 6 T.T.R. 19.

Morjinkot is a gift, by the successful *iroij lablab* in a civil war, to an outstanding warrior or his *bwij*. Amon v. Lokanwa, 6 T.T.R. 413.

Holders of *Morjinkot* land, and their successors and *bwij*, have only *alab* and *dri jerbal* interests, so that one claiming to be a successor to a warrior granted such land cannot successfully claim the *iroij erik* interest. Amon v. Lokanwa, 6 T.T.R. 413.

Morjinkot was *alab* and *dri jerbal* interests, given by an *iroij lablab* who was successful in war, to an outstanding warrior, or to his *bwij*; and since warriors were not of the royal blood, were commoners, the *iroij* interest did not pass under a *morjinkot* gift. Labiliet v. Zedekiah, 6 T.T.R. 571.

—Descent

After it is given, *morjinkot* land follows the customary line of descent. Labiliet v. Zedekiah, 6 T.T.R. 19.

"Kitre"

An *iroij lablab* could not give a gift of land as *kitre* until he terminated the interest of person who succeeded warrior given the land in gift for bravery in battle. Labiliet v. Zedekiah, 6 T.T.R. 19.

"Ninnin"

Ninnin lands are a gift from father to children and other lineages have no entitlement. Korabb v. Nakap, 6 T.T.R. 137.

—Inheritance

Ninnin land is inherited vertically by the descending issue of the donor. Janre v. Labuno, 6 T.T.R. 133.

Where disputed *alab* interests were in *ninnin* land, which descends vertically, not horizontally, and plaintiff was in the vertical line while defendant was in the horizontal line, plaintiff, acting for his older sister, was entitled to the *alab* interests. Janro v. Labuno, 6 T.T.R. 133.

Adopted Persons

A person adopted by a member of a *bwij*, that the adopted person is not a member of, has stronger rights than a child of such adopted person; and where a person is adopted by an *alab* and assigned to land as a *dri jerbal*, his interest should not be terminated except for good cause and acquiescence by the *iroij*, though if his child succeeds him as *dri jerbal*, the child's interest is weaker and may be terminated without any substantial showing of good cause. Toring v. Lejebeb, 6 T.T.R. 491.

—Removal From Land

Where *dri jerbal* assigned to the land by the *alab* was the son of a man adopted by his *bwij*, *dri jerbal* was not a member of the *bwij*, had very tenuous, if any, right to work the land, and at most, was on the land by the *alab's* sufferance; and the "good cause" necessary to his removal could be a lot less persuasive than would normally be required. Toring v. Lejebeb, 6 T.T.R. 491.

MUNICIPALITIES.

Councilmen—Status

A municipal councilman is neither an employee nor agent of the District Government or of the magistrate of a Municipal Government. Siksei v. Trust Territory, 6 T.T.R. 83.

N

NEGLIGENT DRIVING.

Owner's Liability

In absence of statute imposing liability, under family car doctrine, upon owner of auto a relative negligently drives so as to damage another, and in absence of showing that defendant negligent driver was driving under defendant owner's direction and authority and as owner's agent, owner was not liable for damage occurring when defendant driver struck the rear of plaintiff's vehicle. Ngirutoi v. Iluches, 6 T.T.R. 517.

Bailed Autos

Where owner of auto, and his companions, had been drinking and all but one, who wished to go home, were apparently substantially under the influence, and owner gave the one who wished to go home permission to take the auto, a bailment was created, and where bailee allowed a third companion to drive him home and the third companion had an accident after letting bailee off, the third companion was liable for his negligence and the bailee was liable for negligently allowing an intoxicated person to drive. Obak v. Tulop, 6 T.T.R. 240.

Particular Cases

Where driver of plaintiff's auto entered road and turned left, and auto approaching from that direction, which driver of plaintiff's auto saw and thought was not too close, was being passed by another auto, which he did not see and which hit him before its driver, defendant, could return to his lane, defendant, who prior to civil suit had been convicted of reckless driving, making him negligent as a matter of law with respect to the occurrence, was liable. Dingilius v. Bruno, 6 T.T.R. 474.

Evidence—Criminal Acquittal

Criminal and civil liability require different measures of proof, and acquittal of reckless driving charge in connection with head-on collision did not preclude a finding of liability for negligence in a civil action in which defendant's testimony was contradicted by plaintiff's and by police findings. Demei v. Sungino, 6 T.T.R. 499.

