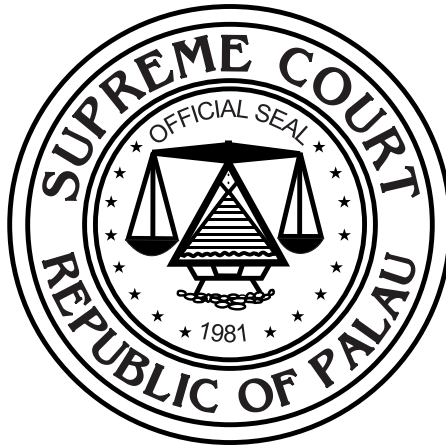


***SUPREME COURT OF THE  
REPUBLIC OF PALAU***



***DIGEST OF  
PUBLISHED DECISIONS***

*for  
ROP Interim Reporter  
Volumes 1 - 7 ROP Intrm. 85*

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Includes:

- Citators for the Constitution, Court Rules, Interim Reporters, Palau National Code, Public Laws, Restatements and Trust Territory Reports
- Table of cases for Interim Reporter Volumes 1 - 7 ROP Intrm. 85





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**\* This Digest Replaces the Digests for Volumes 1-2 and 3-5.**

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**DIGEST FOR**  
**INTERIM REPORTER**  
**VOLUMES 1-7 ROP INTRM. 85**

*This Digest has no precedential value and should not be cited as authority*

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## • **ACCOUNTS AND ACCOUNTING**

An "open account" is established by proving the correctness of each item contained in the account. To collect on an "account stated," on the other hand, the claimant must prove that the other party agreed to the balance due and agreed to pay it, but the claimant does not need to prove each item from which that balance was derived. 5 ROP Intrm. 27, 27 & n.1; 6 ROP Intrm. 159, 168.

Once a prima facie case for collecting on an account stated has been established, the burden of proof shifts to the defendant to prove the inaccuracy of the account, and to prove entitlement to credits. The defendant also has the burden of proving affirmative defenses, such as payment. 5 ROP Intrm. 27, 28 n.4.

## • **ADMINISTRATIVE LAW**

Administrative agencies may exercise only such authority as is granted by the legislature or can be inferred by necessary implication. 1 ROP Intrm. 214, 221.

A ministerial act is an act performed in a prescribed manner, in obedience to the law or the mandate of legal authority, without regard to the exercise of the actor's own judgment upon the propriety of the act done. 3 ROP Intrm. 155, 157.

When the legislature delegates authority to an administrative agency, it must provide clear guidelines for the guidance of the officials in exercising their power. Very little discretion is to remain with the person charged with granting, refusing or revoking a license. 3 ROP Intrm. 205, 210.

Procedural due process requires that an agency follow its own lawful regulations. 5 ROP Intrm. 63, 65.

The "zone of interest" test is a guide for deciding whether a particular plaintiff should be heard to complain of a particular agency decision. 5 ROP Intrm. 63, 67.

An agency may not accomplish through rules and regulations what is prohibited by statute. 5 ROP Intrm. 63, 70.

## • **APPEAL AND ERROR**

**-Abandonment** Appeal dismissed where appellant did nothing to perfect appeal that had been pending for over two years. 1 ROP Intrm. 577E, 577F.

When appellant did not pay the cost of transcript or file a motion for an extension to pay the cost of transcript within 20 days as required by ROP R. App. Pro. 10(b), court deemed appellant to have abandoned the appeal. 2 ROP Intrm. 5, 6.

Appellate counsel bears the responsibility of prosecuting their appeals; failure to do so results in the forfeiture of their clients' right to appeal. 5 ROP Intrm. 135, 136; 5 ROP Intrm. 192, 193.

**-Affirming on Other Grounds** Appellate Division may affirm or reverse a trial court decision even though its reasoning differs. 1 ROP Intrm. 383, 392; 3 ROP Intrm. 219, 222.

Judgment of the trial court is to be upheld if it is correct, even though the court may have relied upon a wrong ground or assigned an erroneous reason for its decision. 3 ROP Intrm. 328, 330 n.1.

**-Briefs** While appellant is required to file a brief, there is no requirement that appellee respond with a written brief. However, if no response is filed, court has discretion to deny appellee opportunity to present oral argument. 1 ROP Intrm. 547AA, 547 CC.

Brief that did not meet the requirements of ROP R. App. Pro. 28 was not dismissed; appellants were given 30 days to file a brief in conformity with the rule. 7 ROP Intrm. 4, 7.

**-Consolidating Appeals** Two appeals based on similar jurisdictional problems may be consolidated in the interest of expediency. 1 ROP



Intrm. 440A, 440C.

Consolidating appeals is appropriate where the same party is involved in several separate appeals concerning the same question or where a single party has several cases pending in the same cause, such as an appeal from a judgment and from an order refusing to vacate it. 3 ROP Intrm. 17, 18.

**-Counsel's Withdrawal Pending Appeal** Before counsel may withdraw from representing a client on an appeal, he must inform the client that the client has the burden of keeping the Court informed where notices, pleadings or other papers may be served, that the client must prepare briefs and attend oral argument, and that the client risks dismissal of the appeal if the client fails to meet these burdens. Counsel must also inform the client that his withdrawal will not affect the scheduling of the case for briefing or oral argument. 4 ROP Intrm. 119, 119.

If appointed counsel representing defendant in a criminal case finds no nonfrivolous grounds for appeal, he should file a motion requesting permission to withdraw. Any such motion must be accompanied by a brief referring to anything in the record that might arguably support an appeal. A copy of the brief must be furnished to the defendant, who then must be allowed time to raise any points he deems necessary. The Court then decides whether the appeal is frivolous and whether counsel will be permitted to withdraw. 5 ROP Intrm. 256, 257.

**-Court Administrative Errors** Parties should not be penalized for court administrative errors. 3 ROP Intrm. 83, 85.

**-Cross-Appeal** Without filing a cross-appeal, a party may not attack a judgment with a view either to enlarge his or her own rights thereunder or of lessening the rights of his or her adversary, where what the party seeks is to correct an error or to supplement the judgment with respect to a matter not dealt with. 5 ROP Intrm. 81, 85.

**-Dismissals/Motions to Dismiss** Motion to

dismiss appeal for lack of prosecution denied where appellants made numerous efforts over the years to move protracted litigation along. 1 ROP Intrm. 592, 593.

Appellant's appeal dismissed where two years passed between time he filed notice of appeal and received estimated cost of transcript and time motion to dismiss was filed. 1 ROP Intrm. 618, 618.

Appeal dismissed where appellant failed to take any action on case for 19 months after he was notified of transcript problems. 1 ROP Intrm. 547V, 547Y.

Where appellant failed to pay cost of transcript or file answer to motion to dismiss, appeal deemed abandoned and case dismissed. 2 ROP Intrm. 5, 6.

Appeal dismissed after appellant failed to take any action case for almost three years. 2 ROP Intrm. 96, 97.

Appeal dismissed where appellant failed to take any action for fifteen months. 2 ROP Intrm. 98, 100.

Appeal dismissed where appellant failed to take action to perfect appeal within time provided by appellate rules. 2 ROP Intrm. 101; 2 ROP Intrm. 103; 2 ROP Intrm. 105; 2 ROP Intrm. 107; 2 ROP Intrm. 109; 2 ROP Intrm. 111; 2 ROP Intrm. 113; 2 ROP Intrm. 115.

Appellant's appeal dismissed where seven months had passed since his brief was due and he had taken no actions to perfect his appeal. 2 ROP Intrm. 225, 225.

Appellant deemed to have abandoned his appeal when he did nothing for eight months after being notified of the estimated cost of transcript. 2 ROP Intrm. 242, 242.

Where appellant requested preparation of transcript and filed opening brief within required time after Clerk of Court issued certification of

record, appeal will not be dismissed even though request for transcript was technically invalid because there was never any evidence or testimony adduced before the Trial Division. 2 ROP Intrm. 327, 330.

Motion to dismiss appeal is substantive motion and must be considered and decided by full appellate panel. 2 ROP Intrm. 244, 247-48.

Where appellee fails to show prejudice resulting from late filing of appellant's brief, motion to dismiss should be denied. 3 ROP Intrm. 13, 15.

Failure to properly serve papers pursuant to Rules of Appellate Procedure may serve as basis for dismissal. 3 ROP Intrm. 20, 23.

When appellant shows good cause or excusable neglect for failing to timely file opening brief, Court may refuse to dismiss appeal. 3 ROP Intrm. 69, 70.

Motions to dismiss in Appellate Division should not be used to raise issues presented in trial court, but should be limited to issues that relate peculiarly to Appellate Division's jurisdiction or to propriety of appeal itself. 3 ROP Intrm. 279, 280-81.

That an appeal is dismissed because appellant failed to file opening brief does not necessarily mean that appeal was ripe for review. 5 ROP Intrm. 117, 119.

***-Errors in Appellate Opinion*** Appellate Division withdrew previous opinion after finding that it contained errors, but it adhered to its original holding. 1 ROP Intrm. 443, 444.

***-Excusable Neglect/Timely Appeal*** Counsel's involvement in trial on another matter is not excusable neglect for failure to file timely appeal. 1 ROP Intrm. 123, 125-26.

Extension of time may be granted even though attorney's acts resulting in untimely filing did not constitute "excusable neglect." 1 ROP

Intrm. 364, 365.

Custom obligations do not constitute good cause or excusable neglect under App. Rule 31(c). 1 ROP Intrm. 577A, 577B.

Mistake of attorney's secretary is not good cause for attorney's failure to file brief on time. 1 ROP Intrm. 631, 633.