—Criminal Conviction

Negligent driving conviction established prima facie liability for negligence in civil proceeding involving same collision as that which led to conviction. Dingilius v. Bruno, 6 T.T.R. 474.

P

PALAU CUSTOM.

Clans—Appointment of Title Bearers

Members of the Tmeleu Clan of Palau are entitled to participate in the appointment of Ngertelwang Clan title bearers, as it appears the Tmeleu Clan members are also members of the Ngertelwang Clan. Ngertelwang Clan v. Sechelong, 6 T.T.R. 323.

—Removal of Title Bearers

Under Palauan custom, a Yechadertelwang of the Ngertelwang Clan may properly be replaced when he fails to meet his clan responsibilities and participate in municipal council affairs. Ngertelwang Clan v. Sechelong, 6 T.T.R. 323.

Divorce—Marital Estate

Where plaintiff-appellee in divorce action claimed on appeal that husband sold property which had been given to plaintiff and her husband by defendant's uncle and that the property was part of the marital estate, claim would be remanded for decision, and if plaintiff was entitled to the property, and maybe if she was entitled to one-half of it, husband had no right to sell it and purchaser, not being an innocent purchaser for value since he hadn't paid the purchase price, would have to give up the property. Ngirchokebai v. Uchel, 6 T.T.R. 626.

—"Olmesumech" and Food Money

Under Palauan custom, the offended spouse in a marriage which breaks up for misconduct is entitled to *olmesumech* from the offending spouse's family. Ngirchokebai v. Uchel, 6 T.T.R. 626.

"Ocheraol"—Nature and Purpose

An *ocheraol* is a party held to obtain contributions for the payment of the construction of a house. Ksau v. Kuskus, 6 T.T.R. 629.

—Refunds

One contributing funds at an *ocheraol* is not entitled to a refund once the house is built. Ksau v. Kuskus, 6 T.T.R. 629.

If the *Tuchermel* of the Klai Clan, Palauan Islands, involuntarily leaves a house built on clan land from money raised at an *ocheraol*, he is not entitled to reimbursement for the money he and his relatives contributed at the *ocheraol*. Ksau v. Kuskus, 6 T.T.R. 629.

Palauan Money—Ownership

In dispute over ownership of valuable pieces of Palauan money, whatever claim plaintiff, who, as maternal uncle of defendant, was a very authoritative person within the lineage, may have had over the money, was lost by reason of fact that in the past he had misused other valuable Palauan money. Torual v. Fritz, 6 T.T.R. 429.

"Ulsiungel"

Ulsiungel is a gift of land for services performed by the donee for the donor while the donor was ill. Maidesil v. Remengesau, 6 T.T.R. 453.

That for the last eight years of his life, two persons cared for a person who gave them a gift of *ulsiungel*, that is, land given in gift inter vivos for favors, services, or care and support rendered the donor, was adequate to justify the gift. Llecholech v. Blau, 6 T.T.R. 525.

Where, in return for caring for him, which defendant did for eight years, landowner told defendant to build his house on landowner's land, plant coconut trees and join the clan landowner derived his title from, and landowner instructed defendant to have all his lands, and defendant entered the land, built on it and planted coconut trees, an inter vivos gift of the land occurred. Llecholech v. Blau, 6 T.T.R. 525.

PALAU LAND LAW.

Japanese Survey—Presumptions

Registration in the Tochi Daicho land survey is presumed correct, and where there was nothing in the record to overcome the presumption, land registration team and Palau District Land Commission improperly found title to lie elsewhere. Ngirudelsang v. Etibek, 6 T.T.R. 235.

Clan Ownership—Title

Court would not, upon reversal of Palau District Land Commission title determination, name appellant, a strong female member of the clan title was found to lie in, as trustee, where under Palauan custom, clan land is administered by the strongest male and it is for the clan to decide whether the land will be administered by someone other than the strongest male. Ngirudelsang v. Etibek, 6 T.T.R. 235.

—Reversionary Rights

Land a clan transfers to an individual does not, under Palauan custom, revert to clan upon individual's death. Llecholech v. Blau, 6 T.T.R. 525.

Individually owned land did not, prior to 1957 statute of descent and distribution, revert to the lineage or clan upon death of the owner intestate. Ngeskesuk v. Solang, 6 T.T.R. 505.

Clan Ownership—Transfer

Under Palauan custom, clan land may be transferred to an individual only upon approval of all adult "strong" members of the clan. Llecholech v. Blau, 6 T.T.R. 525.

Clan land could not be given to individual as *ulsiungel* by the principal titleholder of the clan without consent of the senior members of the clan. Maidesil v. Remengesau, 6 T.T.R. 453.

Instrument purportedly limiting clan's transfer of its land to individual to a life estate was not effective where two "strong" members of the clan, the person the land was transferred to and the person entering the instrument in evidence in ownership dispute, had not approved the instrument, for the approval of all "strong" members was required. Llecholech v. Blau, 6 T.T.R. 525.

PALAU LAND LAW

Individual Ownership—Decedents' Estates

A clan or lineage in the Palauan Islands has no control over individually owned land of a member of the clan or lineage upon the death of the individual, and the individual may do what he wishes with the land without approval of or interference by the clan or lineage. Watanabe v. Ngirumerang, 6 T.T.R. 269.

Lineage Ownership—Administration

Japanese land records of registered leases showing registration of leases to Japanese national and showing party in land title dispute as lessor confirmed judgment that such party was the lineage administrator, with authority to lease the land, but was not the individual owner. Metecherang v. Sisang, 6 T.T.R. 106.

—Decedent's Estates

Upon individual's death, her land was inherited by her heirs, not her clan or lineage, and her "heirs" were her brothers, sisters and adopted son, not the extended family. Ngeskesuk v. Solang, 6 T.T.R. 505.

Chief's Title Land—Use

Defendant disavowing any ownership interest in land he lived on with approval of clan chief did not need clan approval of chief's decision where the land was chief's title land and the chief was entitled to its exclusive use and control. Sngaid v. Ngoriakl, 6 T.T.R. 483.

Transfers

Transfer of clan land must have the unanimous approval of the strong senior members of the clan, and they must be given notice and opportunity to be heard, even those not living in the clan hamlet. Sngaid v. Ngoriakl, 6 T.T.R. 483.

PASSING FALSE INSTRUMENTS.

Intent

Where person accused of passing counterfeit bill did not admit or indicate that she knew the bill was counterfeit, and the prosecution did not prove she had such knowledge, there was no proof of the requisite intent to defraud and accused would be found not guilty. (11 T.T.C. § 501(2)) Trust Territory v. Remengesau, 6 T.T.R. 94.

PONAPE LAND LAW.

German Land Title—Validity of Transfer

Owner of land under deed which was a standard form of title document executed during and issued by the German Administration in 1912, and which was registered, was empowered to convey it to others if he obtained the approval of the *Nanmwarki* and the Governor. Jonathan v. Jonathan, 6 T.T.R. 100.

Where 1931 deed was signed by the *Nanmwarki*, as required by law, but not by the Governor, as required by law, and there was a question whether the *Nanmwarki*, acting as the Cho Sun Cho, was authorized to sign for the Governor, transferees would be treated as holding title

as against all persons except the Government, and it would be inferred that the present and past governments tentatively consented to the transfer where they did not challenge it. Jonathan v. Jonathan, 6 T.T.R. 100.

Document relied upon to establish 1933 conveyance of land was defective and did not vest title where it did not contain *Nanmwarki's* approval, as required by law, and there was no evidence otherwise showing such approval. Jonathan v. Jonathan, 6 T.T.R. 100.

Land conveyed by father to son in 1931 could not be conveyed by father to another son in 1933 where 1931 deed was valid, 1933 deed was fatally defective and there was no evidence that 1931 conveyance was a conditional gift validly revoked or that the land reverted back to the father in any other way. Jonathan v. Jonathan, 6 T.T.R. 100.

PUBLIC LANDS.

Unauthorized Taking

When tree on government forest preserve was cut by appellant without permission, it became personal property and the subject of larceny. Siksei v. Trust Territory, 6 T.T.R. 83.

R

REAL PROPERTY.

Generally

Interests in land and an investment interest in a business on the land are not the same. Lijablur v. Kendall, 6 T.T.R. 153.

Sales—Contracts

Evidence supported land commission determination defendant owned property on basis of sale by plaintiff where plaintiff acknowledged to land registration team that he had entered into and signed the sale agreement and plaintiff had not challenged the agreement for nine years, until the land commission hearing. Martin v. Morei, 6 T.T.R. 496.