Counsel's need for more time to research and prepare is not excusable neglect; Appellate Division is without jurisdiction to entertain appeal where notice of appeal is untimely filed. 1 ROP Intrm. 649, 652.

Misdirection of a notice of the estimated cost of transcript does not constitute excuse for failure of counsel to timely pursue his client's cause. 2 ROP Intrm. 3, 4.

To constitute good cause or excusable neglect for failing to prosecute an appeal, counsel must establish more than the normal (or even reasonably foreseeable but abnormal) vicissitudes inherent in the practice of law. Failure of attorney's employee to deliver a copy of the Trial Division's opinion to the attorney is insufficient to show good cause or excusable neglect. 5 ROP Intrm. 148, 150.

Counsel's mistaken impression that he had filed request for transcripts, along with stress caused by other professional obligations and the need to cancel his family's vacation did not constitute good cause or excusable neglect. 5 ROP Intrm. 192, 193.

Counsel's failure to file a timely opening brief without good cause or excusable neglect resulted in imposition of a \$500 sanction against him. 5 ROP Intrm. 192, 193.

Attorney's explanation that case "fell through the cracks" did not constitute good cause for failure to file his brief on time. 5 ROP Intrm. 234, 235.

***-Filing Deadlines*** Appellate Division exercises



de novo review of Trial Division order dismissing appeal because notice of appeal was not timely filed. 1 ROP Intrm. 403, 404.

Court may dismiss an appeal that is filed three days late. 1 ROP Intrm. 403, 404.

Although government failed to show good cause for its failure to file brief on time, court granted government additional time because court may have contributed to the tardiness of government's brief by its failure to rule on government's motion to consolidate appeals. 1 ROP Intrm. 440A, 440E.

Language of Appellate Rule 31(c) makes it clear that dismissal of the appeal as a consequence for failure to file brief on time is discretionary. 1 ROP Intrm. 514, 516.

Appeal dismissed where appellant failed to file brief or motion to extend time within time prescribed by rules. 1 ROP Intrm. 562, 563; 2 ROP Intrm. 176, 177.

Failure to designate a transcript or waiver of a transcript are identical for purposes of ROP R. App. Pro. 31(b). If appellant does not designate or waives the transcript, the opening brief must be filed within 45 days of the notice of appeal. 1 ROP Intrm. 654, 656.

Counsel is expected to be aware of the time limits prescribed by the court. If counsel fails to receive notice of a procedural step by the court, counsel has a responsibility to determine why and to remedy any defect that exists. 2 ROP Intrm. 1, 2.

Appeal dismissed because appellant failed to file his opening brief on time. 2 ROP Intrm. 63, 63.

Appellant's reliance on the idea that there is an ambiguity in the meaning of the word "transcript" and that such ambiguity amounts to good cause for not filing brief on time has no merit. 2 ROP Intrm. 117, 119.

Failure to file a timely opening brief may result in the dismissal of an appeal. 2 ROP Intrm. 176, 177.

Appellate Rule 4(a), requiring a notice of appeal to be filed within 30 days of service of judgment, is consistent with 14 PNC § 602, the enabling legislation. 3 ROP Intrm. 1, 2.

Where an appellee fails to show prejudice resulting from late filing of appellant's brief, motion to dismiss normally will be denied. 3 ROP Intrm. 13, 15; 5 ROP Intrm. 142, 143.

There is no penalty or punishment for filing briefs before they are due or for filing a brief without taking advantage of a trial transcript. 3 ROP Intrm. 33, 35-36.

The Rules of Appellate Procedure are part of the overall system which has justice as its goal. They allow room for the Court to recognize that events occur that eclipse the importance of filing deadlines. 3 ROP Intrm. 69, 70.

A motion to extend time to file a brief tolls the time for filing until the Court disposed of the motion. 3 ROP Intrm. 77, 81.

An appellant cannot extend the time for filing a brief by designating a transcript where none is called for. 4 ROP Intrm. 60, 61; 5 ROP Intrm. 196, 198.

In appeals where there is no transcript to be prepared, the appellant's brief is due within 45 days of the filing of the notice of appeal irrespective of the certification of record and without the need for any other action by the Clerk of Courts. 4 ROP Intrm. 60, 62; 5 ROP Intrm. 196, 197.

Court will look to substance of a motion to alter or amend the judgment or for a new trial, and will not rely on the label given the motion, to determine if it tolls the time for filing a notice of appeal. 5 ROP Intrm. 12, 13.

ROP R. App. P. 40(a), which requires a

party to file its petition for rehearing within 14 days after service of the Appellate Division's order, applies to an appellant's request that the Court reconsider an order dismissing the appeal for failure to pay the estimated cost of the transcript on time. 5 ROP Intrm. 135, 135.

Filing a late notice of appeal is a fatal jurisdictional defect; timely filing is a prerequisite to jurisdiction. 2 ROP Intrm. 227, 228; 5 ROP Intrm. 148, 149; 6 ROP Intrm. 51, 52.

Pendency of a motion does not suspend the deadlines for the filing of briefs established by ROP R. App. Pro. 31(b). 5 ROP Intrm. 221, 222.

Filing a Rule 59 motion to alter or amend a judgment extends the date for filing a notice of appeal to 30 days following service of the ruling on the Rule 59 motion; however, a motion to reconsider an order in connection with a rule 59 motion does not again toll the running of the time for appeal. 6 ROP Intrm. 51, 53.

The filing of a Rule 60(b) motion does not toll the deadline for filing a notice of appeal. 6 ROP Intrm. 51, 54.

***-Filing Notice in Wrong Court*** Notice of appeal filed in the Appellate Division rather than in the Trial Division will be stricken for noncompliance with the rules of appellate procedure. 1 ROP Intrm. 123, 126.

Filing a notice of appeal in the incorrect court is not a fatal defect requiring dismissal. 2 ROP Intrm. 57, 57; 5 ROP Intrm. 12, 14.

***-Hearings*** There is no requirement that a hearing be held on procedural motions. 4 ROP Intrm. 236, 239.

Hearing on appeal may be scheduled immediately after appeal is filed in circumstances where the legal issue is narrow in scope and deciding the appeal immediately would save Palauan taxpayers time, resources and money. 1 ROP Intrm. 406, 410.

***-Interlocutory Appeals*** A party seeking to file an interlocutory appeal must first obtain the approval of the trial court. 1 ROP Intrm. 289, 290.

Trial court's order denying request for a preliminary injunction that would have enjoined the use of service station polling places finally determined the issue and dispute between the parties; therefore, order was appealable. 1 ROP Intrm. 406, 411.

The key to the determination of whether a judgment or order is final is the substance of the decision rather than its form or name. If the trial court has adjudicated the rights of the parties and no further judicial action is required, the judgment or order may be appealed. 1 ROP Intrm. 406, 411.

Appellate court has jurisdiction to hear defendant's appeal from trial court's denial of its motion to dismiss; such decision was not interlocutory because case had been finalized by trial court's grant of summary judgment to plaintiff. 1 ROP Intrm. 521, 546-47.

Government could appeal trial court's quashing of search warrant before trial because such a ruling effectively disposed of the case against defendant. Without the suppressed evidence, defendant most likely would have been acquitted. When a ruling of the trial court, for all intents and purposes, has disposed of a matter, an appellate court can entertain an appeal although a formal judgment terminating the matter in the trial court has not been entered. 1 ROP Intrm. 547 A, 547G.

Generally, trial court ruling that resolves fewer than all of the claims or determines the rights and liabilities of fewer than all of the parties is an unappealable interlocutory order. However, where trial court rulings effectively terminated case, appellate court found it had jurisdiction to hear appeal. 1 ROP Intrm. 547 MM, 547QQ.

Appeal dismissed because trial court order requiring plaintiff to submit certain

information was not a final disposition between the parties. 1 ROP Intrm. 647, 648.

Trial court's denial of motion for summary judgment was not an adjudication on the merits. Thus, decision was not final and not appealable. 1 ROP Intrm. 663A, 663C.

An order that does not finally settle the issues on trial generally is not appealable, although it is open to review in connection with an appeal of the final judgment. 3 ROP Intrm. 130, 131; 6 ROP Intrm. 196, 197.

Probate proceeding is not final, and orders issued thereunder are not appealable, until a determination is made as to the distribution of the estate's assets. 3 ROP Intrm. 130, 132.

A denial of a motion to dismiss is interlocutory and not immediately appealable. 3 ROP Intrm. 279, 280.

Appellate remedy following final judgment adequate to preclude writ of mandamus to compel disqualification of trial court judge. 3 ROP Intrm. 341, 341-42.

An order denying a motion to disqualify counsel is not immediately appealable, but must await final judgment for review. 4 ROP Intrm. 63, 64.

A trial court order sanctioning a party and directing payment on a date certain prior to final judgment is immediately appealable. 5 ROP Intrm. 10, 11.

An order directing the payment of money subject to review and revision by the trial court prior to final judgment is not enforceable or appealable until after final judgment. 5 ROP Intrm. 10, 11.

Where a claim in an action remains to be resolved, an order dismissing another claim is not a final judgment. 5 ROP Intrm. 117, 119.

An order remanding a case for a new trial

is not a final order and is generally not appealable. 6 ROP Intrm. 197, 197.

An order appointing a permanent executrix of an estate and admitting a will to probate is not a final order for purposes of appeal. 6 ROP Intrm. 216, 217.

The proper time to consider appeals is after final judgment; an order denying a motion to dismiss for lack of personal jurisdiction is appealable only after final judgment. 7 ROP Intrm. 46, 47.

**-Jurisdiction of Trial Court After Appeal** Once notice of appeal has been filed, trial court loses jurisdiction. 1 ROP Intrm. 289, 290.