—Recording

Where owner of land sold it to two different persons and the first transfer agreement was recorded, second sale, as a matter of law, could not be sustained, because buyer was prevented by the transfer from being an innocent purchaser without notice of the prior sale. Martin v. Morei, 6 T.T.R. 496.

Joint Interests—Division and Distribution

The division and distribution of land inherited by five persons was for their determination as owners in joint tenancy. Ngeskesuk v. Solang, 6 T.T.R. 505.

RESIDENCE.

Domicile

In general, residency can be viewed as a manifestation of domicile. Hamrick v. Hamrick, 6 T.T.R. 252.

S

SALES.

Passage of Title—Consignments

Rule that when a consignee of goods refuses to accept delivery the goods remain seller's property applies only when the seller, by consignment to itself, retains title. Mikkelson v. Ishiguro, 6 T.T.R. 370.

When plaintiff seller ordered goods released to consignee without payment of bill of lading seller had sent to bank for collection, and arranged for release from storage in warehouse of defendant, a consignee of other goods from seller, by assisting in payment of the storage charge for the goods seller ordered released, seller had done all it could to effectuate delivery and title passed to consignee, and consignee's refusal to accept was between it and defendant and not seller's responsibility, so that seller was not liable to defendant for amount consignee owed defendant as its share of storage charge. Mikkelson v. Ishiguro, 6 T.T.R. 370.

SEARCH AND SEIZURE.

Consent—Voluntariness

Voluntariness of consent to a police search is a question of fact to be determined from all the circumstances. Trust Territory v. Bruno, 6 T.T.R. 635.

Whether one who consented to a police search knew of his right to refuse is a factor to be considered in determining whether the consent was voluntary. Trust Territory v. Bruno, 6 T.T.R. 635.

Prosecution need not show that accused knew he had a right to refuse to consent to a police search as a prerequisite to establishing that accused voluntarily consented to a search. Trust Territory v. Bruno, 6 T.T.R. 635.

Where an accused actively assisted a police officer, consent will ordinarily be regarded as having been voluntary. Trust Territory v. Bruno, 6 T.T.R. 635.

A voluntary consent to a search is not rendered invalid solely on the basis that a suspect was not given the Miranda warning. Trust Territory v. Bruno, 6 T.T.R. 635.

STATUTES.

Construction

A statute should be construed so as to give effect to all its provisions. Mad v. Trust Territory, 6 T.T.R. 550.

—Legislative Intent

It is High Court's duty to carry legislature's intent into effect in the fullest degree, and a construction of a statute should not be such as to nullify, destroy or defeat that intent. Mad v. Trust Territory, 6 T.T.R. 550.

Validity—Tests

A court should be reluctant to invalidate a legislative act unless it is clear that the act is in violation of the legislative body's power; and when an act is valid on its face, it is not fitting to impute unacceptable motives to the legislature in the absence of evidence of such. Hamrick v. Hamrick, 6 T.T.R. 252.

Time Requirements

While time for performance set out in a statute may well be generally directory and not mandatory, it cannot be so held when such a result would be contrary to the purpose of the statute and the clear legislative intent. Cruz v. Johnston, 6 T.T.R. 354.

Election Laws

Title of Trust Territory Code relating to elections was clearly designed to provide for the election of the Congress of Micronesia, and does not apply to municipal elections. (T.T.C., Title 43) Benavente v. Ada, 6 T.T.R. 45.

T

TORTS.

Venue—Defamation

In libel action by Chief Public Defender for the Trust Territory, a resident of Saipan, against newspaper published in the Marshall Islands and distributed throughout the Trust Territory, venue in the Mariana Islands district was, under both statute and the better common law view, properly laid, and motion for change of venue to the Marshall Islands District, made on ground it would be inequitable to require the action to be defended in Saipan, would be denied. (6 TTC §§ 101, 103, 104) St. Pierre v. The "Micronitor", 6 T.T.R. 249.

Negligence—Proximate Cause

Negligence does not give rise to liability for an injury unless it was the proximate cause of the injury. Dingilius v. Bruno, 6 T.T.R. 474.

A cause, to be the proximate cause of an injury, need not be the sole cause, and the concurrence of other causes in producing the injury does not relieve defendant from liability unless it is shown that the other causes would have produced the injury independently of defendant's negligence. Dingilius v. Bruno, 6 T.T.R. 474.