A notice of appeal does not divest the trial court from proceeding to satisfy the judgment, as long as no stay pending appeal has been entered. 3 ROP Intrm. 247, 250 n.3.

**-Mandate** Trial court must strictly comply with mandate on remand. 3 ROP Intrm. 43, 45-46.

**-Multiple Parties/Multiple Claims** In a case involving multiple claims or multiple parties, any order that fails to resolve all the claims or determine the rights and liabilities of all the parties is not appealable unless the parties secure approval from the trial court pursuant to ROP R. Civ. P. 54 to file an appeal. 1 ROP Intrm. 547 MM, 547QQ.

In a case involving multiple appellees, an appellee must file its own motion to dismiss the appeal if it wishes to have the appeal dismissed; it cannot rely on a motion filed by another appellee. 2 ROP Intrm. 117, 120.

**-No Right to Free Transcript** Appellants in civil cases have no constitutional right to a waiver of transcript fees. 4 ROP Intrm. 200, 200 n.2.

The Judiciary does not have the resources to pay transcription costs in civil appeals. 6 ROP Intrm. 191, 192.



**-Notice of Appeal** Notice of appeal, bond, request for extension of time and request for the record should be filed in the Trial Division. 1 ROP Intrm. 123, 125.

Appellate Rules 4(a) and (b) are not flexible. They require that extension of time for filing a notice of appeal may not exceed an additional 30 days. 1 ROP Intrm. 649, 651.

Rule 4(b) requires finding of excusable neglect as reason to allow extension of time to file notice of appeal. Bare conclusory statement that counsel requires more time to research or prepare is insufficient. 1 ROP Intrm. 649, 652.

Appellate Rule 3 does not require appellants to specify in detail all the issues for appeal in the Notice of Appeal. 5 ROP Intrm. 188, 188.

If an intent to appeal a specific order or judgment cannot be fairly inferred from the notice of appeal, the appellate court is without jurisdiction to consider that order or judgment. However, an appeal from a final judgment supports review of all interlocutory orders. 5 ROP Intrm. 239, 241.

A notice of appeal filed while a posttrial motion is still pending is premature, but it becomes effective upon the disposition of the posttrial motion. 7 ROP Intrm. 4, 6.

**-Oral Argument** Appellees need not file a written brief, but if they do not, court has discretion to deny them opportunity to present oral argument. 1 ROP Intrm. 547 AA, 547 CC.

Where appellees fail to file a timely brief, they bear the burden of petitioning the court for leave to present oral argument. 1 ROP Intrm. 577A, 577 B.

Even if a party has not submitted a brief, its counsel must still appear at oral argument to answer any questions the Court may have. 4 ROP Intrm. 63, 65 n.2.

Arguments should not be raised for the first time at oral argument. 5 ROP Intrm. 95, 100.

Pursuant to Rule of Appellate Procedure 34(a), if oral argument would not materially assist the Court in ruling on a motion, the Court may rule without conducting oral argument. 5 ROP Intrm. 131, 132; 5 ROP Intrm. 136, 137; 5 ROP Intrm. 150, 151.

**-Pendent Appellate Jurisdiction** Under the doctrine of pendent appellate jurisdiction an appellate court may assert jurisdiction over a claim that has not been certified pursuant to ROP Civ. Pro. Rule 54(b) if the claim is inextricably intertwined with another claim over which the court properly has jurisdiction. 5 ROP Intrm. 10, 11.

**-Petition for Rehearing** Petitions for rehearing should be granted exceedingly sparingly, and only in those cases where the Appellate Division's original decision obviously and demonstrably contains an error of fact or law that draws into question the result of the appeal. 3 ROP Intrm. 282, 283; 7 ROP Intrm. 7, 7; 7 ROP Intrm. 63, 63; 7 ROP Intrm. 64, 64.

A request to reconsider and overturn past precedent is wholly out of place in a petition for rehearing. 3 ROP Intrm. 282, 283-84.

An argument made for the first time in a petition for rehearing is not a proper basis upon which to reverse a decision, especially when that argument has been rejected by the court in related litigation. 7 ROP Intrm. 63, 64.

**-Plain Error** Where an error affects the substantial rights of a criminal defendant, the Appellate Division may consider it even though neither party raised the error. 5 ROP Intrm. 1, 4.

It is not the province of the appellate court to reverse the findings of the trial court simply because the same facts would have caused it to decide the case differently. 5 ROP Intrm. 264, 264.

The appellate court will not substitute its own judgment of the credibility of witnesses, based on its reading of a cold record, for the trial court's assessment of the witnesses' veracity. 5 ROP Intrm. 264, 265.

Clearly erroneous test applies to both oral and documentary evidence. 6 ROP Intrm. 1, 3.

**-Preserving Issues** Appellant could make estoppel argument on appeal even though he only raised it "in passing" before trial court. 1 ROP Intrm. 701, 705.

Except for issues of constitutional magnitude, an appellate court is limited in its deliberations to the issues framed by the parties and the record on appeal. 2 ROP Intrm. 7, 12.

A party must make objections to the admission of evidence at trial to preserve the issue for appeal. 3 ROP Intrm. 39, 40.

When an issue is not assigned error, it is waived. 3 ROP Intrm. 72, 76; 5 ROP Intrm. 239, 246.

Appellate Division will not address an issue unless the issue was addressed by the lower court. 3 ROP Intrm. 305, 312 n.3.

Arguments not raised below are waived. 3 ROP Intrm. 314, 322; 5 ROP Intrm. 139, 141 n.2; 5 ROP Intrm. 142, 148.

A party cannot raise an issue on appeal that it failed to raise at trial. 1 ROP Intrm 150, 151; 2 ROP Intrm. 52, 54; 2 ROP Intrm. 251, 254; 4 ROP Intrm. 177, 179; 6 ROP Intrm. 102, 104.

One exception to the rule that issues not raised below will not be considered on appeal permits a reviewing court to address an issue not raised below to prevent the denial of fundamental rights, especially in criminal cases where the life or liberty of an accused is at stake. Another exception, applicable when the general welfare of the people is at stake, affords the court the opportunity to consider the public good over the

personal interests of the litigants. 4 ROP Intrm. 224, 226.

Court need not address aspects of the trial court's judgment not appealed. 5 ROP Intrm. 15, 17.

Party may not rely on a constitutional provision on appeal he did not rely on below. 5 ROP Intrm. 86, 90.

Absent compelling circumstances, Appellate Division will not consider arguments that were not presented to the Trial Division. 6 ROP Intrm. 4, 5 n.1.

Merely raising a claim in the complaint, without further argument to the trial court, fails to preserve the claim for appeal. 6 ROP Intrm. 225, 226 n.1.

Objections regarding the form of notice and service are waived if they are not raised at the Trial Division level or on an initial appeal. 7 ROP Intrm. 38, 41.

Arguments made for the first time on appeal are considered waived, although in exceptional circumstances, this stricture will be relaxed. 7 ROP Intrm. 38, 43.

**-Record** Rule 10(e) of the Rules of Appellate Procedure gives the trial court and the appellate court a circumscribed power to correct the record under limited circumstances; however, the rule may not be used to add matter to the record on appeal that was not before the trial court. 6 ROP Intrm. 98, 100.

**-Remand** Although the Appellate Division generally remands a case to the Trial Division for entry of judgment in accordance with the appellate decision, it has the prerogative to announce judgment in the appellate decision. 1 ROP Intrm. 150, 152.

On remand, a trial court is not free to deviate from the appellate court's mandate. 6 ROP Intrm. 148, 151.

**-Reversal** A reversal sets a matter at large for readjudication of all the issues involved in the case only where the part of the judgment appealed from is so interwoven and connected with the remainder, or so dependent thereon, that the appeal affects the other parts or involves a consideration of the whole, and is really an appeal from the whole. When issues addressed in a judgment are “separable”, then a reversal of the part appealed from does not affect the portions not dependent thereon. 5 ROP Intrm. 58, 59.

**-Same Justice on Appeal** Constitutional and statutory provisions barring a justice on the Supreme Court from hearing or deciding an appeal of a matter heard by him in the Trial Division do not prohibit a justice from hearing an appeal involving a legal issue he has heard in an unrelated Trial Division case. 4 ROP Intrm. 145, 146-47.

**-Sanctions** Court imposed \$250 fine on attorney for failing to file appellate briefs on time. 1 ROP Intrm. 364, 365.

Court sanctioned attorney \$500 for failing to appear. 1 ROP Intrm. 403, 405.

Court sanctioned attorney \$250 for filing a frivolous appeal. 1 ROP Intrm. 427, 428.

Court imposed \$100 fine on attorney for failing to file appellate brief on time. 1 ROP Intrm. 585, 586.

Court fined attorney \$100 for relying on another party’s motion for extension of time rather than filing its own. 1 ROP Intrm. 718, 723.

Court imposed \$500 fine on attorney for failing to file a motion for extension of time before his appellate brief was due. However, it did not dismiss the appeal because it was concerned that dismissing the appeal would not serve the interests of justice given the severity of the criminal sentence that appellant faced. 1 ROP Intrm. 528A, 528C.

Appellee's counsel fined \$100 for missing

an oral argument. 3 ROP Intrm. 4, 12.

Filing frivolous motion to dismiss is sanctionable. 3 ROP Intrm. 25, 28.

Counsel sanctioned for misquoting statute. 3 ROP Intrm. 39, 41-42.

Failure to conduct basic legal research and to be certain of underlying facts that were essential to the issues at hand is sanctionable. 3 ROP Intrm. 77, 82.

Appellant's counsel sanctioned for asking to proceed without prepayment of transcription cost when there was no transcript to prepare. 4 ROP Intrm. 60, 62.

**-Service** Appellate Rule 25(b) requires party to serve opponent at or before the time of filing. Orders made upon unserved motions shall be void. 1 ROP Intrm. 123, 126.

Rules of Appellate Procedure allow a judgment to be served by mail. 1 ROP Intrm. 403, 405.

Counsel complaining about failure of service should follow the procedure in ROP R. App. Pro. 27 before asking for sanctions. Any party that does ask for sanctions must show prejudice flowing to him as a result of the violation. 1 ROP Intrm. 718, 721.

**-Single Justice Orders** Single judge may rule on motion that is unopposed or seeks procedural relief that does not substantially affect the ultimate disposition of the appeal. A motion to dismiss an appeal is one of substance and therefore must be considered and decided by the full appellate panel. 2 ROP Intrm. 244, 247-48.

Procedural orders, such as extensions of time to file, that do not substantially affect the rights of the parties or the ultimate disposition of the appeal may be ruled upon by a single justice. 3 ROP Intrm. 25, 27.

A single justice may grant an extension of



time to file a brief even after the time to file the brief has expired. 3 ROP Intrm. 77, 80.

A single justice has authority to grant motions to extend time for filing appellate briefs. 4 ROP Intrm. 236, 238.

Although normally all members of the appellate panel would rule on the petition for a writ of prohibition, when all other members of the panel are off-island and time is an important factor, one justice may rule on the petition. 5 ROP Intrm. 258, 258.

**-Standard of Review** Trial court's determination of compensatory damages is a finding of fact that will not be set aside by the appellate division unless clearly erroneous. 1 ROP Intrm. 22, 28.

Trial court's determination with respect to estoppel defense will be sustained on appeal unless the determination is clearly unreasonable. 1 ROP Intrm. 366, 376.

If trial court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that it would have weighed the evidence differently. Where there are two permissible views of the evidence, the fact finder's choice cannot be clearly erroneous. 1 ROP Intrm. 597, 602; 4 ROP Intrm 189, 196; 6 ROP Intrm. 229, 232; 6 ROP Intrm. 264, 266; 7 ROP Intrm. 17, 19.

Trial court's findings of fact shall not be set aside absent a showing of insufficiency of evidence, manifest error or abuse of discretion. 1 ROP Intrm. 701, 704.

Where appellant's notice of appeal and brief only repeats assertions made before the trial judge, appellate division will not re-weigh the evidence or set aside the trial court's findings of fact. 2 ROP Intrm. 251, 254.

Entry of default judgment is reviewed for abuse of discretion. 3 ROP Intrm. 4, 9.

Mixed findings of law and fact are reviewed *de novo*. 3 ROP Intrm. 4, 10; 5 ROP Intrm. 225, 228.

It is not the appellate panel's duty to reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence. 2 ROP Intrm. 257, 259; 3 ROP Intrm. 91, 92.

The trial court has discretion to review the facts of an LCHO matter *de novo*, but the Appellate Division does not. 3 ROP Intrm. 140, 141.

In extraordinary cases, the Appellate Division may reverse the trial court's credibility determinations. 3 ROP Intrm. 258, 260.

Appellate Division's review of the sufficiency of evidence is extremely circumscribed, limited to the question whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. 3 ROP Intrm. 269, 274.

A trial court's determination that a petition for a writ of habeas corpus is sufficiently pleaded will be reviewed for abuse of discretion. 4 ROP Intrm. 15, 17.

Granting or denying a motion for relief from judgment lies within the sound discretion of the trial court. 4 ROP Intrm. 177, 181.

Cases holding that trial court's findings of fact will be upheld as long as there is "reasonable evidence" to support them are overruled. 4 ROP Intrm. 257, 259.

If the trial court's findings of fact are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless the Appellate Division is left with a definite and firm conviction that a mistake has been committed. 1 ROP Intrm. 695, 697; 4 ROP Intrm. 257, 260; 6 ROP Intrm. 48, 49; 6 ROP Intrm. 225,

227; 6 ROP Intrm. 259, 262; 7 ROP Intrm. 76, 77.

Where factual issues are not in dispute, the denial of due process is a pure question of law that this Court reviews *de novo*. 5 ROP Intrm. 19, 21.

The Appellate Division reviews the trial court's grant of summary judgment *de novo*. 5 ROP Intrm. 91, 92.

Appellate Division will review the trial court's exercise of its inherent power to issue either criminal or civil contempt citations under the abuse of discretion standard. 5 ROP. Intrm. 95, 98.

The standard of review for a trial court's ruling on a Rule 56(f) motion is abuse of discretion. 5 ROP Intrm. 105, 108.

All aspects of the trial court's imposition of sanctions are reviewed under an abuse of discretion standard. 5 ROP Intrm. 105, 113.

Appellate Division will reverse the Trial Division's findings of fact only if they are "clearly erroneous." 1 ROP Intrm. 114, 115; 1 ROP Intrm. 330, 331; 1 ROP Intrm. 608, 611; 1 ROP Intrm. 682, 688; 5 ROP Intrm. 122, 130; 6 ROP Intrm. 48, 49; 6 ROP Intrm. 218, 219; 6 ROP Intrm. 267, 269; 7 ROP Intrm. 82, 83.

Appellate court reviews trial court's finding of the existence of customary law under the clearly erroneous standard. 5 ROP Intrm. 225, 228.

The appellate division will not disturb the trial division's decision to deny a motion for a trial *de novo* absent a showing that the trial division abused its discretion. 6 ROP Intrm. 10, 14.

Denial of a Rule 60(b) motion is reviewed for abuse of discretion. 6 ROP Intrm. 83, 85.

It is not the function of the appellate division to determine the credibility of witnesses.

6 ROP Intrm. 178, 181 n. 6.

Where there are two permissible views of the evidence, the factfinder's choice cannot be clearly erroneous. 7 ROP Intrm. 57, 61.

**-Stay Pending Appeal** Trial court has discretion to grant a stay pending appeal. The court's decision will be overturned only if it is "patently grossly abusive of the rights of the parties." 1 ROP Intrm. 181, 184; 5 ROP Intrm. 189, 191.

Where no motion for stay or temporary restraining order had been filed in the trial court as required by Appellate Rules, appellate court had no authority to decide motion seeking a stay of trial court's decision. 1 ROP Intrm. 265, 266.

Where there is a strong possibility that the subject of the appeal (land and Palauan money) may be sold if the trial court judgment were enforced, appellate court will reverse trial court decision not to grant stay pending appeal. 1 ROP Intrm. 653A, 653C.

ROP R. App. Pro. 9(b) requires the trial court to state in writing the reasons for denying a stay pending appeal. If the trial court does not state such reasons, the Appellate Division will order it to do so. 2 ROP Intrm. 197, 197.

Factors trial court will consider in deciding to grant stay pending appeal are whether: 1) appellant has shown a strong likelihood of success on the merits of the appeal; 2) appellant has shown irreparable injury without the relief requested; 3) the stay will injure appellee; and 4) the stay is in the public interest. 5 ROP Intrm. 189, 191.

**-Stipulation** Where attorney general was not a party or signatory to a stipulated judgment but was subsequently ordered to represent a party to the action, court granted motion to vacate the stipulated judgment. 1 ROP Intrm. 127, 128-29.

**-Summary Judgment on Appeal** An appellate court has the power to order summary judgment for appellant, both where no motion has been



made and also where cross-motions have been made. 5 ROP Intrm. 63, 67.

Appellate division reviews a summary judgment order de novo. 6 ROP Intrm. 105, 106.

Where an appellant has failed to file a proper response to his opponent's motion for summary judgment, the appellate court will not allow the appellant to argue that genuine issues of material fact preclude the entry of summary judgment. 6 ROP Intrm. 102, 103-04.

**-Transcript** The word "transcript" is limited to testimony and evidence. 2 ROP Intrm. 327, 330.

Cross-appellant intending to rely on testimony presented to the trial court has a legal obligation to pay a portion of the cost of transcribing that testimony. The cost is allocated according to the portion of testimony each appellant would have designated for transcription had that party been the sole appellant. There is no exception to this rule for government entities. A cross-appellant may rely only on that portion of the transcript for which it paid in whole or in part. 5 ROP Intrm. 156, 156-59.

A transcript of the proceedings below is unnecessary when the appellant agrees with the facts found by the court below but disputes the lower court's interpretation of the relevant law and how such law applies to those facts. 6 ROP Intrm. 31, 33.

**-Writ of Attachment** Writ of attachment seeks specific personal property. Party can seek such a writ prior to judgment to prevent potential debtor from divesting himself of the asset. Issuance of this writ is discretionary. 2 ROP Intrm. 292, 295-96.

**-Writ of Execution** Motion for a writ of execution may be filed by a judgment creditor; court shall issue this writ pursuant to 14 P.N.C. § 2103 et seq. 2 ROP Intrm. 292, 295-96.

**-Writ of Mandamus** A writ of mandamus may be appropriate when a trial judge has failed to act on

a writ of execution or a writ of attachment. 2 ROP Intrm. 59; 2 ROP Intrm. 61.

A writ of mandamus will not issue in doubtful cases, but only where there is 1) a specific, incontrovertible right in the petitioner to have the act in question performed; 2) a corresponding ministerial duty to be performed by the respondent; and 3) no other specific and adequate relief, such as appeal, available. Mandamus is a proper remedy as to discretionary duties only where there is a showing of abuse of discretion or of arbitrary and capricious action on the part of a public official. 3 ROP Intrm. 48, 49.

In a mandamus action against a public official, it is presumed that official duties were regularly, or will be properly, performed. 3 ROP Intrm. 48, 50.

A writ of mandamus is an extraordinary writ and is reserved for extraordinary situations. The party seeking mandamus has the burden of showing that the right to have the writ issued is clear and undisputable. 3 ROP Intrm. 336, 338.