The proximate cause of an injury is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred; it is the efficient cause, the one that necessarily sets in operation the factors that accomplish the injury. Rasa v. Trust Territory, 6 T.T.R. 535.

The acts and omissions of two or more persons may work concurrently as the efficient cause of an injury, and in such a case, each of the participating acts or omissions is regarded in law as a proximate cause. Rasa v. Trust Territory, 6 T.T.R. 535.

—Last Clear Chance

Though plaintiff driver may have been negligent in passing auto parked in his lane when defendant's oncoming auto was approaching, there would have been no accident if defendant had stopped driving down the center of the road, so that defendant's continuing negligence to the moment of the collision was the proximate cause of the collision and defendant could not successfully claim last clear chance doctrine barred recovery by plaintiff. Demei v. Sungino, 6 T.T.R. 499.

Damages—Before and After Value

The standard measure of property damage resulting from a tort is the difference in value before and after the damage. Dingilius v. Bruno, 6 T.T.R. 474.

Measure of damages for negligent destruction of auto was difference between value of auto immediately before and immediately after the destruction. Ngirutoi v. Iluches, 6 T.T.R. 517.

Generally, measure of damages arising from tortious damage to an automobile is the difference between the automobile's value immediately before and immediately after the accident. Demei v. Sungino, 6 T.T.R. 499.

In suit for negligent damage to auto, measure of loss was difference in "before and after" value. Obak v. Tulop, 6 T.T.R. 240.

In action for negligent damage to 1968 auto which cost $2,200 new and was damaged beyond repair eight months after purchase, $300 salvage value would be deducted from value of auto, as depreciated, at time of accident, even though plaintiff had given the wrecked car away rather than selling it, and damages would be set at $1,100. Obak v. Tulop, 6 T.T.R. 240.

Auto one year old at time defendant negligently damaged it would be taken to have depreciated one-third of its original $2,100 cost, and where it was not worth repairing, but had a $650 salvage value, the recovery would be $1,400, the value immediately before damage, minus $650, which would give the value immediately after the damage. Dingilius v. Bruno, 6 T.T.R. 474.

—Loss of Use

Loss of use of vehicle struck from rear by defendant, at the rate of eighteen dollars a day income for seven months, at which time a replacement was obtained, the vehicle being plaintiff's taxi, could not be recovered for where the vehicle was completely destroyed. Ngirutoi v. Iluches, 6 T.T.R. 517.

—Temporary Replacements

In suit for negligent damage to auto, cost of car rental from time auto was damaged beyond repair to time new one was purchased could not be recovered, due to rule that there can be no recovery for loss of use when the vehicle cannot be restored. Obak v. Tulop, 6 T.T.R. 240.

TRUK LAND LAW.

Individual Ownership—Possession by Others

Plaintiff's claim to individual ownership of land to which both plaintiff and defendant claimed title could not be sustained in view of clear, long-continued possession of the land by his sister, continued by her son, the defendant. Son v. Sekap, 6 T.T.R. 130.

Lineage Ownership—Assignment of Lands

Claimed division of lands by lineage, allegedly resulting in mother of defendant being given land to which plaintiff and defendant asserted title, would be held nothing more than an assignment of lands to various members of the lineage for living and working purposes where evidence showed that the parties and other lineage members consistently so treated the land, plaintiff, defendant and two other lineage members having lived there at various times and plaintiff having planted breadfruit trees. Son v. Sekap, 6 T.T.R. 130.

—Possession Rights

In land title dispute, defendant, as successor to his mother, to whom the land had been assigned by the lineage, clearly had right of possession, but must recognize the customary rights of other lineage members, including plaintiff. Son v. Sekap, 6 T.T.R. 130.

—Gifts

A gift of land by a lineage to its *afokur* is recognized, and unless there are reversionary strings attached to the transfer, the land will not go back to the lineage unless both the male and the female lines of descendants from the *afokur* have died out. Kio v. Puesi, 6 T.T.R. 12.

—Proof of

Test of whether there was lineage distribution in the distant past depends upon the present treatment of the land in question and of other parcels of what was once lineage land. Kio v. Puesi, 6 T.T.R. 12.