For a writ of mandamus to issue, the party seeking the writ must have no other adequate means to attain the relief he desires. 3 ROP Intrm. 341, 341.

Writs of mandamus and prohibition may be denied without briefing or oral arguments. 4 ROP Intrm. 145, 146.

A writ of mandamus may be used to review a denial of a motion to disqualify an attorney only in exceptional cases. 4 ROP Intrm. 63, 64-65.

**-Writ of Prohibition** A writ of prohibition is a common law writ designed to prevent a lower court from acting in excess of its jurisdiction. A petition for a writ of prohibition is an appropriate method of seeking relief where a criminal statute sought to be enforced is alleged to be unconstitutional on its face. 1 ROP Intrm. 154, 156.

A writ of prohibition may not issue to review and correct errors and irregularities of a lower court, or to prohibit a lower court from acting in the proper exercise of its powers and within its jurisdiction. 3 ROP Intrm. 48, 50-51.

A writ of prohibition may be issued only in the case of extreme necessity, and only when it has been clearly established that 1) the lower court is about to exercise judicial or quasi-judicial power; 2) the exercise of such power is unauthorized; and 3) the exercise of such power will result in injury for which there is no other adequate remedy. 3 ROP Intrm. 49, 50-51; 5 ROP Intrm. 121, 122.

A writ of prohibition is an appropriate method of seeking relief where the government attempts to enforce a criminal statute which is alleged to be unconstitutional on its face. 3 ROP Intrm. 262, 262.

A writ of prohibition should be denied if there is a complete remedy by appeal. 5 ROP Intrm. 121, 122.

### • **BONA FIDE PURCHASERS**

Notice of a prior interest effective to charge a subsequent purchaser with knowledge of the interest may be either direct information of the prior right, or may consist of information from which actual knowledge may be inferred; the notice need not be actual, but may be constructive or implied. 3 ROP Intrm. 101, 103.

The concept of notice of defective title in the context of bona fide purchasers exists in Palau. 3 ROP Intrm. 101, 104.

There is no reason to assume that an individual owner listed in the Tochi Daicho is also a bona fide purchaser for value. 3 ROP Intrm. 386, 390.

When a trustee sells property in breach of trust, a person who takes the property for value and without notice of the breach of trust holds the

property free of the trust. A person has notice of a breach of trust if 1) he knows or should know of the breach of trust, or 2) by statute or otherwise he is subjected to the same liabilities as though he knew or should have known of the breach of trust, even though in fact he did not know and had no reason to know of the breach of trust. 4 ROP Intrm. 89, 92.

A party seeking to establish his status as a bona fide purchaser has the burden of proving he acquired his interest in good faith, for value, and without notice of another's interest in the property. 5 ROP Intrm. 74, 77.

The general rule is that actual possession of real estate is constructive notice of the rights of the possessor and of all facts connected therewith which a reasonable inquiry, made of the possessor, would disclose. 5 ROP Intrm. 74, 78.

### • **CIVIL PROCEDURE**

**-Address** When a party does not leave an address where he can be reached with the court as required by ROP R. Civ. P. 11, the burden is on him, not the court, to monitor the status of the case. The court is not required to track down a party whose address is unknown. 7 ROP Intrm. 70, 72.

**-Affirmative Defenses** Failure to raise affirmative defenses, such as statute of limitations, in answer constitutes waiver of the defenses. Although party may consent to raise issues at trial that have not been raised in the pleadings. 1 ROP Intrm. 587, 589.

**-Amendments to Pleadings** Trial court did not abuse its discretion by refusing to allow party to amend its pleadings the day before a hearing scheduled to discuss a motion for judgment on the pleadings. 1 ROP Intrm. 634, 645.

**-Answer** Trial court did not commit reversible error in refusing to allow defendant to file answer where defendant was able to present her full defense at trial and thus was not prejudiced.

5 ROP Intrm. 81, 84.

**-Choice of Law** A party who intends to raise an issue concerning the law of a foreign country must generally give advance notice to the trial court of that intent; otherwise the trial court will consider only Palauan law. 5 ROP Intrm. 122, 129.

A party claiming that foreign law differs from Palauan law generally carries the burden of establishing the content of foreign law. In the absence of any proof of foreign law, the case will normally be decided in accordance with Palauan law. 5 ROP Intrm. 122, 129.

**-Costs** Costs awarded to President where summary judgment was granted in his favor on principles of sovereign immunity. 1 ROP Intrm. 188, 192.

Where losing party behaved inappropriately during litigation, trial court did not abuse discretion in requiring party to pay winning party's travel expenses and long distance telephone charges. 1 ROP Intrm. 569, 576-77.

Court refused to award costs of travel, facsimiles and phone calls incurred during the investigation of other party's failure to properly serve motion papers. 1 ROP Intrm. 718, 723.

Trial court did not abuse its discretion by taxing costs against a party whose claim was barred by the applicable statute of limitations. 3 ROP Intrm. 110, 115.

**-Counterclaim** Small Claims Rule 5 clarifies the procedure by which a small claims defendant may bring a counterclaim in excess of \$1,000, the jurisdictional maximum for the small claims court. Under Rule 5, any such counterclaim must be brought as a separate action in the Trial Division. The small claims action and the Trial Division action may then be consolidated at the Trial Division level. 5 ROP Intrm. 81, 84 n.2.

The assertion of a counterclaim in excess of the jurisdictional amount of a court of limited

jurisdiction does not oust the court of jurisdiction over the plaintiff's claim. A party wishing to assert such a counterclaim may proceed in one of two ways: First, the party may assert the counterclaim in the court of limited jurisdiction, but any relief granted will be confined to the jurisdictional limits of the court. Second, the counterclaim may be brought as a separate action in a court with proper jurisdiction. 5 ROP Intrm. 81, 85.

A counterclaim in excess of the jurisdictional limits of a court cannot be a compulsory counterclaim under ROP Rule of Civil Procedure 13(a) because the trial court could not have made a full adjudication thereon. No claim should be regarded as compulsory and barred for failure to plead it if the court cannot make an adjudication thereon. 5 ROP Intrm. 81, 85 n.3.

**-Declaratory Judgment** Declaratory judgment under Civil Rule 57 is an appropriate remedy for voiding an unconstitutional OEK resolution. 3 ROP Intrm. 351, 360.

**-Default Judgment** Mere inconvenience in complying with deadlines, without more, is not good cause to set aside a default judgment. 1 ROP Intrm. 569, 573.

Mere fact that a substantial amount of money is at stake does not alone require trial court to set aside default judgment. Defaults are sanctions that exists to remind litigants that they may not disregard the rules of the court without certain consequences. 1 ROP Intrm. 569, 576.

A default judgment may be entered without a hearing as long as a hearing on damages is scheduled for a later date. 3 ROP Intrm. 4, 7.

Three day notice requirement of Civil Rule 55(b)(2) only applies to the hearing on the application for judgment. 3 ROP Intrm. 4, 8.

The sanction of judgment by default, although severe, is within the discretion of the trial judge. 3 ROP Intrm. 4, 9.



Default judgments are disfavored; whenever it is reasonably possible, cases should be decided on their merits. Thus, where timely relief is sought from a default judgment and the movant has a meritorious defense, any doubt should be resolved in favor of the motion to set aside the judgment. 3 ROP Intrm. 4, 9.

Mere inconvenience in complying with deadlines, without more, is not good cause to set aside a default judgment. 3 ROP Intrm. 4, 11.

Default judgment need not be set aside where answer was filed after time permitted by the rules but before entry of default judgment. 3 ROP Intrm. 4, 11.

In deciding whether to set aside a default judgment, the court must keep in mind: 1) that Rule 60(b) must be applied liberally; 2) that default judgments are disfavored; and 3) any doubt should be resolved in favor of the motion to set aside the judgment. 7 ROP Intrm. 66, 67.

Where appellee was served with a complaint that was based on events that had transpired more than a decade before, the Trial Division did not err in finding that appellee's failure to file an answer was excusable neglect and that therefore the default judgment entered against appellee should be set aside. 7 ROP Intrm. 64, 68.

**-Discovery Protective Orders** It is clearly within the trial court's authority to issue a protective order preventing party from pursuing interrogatories under ROP R. Civ. Proc. 26(c). 5 ROP Intrm. 81, 83.

The trial court has wide discretion in managing discovery and issuing protective orders, and the Appellate Court will uphold a trial court's discovery decisions unless, in the totality of circumstances, its rulings are seen to be a gross abuse of discretion resulting in fundamental unfairness in the trial of the case. 5 ROP Intrm. 81, 83.

When considering the issuance of a

protective order under ROP R. Civ. Proc. 26(c), proper considerations in determining if requested discovery imposes an undue burden or expense include the complexity of and amount involved in the dispute. 5 ROP Intrm. 81, 83.

**-Forfeiture** Forfeiture is a harsh and oppressive remedy, generally not favored by courts; forfeiture statutes are strictly construed against forfeiture and in favor of the person whose property rights are at issue. 1 ROP Intrm. 429, 432-33.

Court set aside forfeiture order pertaining to a vessel that had entered Palauan waters and docked pursuant to valid entry permit, but had failed to depart upon expiration of permit. 1 ROP Intrm. 429, 437.

**-Injunctions** For a permanent injunction to issue, party seeking relief must demonstrate by a preponderance of the evidence that there is a reasonable probability, not a mere possibility, that an injury will occur. 3 ROP Intrm. 419, 424.

Injunction is the proper remedy to prevent an election or referendum where the procedure for the referendum has not been conformed to, or where the measure, if adopted, would be unconstitutional. 5 ROP Intrm. 273, 275.

The court will consider four factors in determining whether to grant a preliminary injunction: 1) that plaintiff has a substantial likelihood of success on the merits; 2) that a substantial threat exists that plaintiff will suffer irreparable harm if the injunction is not granted; 3) that the threatened injury to plaintiff outweighs the threatened harm the injunction will cause the defendant; and 4) where the public interest lies. The plaintiff bears the burden of persuasion on these four elements. 1 ROP Intrm. 65, 72; 5 ROP Intrm. 273, 276.

**-In Rem Jurisdiction** In an *in rem* forfeiture action, a party cannot divest Palauan courts of jurisdiction by transferring or selling the res. 4 ROP Intrm. 19, 21.

Nothing in the nature of *in rem* jurisdiction suggests a reason to treat it differently from *in personam* jurisdiction. 4 ROP Intrm. 19, 20.

In a true *in rem* proceeding, judgment may be binding on persons not specifically named as parties. In a quasi *in rem* proceeding, the court undertakes to determine the rights only of those named as parties. 5 ROP Intrm. 122, 126.

**-Interpretation of Rules of Civil Procedure** Counsel should not rely on informal interpretations of court rules, but should instead follow the methods provided by the rules to raise substantive and procedural questions for formal resolution by the court. 3 ROP Intrm. 98, 99-100.

**-Intervention** Intervention under Civil Rule 19(a) was not proper when intervenors did not have an interest in the subject matter of the lawsuit. 3 ROP Intrm. 247, 248 n.1.

**-Judgment on the Pleadings** Judgment on the pleadings pursuant to Rule 12(c) is appropriate when, after the pleadings are closed, the court determines that there is no material issue of fact presented and that one party is clearly entitled to judgment. 1 ROP Intrm. 634, 640.

**-Leave to Amend** Court has authority to grant motion for leave to amend pleading even after a party's case has been presented. 3 ROP Intrm. 364, 365.

Leave to amend a pleading should be denied where the amendment could not withstand a motion to dismiss. 4 ROP Intrm. 264, 266.

**-Long-Arm/Personal Jurisdiction** Performance of a single act in the forum state by a non-resident is sufficient contact with that state to meet the requirements of due process if the act gave rise to the cause of action at issue. Loading of plaintiff's coconut oil onto defendant's ship in Palau constituted sufficient minimum contacts with Palau to permit exercise of jurisdiction over defendant. 1 ROP Intrm. 57, 59.

Injunction issued by district court of Guam that proscribed any further legal proceeding by plaintiff against defendant had no extraterritorial effect. Such injunction would not bar suit by plaintiff against defendant in Palau. 1 ROP Intrm. 57, 60-61.

The sweep of 14 PNC § 142(a) is purposefully broad, allowing Palau's courts to exercise jurisdiction over corporations who engage in any business, even a single transaction, with respect to legal claims that result from that transaction. 4 ROP Intrm. 282, 287.

**-Master's Report** The effect to be given to the tardiness of a master's report is within the discretion of the trial court. Practical effect of the trial court's adoption of an untimely master's report was to grant a continuance for its submission. Although it would have been preferable for the trial judge to state explicitly that he was granting a continuance, failure to do so was harmless error. 5 ROP Intrm. 139, 141.

Upon the trial court's adoption of a master's report, such report becomes the trial court's findings of fact. 5 ROP Intrm. 139, 142.

**-Motions to Dismiss** Appellate Division reversed trial court order granting motion to dismiss where it believed neither party had done an adequate job of presenting the issues of the case. 2 ROP Intrm. 137, 142.

Court has jurisdiction and authority to dismiss a case *sua sponte*, but because of the extreme nature of such a sanction, plaintiff is entitled to notice and a hearing before such dismissal. 2 ROP Intrm. 189, 193.

When considering a motion to dismiss under Rule 12(b)(6) the trial court must treat all facts in the complaint as true and must construe the allegations in the light most favorable to the plaintiff. 3 ROP Intrm. 174, 180.

Trial court may dismiss an action on the pleadings *sua sponte* provided the parties have had an opportunity to be heard. 3 ROP Intrm.

225, 227.

Under appropriate circumstances the trial court has the power to dismiss a case *sua sponte*, but due process requires that it provide the parties notice and opportunity to be heard before doing so. 4 ROP Intrm. 172, 173.

Before making an involuntary dismissal of plaintiff's claims, the trial court must make findings of fact and conclusions of law. Such findings and conclusions are sufficient if they analyze the evidence, resolve the material issues of fact and apply the law to those facts. 6 ROP Intrm. 142, 143.

In determining a motion to dismiss under Rule 12(b)(6), all allegations in the complaint are accepted as true, and the Court's inquiry is limited to whether allegations are sufficient to make out the elements of a right to relief. 6 ROP Intrm. 317, 317.

***-Sanctions*** Sanctions may not be imposed under Rule 11 without notice and an opportunity to be heard. 4 ROP Intrm. 216, 222 n.5.

In considering whether to impose Rule 11 sanctions, the trial court should avoid hindsight and resolve all doubts in favor of the signer of the pleading. 4 ROP Intrm. 216, 222.

The inherent power of a court to sanction can be invoked even if procedural rules exist that sanction the same conduct. 5 ROP Intrm. 95, 104.

All aspects of the trial court's imposition of sanctions are reviewed under an abuse of discretion standard. 5 ROP Intrm. 105, 113.

It is an abuse of discretion for the trial court to impose sanctions with no explanation, or with an explanation that is so conclusory that the appellate court cannot review the substance of its decision. Nonetheless, even a perfunctory order may at times suffice if the award of sanctions was clearly appropriate from the face of the record. Likewise, a conclusory order may be enough where the parties on appeal have identified the

critical issues in dispute and meaningful review may be had. 5 ROP Intrm. 105, 113.

There are several possible sources of authority on which the trial court may rely in imposing a sanction. For example, the trial court may rely on Civil Procedure Rule 11, 14 P.N.C. § 702, its contempt of court powers or its inherent powers. 5 ROP Intrm. 105, 114.

A complaint is not frivolous (and therefore sanctionable) simply because it lacks sufficient merit to withstand a summary judgment motion. 5 ROP Intrm. 105, 114.

There are three basic procedural requirements for a trial court's *sua sponte* imposition of sanctions. First, before imposing sanctions on its own motion, the trial court should provide the party who faces potential sanctions with notice. Second, the trial court should provide the party with an opportunity to respond. Third, the trial court should ensure that the record is sufficient to allow for a meaningful review of the imposition of sanctions. 5 ROP Intrm. 105, 114.

***-Service*** Service by mail under Civil Rule 5(b) is complete upon mailing. 3 ROP Intrm. 229, 233.

Service pursuant to 14 PNC § 145, when accomplished by certified mail, occurs upon receipt. 4 ROP Intrm. 347, 353.

Absence of proof in the trial file that appellant was served with notice of trial does not entitle appellant to a new trial when appellant has not alleged that he lacked notice of trial and all indications are that he had notice of the trial and simply chose not to appear. 7 ROP Intrm. 70, 72.

***-Special Order No. 2*** Special Order No. 2, requiring that Trial Division decisions be entered within 60 days of submission, does not apply to motions. 3 ROP Intrm. 334, 334.

***-Summary Judgment*** The function of a summary judgment motion is to determine whether there is a material issue of fact to be tried; if there is none,



the court may proceed to determine the controversy as a matter of law. 1 ROP Intrm. 90, 90.

A motion for summary judgment alleges that all matters of fact are settled and that the Court need only determine the law of the case and grant final judgment. 1 ROP Intrm. 261, 262.

Affidavits submitted in support of Rule 56 motion for summary judgment must be made on the basis of personal knowledge, must set forth facts that would be admissible in evidence, and must show that the affiant is competent to testify on the matters stated therein. 2 ROP Intrm. 277, 283.

When considering a summary judgment motion, all doubts are to be resolved against the moving party. The opponent to summary judgment need only show that there is sufficient evidence supporting the claimed factual dispute to require a judge to resolve the parties' differing versions of the truth. The affidavits of the moving party are to be strictly construed, and those of the opposing party liberally construed. The opponent's version of any disputed fact is to be presumed correct. 4 ROP Intrm. 43, 51.

When the only question presented is whether the non-moving party adequately responded to a motion for summary judgment, a denial of a motion for summary judgment is not reviewable on appeal following a trial on the merits. 4 ROP Intrm. 163, 166.

The Appellate Division reviews the trial court's grant of summary judgment *de novo*. 5 ROP Intrm. 91, 92.

Rule 56(f) provides the party opposing a motion for summary judgment with a procedural mechanism to request that the court delay its ruling on the motion until the party can obtain the necessary discovery to respond to the motion. Rule 56(f) requires the party to submit an affidavit to the court stating the reasons why the party cannot present the facts essential to justify the party's opposition to the motion. 5 ROP Intrm.

105, 108.

The standard of review for a trial court's ruling on a Rule 56(f) motion is abuse of discretion. 5 ROP Intrm. 105, 108.

Rule 56(f) should be applied liberally when the party invoking it has complied with the dictates of the Rule, and has acted with great diligence and good faith. 5 ROP Intrm. 105, 108.

To comply with the dictates of Rule 56(f), it is not enough for a party to aver that the information necessary to defeat the summary judgment motion is in the hands of others. In addition, the moving party should specify what facts he intends to discover and how such facts support his opposition to the summary judgment motion. The moving party's affidavit should also specify what actions to obtain the discovery have been taken and what has frustrated the efforts. 5 ROP Intrm. 105, 108.

Summary judgment is appropriate against the party who fails to make an evidentiary showing sufficient to establish a factual question as to the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. 5 ROP Intrm. 105, 109.