—Evidence For or Against

That land has been sold and resold was evidence that, prior to that, there had been a lineage distribution of the land in the distant past. Kio v. Puesi, 6 T.T.R. 12.

Claim that land had been the subject of a lineage distribution in the distant past could not be sufficiently attacked by assertion that those occupying the land, and their father, who had previously occupied the land, occupied and used the land "in behalf of the lineage". Kio v. Puesi, 6 T.T.R. 12.

Adverse Possession

Regardless of whether lineage owned land involved in action to quiet title and restrain further trespass, or had owned it during the forty or more years during which plaintiffs and the father of plaintiffs lived on and worked the land, defendants' claims of lineage ownership

were barred where they had not at least obtained some clear and definite acknowledgment of their ownership by words or acts of the users at intervals of less than twenty years. Kio v. Puesi, 6 T.T.R. 12.

TRUST TERRITORY.

Applicable Law—Federal Statutes

The Trust Territory Government is not a federal agency, and the High Commissioner, acting as its chief executive officer, is not subject to the National Environmental Policy Act and need not comply with that act's requirements regarding the obtaining of a final environmental impact statement. (42 U.S.C. § 4321 et seq.) Guerrero v. Johnston, 6 T.T.R. 124.

—United States Decisions

United States decisions defining due process are applicable in the Trust Territory. Curly v. Government, 6 T.T.R. 409.

Suits Against—Standing

The primary inquiry in deciding whether a suit not consented to by the government may be maintained against the government for the acts of one of its employees is whether the employee acted beyond the scope of his statutory powers. Guerrero v. Johnston, 6 T.T.R. 124.

Plaintiffs had standing to maintain unconsented to action against the government where complaint alleged the High Commissioner acted in violation of law providing that lease be executed only after obtaining advice and opinion of the District Land Advisory Board. (6 T.T.C. §§ 251, 252; 67 T.T.C. § 53(4)) Guerrero v. Johnston, 6 T.T.R. 124.

TRUSTS.

Governing Law

Trust funds and the rules governing their administration are present day concepts and the traditional powers of the High Chief of Angaur Island, which are considerable, though not absolute, are not applicable; the chief, like any other person, is bound by the trust rules and the rules of the board which administers the trust if he becomes a member of the board, and is bound by the board's decisions. Tulop v. Joseph, 6 T.T.R. 290.

Powers and Duties of Trustees and Officers

Where trust fund administering board authorized to approve business loans approved a loan and treasurer of the board had performed acts showing he acknowledged that the board, called for by the trust document, had been formed, he could not refuse to withdraw and pay over the money for the loan on the grounds the board did not exist, no one told him to do so and he believed business loans should not be made because the money was needed for another purpose. Tulop v. Joseph, 6 T.T.R. 290.

W

WILLS.

Valid Wills

Properly executed, certified and approved will was valid. Janre v. Labuno, 6 T.T.R. 133.

Invalid Wills

Will made for decedent after his death, not signed by decedent and using language indicating he did not write it, was not decedent's will and did not revoke prior valid will. Janre v. Labuno, 6 T.T.R. 133.

Oral—Invalid Wills

Statement by son, who was upset when his mother interceded in an argument with his brother, that when he returned from WW II he was going to Japan and would never return so that all his parents' property, registered in him under the Tochi Daicho as his father was a Japanese national and thus could not own land at the time of the survey, would go to his brother, was not an effective will. Ngeskesuk v. Solang, 6 T.T.R. 505.

Conflicting Wills—Prevailing Will

If decedent made two wills, subsequent will would prevail. Janre v. Labuno, 6 T.T.R. 133.

—Particular Cases

Where plaintiff and defendant disputed *alab* rights to two *watos,* each offered a will by the same predecessor *alab,* and plaintiff's will disposed of both *watos* whereas defendant's will, executed subsequent to plaintiff's, gave *alab* rights in one of the *watos* to defendant's wife but did not mention the other *wato,* defendant's claim regarding *alab* rights in the *wato* not mentioned in the will he offered must fail. Janre v. Labuno, 6 T.T.R. 133.

Disposable Property—Testator's Interest

Where Japanese national's land was registered to his son under the Tochi Daicho survey because Japanese nationals were prohibited from owning land, and father sold the land in 1942, son, who was killed in 1943 in the war, could not leave the land to his brother because he had no land to leave by will. Ngeskesuk v. Solang, 6 T.T.R. 505.