For a party to defeat a properly supported motion for summary judgment made against it based on the absence of an essential element on which the nonmoving party will bear the burden of proof at trial, the nonmoving party must offer evidence to dispute the facts advanced by the movant and show that there is a genuine issue of material fact to be resolved by the fact finder. The mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment. 5 ROP Intrm. 105, 110; 5 ROP Intrm. 337, 338.

To create a "genuine" issue of fact under Rule 56(c), the evidence offered by the nonmovant must be sufficient to support a trier of fact's finding in the nonmovant's favor on the disputed fact. If the evidence is merely colorable,

or is not significantly probative, summary judgment may be granted. 5 ROP Intrm. 105, 110.

A factual dispute is "material," as that term is used in Rule 56(c), if it must be resolved by the fact finder before the fact finder can determine if the essential element challenged by the movant exists. 5 ROP Intrm. 105, 110 & n.3.

Oral motions for summary judgment are not permitted. 6 ROP Intrm. 245, 251.

***-Third Party Complaint*** Party waived any objection to being brought into a suit as a third party defendant by not raising an objection in his pleadings or in a motion before the trial court. When a party assumes the role of a proper party, he may not afterward object that he was not such. 4 ROP Intrm. 43, 53.

#### ● **CIVIL SERVICE**

Legislative history of PNC Title 33 indicates that the National Civil Service Board was not intended to review personnel grievances but only to promulgate regulations covering the system; thus, NCSB Rules 11.5, 11.6(d), 11.9(a) and (b), 11.10, and 11.12 are void. 3 ROP Intrm. 61, 67.

Adjudicative proceedings provided for in the Administrative Procedures Act do not apply to dismissal, demotions, and suspensions made pursuant to PNC Title 33. The legislature intended Title 33 grievances to be heard by a court and not an administrative agency. 3 ROP Intrm. 61, 64.

Thirty day filing period for filing a civil action for reinstatement tolled due to employee's reasonable reliance on regulations implying that an employee need not file a civil action until after he exhausts his administrative remedies. 4 ROP Intrm. 103, 106.

A dismissed employee does not have the option of requesting an administrative hearing; if

he desires review of his dismissal, suspension or demotion his only choice is to file an action in the Trial Division. 4 ROP Intrm. 103, 106 n.1.

In determining whether an employee was properly dismissed, suspended, or demoted, trial court is not bound by the findings of an impartial hearing officer. 4 ROP Intrm. 103, 109.

Civil service employees may not be transferred. 5 ROP Intrm. 69.

By openly defying a supervisor's orders, an employee is guilty of insubordination, which is punishable by termination pursuant to National Public Service System Rule 11.4(c). 5 ROP Intrm. 280, 281.

#### ● **COMMON LAW**

The "common law" comprises the body of those principles and rules of actions, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming and enforcing such usages and customs. 3 ROP Intrm. 174, 189.

#### ● **CONSPIRACY**

To constitute a civil conspiracy, there must be two or more persons, an object to be accomplished, a meeting of the minds on the object or course of action, one or more unlawful acts and damages as a proximate result thereof. 1 ROP Intrm. 320, 326.

A plaintiff may prove a civil conspiracy by direct evidence of an actual agreement or by the use of circumstantial evidence. 1 ROP Intrm. 320, 326.



## • **CONSTITUTIONAL LAW**

**-Amendments** Art. XIV, § 1 procedures constitute exclusive process by which amendments to Constitution may be proposed. 1 ROP Intrm. 521, 532.

**-Appointments** Constitutional duty of President to appoint Public Auditor is mandatory and ministerial in nature; appointment should have been made before the end of the President's first year in office so that Public Auditor could make annual report to OEK. 1 ROP Intrm. 90, 93.

**-Citizenship** Palauan citizenship is based on blood rather than birth on Palauan soil. Palau Constitution provides that a person born of parents, one or more of whom are citizens of Palau, is a citizen of Palau by birth, and shall remain a citizen of Palau so long as the person is not or does not become a citizen of any other nation. Palau allows dual citizenship only for people under age 21. Such a citizen of Palau who is a citizen of another nation must renounce his citizenship of the other nation within three years after his eighteenth birthday. If he fails to comply with this requirement, he is deprived of Palauan citizenship. 5 ROP Intrm. 122, 127-28.

**-Constitutionality of Executive Orders** An executive order must be supported by the Constitution or an act of the legislature. 5 ROP Intrm. 273, 278.

**-Constitutionality of Statutes** A statute will be construed, if reasonably possible, so as not to be inconsistent with the Constitution, but when a statute clearly violates the Constitution, the court must give effect to the language of the Constitution without regard to the consequences. 3 ROP Intrm. 61, 64.

The legislature is presumed to intend to pass a valid act. 3 ROP Intrm. 61, 66; 5 ROP Intrm. 131, 133; 5 ROP Intrm. 300, 302.

A law should be construed to sustain its constitutionality whenever possible, and to give it efficient operation and effect as a whole. 3 ROP

Intrm. 61, 66; 5 ROP Intrm. 131, 133.

Invalid parts of a statute are to be excised and the remainder enforced. 3 ROP Intrm. 61, 66.

Entity that owes its very existence to a statute cannot challenge the constitutionality of that statute. 5 ROP Intrm. 305, 307.

It is not the role of the legislature to defend the laws it has passed. 5 ROP Intrm. 344, 345.

**-Due Process** Doctrine of due process has two components: procedural and substantive. 1 ROP Intrm. 206, 209.

Under due process clause, House of Delegates member was entitled to notice and an opportunity to be heard prior to vote on resolution expelling him. 3 ROP Intrm. 351, 356-57.

Where factual issues are not in dispute, the denial of due process is a pure question of law that this Court reviews *de novo*. 5 ROP Intrm. 19, 21.

**-Equal Protection** It would be a violation of the Equal Protection clause if statute of limitations for filing appeal from Land Commission decision began to run from the date determinations of ownership were issued; appeal date must run from time litigant receives notice of the determination because otherwise some litigants would have a full 120 days and others would have far less. 1 ROP Intrm. 513A, 513C.

Palauan courts are not bound by U.S. court decisions regarding equal protection, but may look to such decisions for guidance. 3 ROP Intrm. 174, 181 & n.1.

Equal protection clause does not forbid the legislature from making policy choices and passing laws that may benefit one person over another if it acts reasonably and does not discriminate on the basis of any of the suspect classifications contained in the clause. 3 ROP Intrm. 386, 392 n.2.

Cases involving ballot language and voter education are properly understood as “election contests” and not “right to vote” or “equal protection” actions. 3 ROP Intrm. 398, 402 n.4.

**-Excessive Fines** Forfeiture of vessel worth \$4,000,000 for overstaying its entry permit might be excessive fine imposed in violation of Constitution. 1 ROP Intrm. 429, 434.

**-Federalism** Unlike the United States Constitution, the Palau Constitution grants only certain limited powers to the States; all other powers are retained by the National Government. 2 ROP Intrm. 201, 207.

Palau Constitution does not require states to establish system of government in which all key or public officials are elected. 6 ROP Intrm. 74, 77.

The Bureau of Public Safety, as part of the national government, has the right to enforce the laws of the states. 6 ROP Intrm. 131, 133.

Airai State public law that permitted the governor to choose the chief title holder of Airai was invalid because it was in violation of 35 PNC § 215(b) and contravened Palauan custom. 6 ROP Intrm. 198, 201.

**-Impoundment of Public Funds** President has constitutional authority to impound public funds. Such impoundment violates the due process or equal protection clauses only if exercised in arbitrary or capricious manner or if invidiously discriminatory. 1 ROP Intrm. 206, 211.

**-Interpretation of Constitutional Provisions** Where the meaning of a constitutional provision is ambiguous or susceptible to different interpretations, the Court may resort to preceding facts, surrounding circumstances and other forms of extrinsic evidence to determine the framers’ intent. 1 ROP Intrm. 1, 5; 5 ROP Intrm. 300, 302.

Function of court in interpreting Constitution is to find that all sections and provisions are in harmony. Task of court is to

bring discordant sections into harmony as much as possible. 1 ROP Intrm. 521, 544-45.

Resolution of constitutional issues is the responsibility of Judiciary as the ultimate interpreter of the Constitution. 3 ROP Intrm. 53, 55.

Mandate of 1 PNC § 303, that rules of the common law as expressed in the Restatements or as generally understood and applied in the United States, does not apply to constitutional or statutory interpretation. 3 ROP Intrm. 174, 188-89.

It is incorrect to rely on language in an early draft of a constitutional provision as an interpretational guide when such language was ultimately deleted. 3 ROP Intrm. 426, 434.

Court followed statutory definition of “resident” to interpret the same term in Article IX, Section 6 of the Constitution. A practical construction by the legislature of a provision of the Constitution is entitled to great weight and ought not be lightly disregarded. 3 ROP Intrm. 426, 434-35.

An act passed by the first legislature assembled under the Constitution, many of whose members had taken part in framing that instrument, is contemporaneous evidence of a Constitutional provision's true meaning. 3 ROP Intrm. 426, 435.

The guiding principle of constitutional construction is that the intent of the framers must be given effect. 5 ROP Intrm. 300, 302.

Palauan courts may turn to the records and committee reports of the Constitutional Convention to divine the meaning of constitutional language. 5 ROP Intrm. 300, 302.

Where there is no controlling language in the Constitution, the Court must look to the intent of the framers to give effect to the Constitution. 6 ROP Intrm. 91, 93; 6 ROP Intrm. 192, 194.

In analyzing intent of the framers, court must presume that the framers sought a reasonable result. 6 ROP Intrm. 91, 93.

In interpreting Palauan Constitution, the Court typically looks to decisions of the United States Supreme Court for helpful U.S. authority, but it may also look to 50 state court systems, and cases interpreting the state constitutions. 6 ROP Intrm. 305, 312.

A validly enacted statute is presumed to be constitutional, and should be construed to sustain its constitutionality whenever possible. 6 ROP Intrm. 368, 371.

**Judicial Review** The Court is the ultimate interpreter of the Constitution. 1 ROP Intrm. 154, 160; 1 ROP Intrm. 708, 713; 4 ROP Intrm. 1, 5; 5 ROP Intrm. 300, 301.

Court will consider the opinion of the executive branch of the U.S. government regarding the meaning of the trusteeship agreement, but it is not bound by such a determination. 1 ROP Intrm. 154, 160.

It is the Court's responsibility to say what the law is. 1 ROP Intrm. 664, 674; 3 ROP Intrm. 53, 55.

It is the province and duty of the Court to determine whether the powers of any branch of the government have been exercised in conformity to the Constitution. 5 ROP Intrm. 300, 302.

**Justiciability** Suit filed by the President against the Senate for declaratory ruling regarding the constitutional duties of the President and Vice-President is justiciable; it is not a "political question." 1 ROP Intrm. 1, 4-5.

Claims regarding implementation of Compact of Free Association were ripe for adjudication because if Court failed to consider them and Compact went into effect, claims would be lost forever. 1 ROP Intrm. 333, 336.

Whether a state constitution conforms to the Palau Constitution is a justiciable issue; it is not a political question. 1 ROP Intrm. 664, 674.

Case by expelled delegate to the OEK against the 2<sup>nd</sup> OEK was dismissed as moot because 2<sup>nd</sup> OEK had terminated before appeal was heard. 1 ROP Intrm. 708, 711.

Whether a state government complies with the Constitution's Guaranty Clause is a justiciable issue. 3 ROP Intrm. 53, 55.

Appellate Division will not entertain speculative inquiries of matters that lack concrete factual situations, fully developed and properly presented for determination. 3 ROP Intrm. 127, 128-29.

Court has jurisdiction to consider whether the legislature's proceedings are in conformity with the Constitution. 3 ROP Intrm. 351, 357.

Whether legislature expelled a member without notice is a justiciable issue. 3 ROP Intrm. 351, 358.

To determine whether a claim is justiciable, court must determine whether the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be judicially molded. 3 ROP Intrm. 351, 359.

Courts will not decide abstract questions presented by persons who bear only a hypothetical burden presented by a statute. 3 ROP Intrm. 419, 423.

Court has jurisdiction to hear action challenging the qualifications of a candidate elected to and seated in the OEK. 3 ROP Intrm. 426, 430-31.

Trial court adopted Baker v. Carr formulation of the "political question" doctrine. 4 ROP Intrm. 264, 272.

Typically, an action challenging the



constitutionality of a law is brought against the person or body charged with carrying it out. 5 ROP Intrm. 344, 346.

**-Right to Travel** Palauan citizens' "right to travel," as encompassed in Article IV, § 9 of Constitution, is not abridged by Koror State curfew. 6 ROP Intrm. 131, 133.

**-Right to Vote** Palau Constitution requires state constitutions to provide right to vote by secret written ballot for key public officials of state government. 1 ROP Intrm. 664, 675-76.

**-Self-Executing Provisions** In the absence of an express provision, the question of whether a constitutional provision is self-executing is one of construction; the most important test for determining whether a constitutional provision is self-executing is the intent of the framers who drafted the provision. 3 ROP Intrm. 385A, 385H; 5 ROP 273, 277.

Article XIV, Section 1(b) of the Constitution is self-executing to the point of setting petitioners' rights in motion, but it is not self-executing beyond this point as it does not provide the mechanics for carrying out and funding a vote once a qualified petition has been brought. 3 ROP Intrm. 385A, 385J n.1.

Courts presume that constitutional provisions are self-executing, and will decline to give immediate effect to a constitutional provision in only two instances: 1) Where the court cannot determine the scope or nature of the right from the language of the provision even with recourse to the full panoply of interpretive devices which courts normally use to divine the meaning of constitutional language; or 2) Where the provision reflects an intention of the framers that it not be implemented until legislative or other action is taken. 4 ROP Intrm. 1, 4.

The initiative clause of the Constitution, Article XIV, Section 1(b), is self-executing. 4 ROP Intrm. 1, 7.

**-Separation of Powers** It is the responsibility of

the judiciary to determine ultimately what the law is, notwithstanding the respect each branch must accord the others. 1 ROP Intrm. 1, 5.

It is emphatically the province and duty of the judicial branch to say what the law is. 1 ROP Intrm. 90, 91.

The executive branch cannot discharge the functions of the legislature through conduct that is tantamount to a repeal, enactment, variance, or enlargement of legislation. 3 ROP Intrm. 314, 320-21.

**-Special Judges** Use of special judges in murder cases does not violate Palau Constitution. 1 ROP Intrm. 274, 276; 2 ROP Intrm. 227, 232.

**-Special Prosecutor** The law establishing the Office of the Special Prosecutor does not violate the Constitution's grant of executive powers to the President. The provision stating that the Special Prosecutor may be removed only for "good cause" is constitutional. 7 ROP Intrm. 57, 59.

**-Speech and Debate Clause** OEK members who voted to expel member without notice are immune from suit pursuant to the Constitution's speech and debate clause (Article IX, Section 9), but the speech and debate clause does not protect OEK employees. 3 ROP Intrm. 351, 361.

**-Standing** Senate has legal capacity to sue President for purpose of enforcing a substantive right existing under the Constitution or laws of Palau. 1 ROP Intrm. 90, 94.

Palauan voters had standing to sue ROP and President regarding the implementation and referendum on the Compact because their due process rights were at issue. 1 ROP Intrm. 333, 336.

Registered, but absentee, voters has standing to sue regarding the legality of balloting procedures. 1 ROP Intrm. 406, 412.

Member of the public has standing to sue to enforce the rights of the public even though his



injury is not different in kind from the public's generally, if he can show that he has suffered or will suffer some injury in fact from the contested action. 1 ROP Intrm. 634, 640.

Only a slight injury need be alleged to satisfy standing requirement. 5 ROP Intrm. 63, 67.

Plaintiff has no standing to assert a purely hypothetical claim. 5 ROP Intrm. 91, 93.

Political subdivisions of the state lack standing to challenge the constitutionality of state laws directing or involving their performance. 5 ROP Intrm. 344, 347.

Senate has standing to bring suit against members of the executive branch for allegedly spending funds that the OEK had not appropriated. 7 ROP Intrm. 8, 11.

**-State Constitutions** 5 PNC § 105 requires state constitutions to be approved in a referendum by a majority of votes cast. 1 ROP Intrm. 664, 672-73.

Airai State Constitution is invalid because it failed confirmation in a referendum. 1 ROP Intrm. 664, 680.

Airai State Governor is not mandated by Article VII, Section 13 of state constitution to take action on recall petition because that article and section is not self-executing and requires enabling legislation to be put into effect. 2 ROP Intrm. 201, 205.

Under Koror State Constitution, approval of House of Traditional Leaders is only necessary for legislative bills, not constitutional amendments. 6 ROP Intrm. 74, 78.

Ngardmau State public law that permitted legislature to appoint membership of Ngardmau Council of Chiefs is invalid under the Ngardmau State Constitution because it diminishes the role the state constitution mandates for the traditional chiefs. 6 ROP Intrm. 192, 195.

Airai State Constitution is not in violation of the Palau Constitution; it assigns a sufficiently important role to Airai State traditional leaders. 6 ROP Intrm. 198, 204.

**-Supremacy** Constitution is the supreme law of the land and prevails over any statutes passed by the OEK. Statute passed by the OEK concerning residency requirements for Peleliu elections declared null and void because it conflicts with Art. VII of Palau Constitution, which dictates that each state shall prescribe residency requirements. 1 ROP Intrm. 62, 63.

Palau is under the administration of two governments. The will of the people is expressed in the Palau Constitution, yet Palau remains part of the Trust Territory, leaving the U.S. with obligations under the terms of the Trusteeship Agreement. The relationship between the U.S. and the peoples of the Trust Territory is a fiduciary one in which the interests of the inhabitants of the territory become paramount. 1 ROP Intrm. 154, 157.

While Palau is under Trust Territory, it does not enjoy absolute sovereignty. 1 ROP Intrm. 185, 186.

Constitution is supreme in Palau and takes precedence over the Compact or any other international agreement. 1 ROP Intrm. 333, 337; 1 ROP Intrm. 521, 539.

**-Takings** Party may not establish a "taking" under Article XIII, Section 7 of the Constitution simply by showing that it has been denied the ability to exploit a property interest that it heretofore had believed was available for development. 3 ROP Intrm. 419, 422.

In deciding whether a "taking" has occurred, court will focus on both the character of the governmental action and the nature and extent of interference with rights. 3 ROP Intrm. 419, 422-23.

In the United States, to satisfy the constitutional mandate of the Fifth Amendment,

“just compensation” includes a payment of interest. 6 ROP Intrm. 267, 272 n.3.

**-Tax on Land** Article XIII, Section 9 of the Constitution does not prohibit taxes on revenue derived from land. 3 ROP Intrm. 314, 319.

**-Tinted Windshields** Law regulating tinted windshields on vehicles is rationally related to public safety and does not violate due process or equal protection. 6 ROP Intrm. 368, 369.

**-Vagueness** Anti-gambling statutes are not unconstitutionally vague. 1 ROP Intrm. 417, 424.

**-Witnesses/Full Opportunity to Examine** Whether the Palau constitutional provision guaranteeing the right to a “full opportunity to examine all witnesses” is more expansive than the U.S. constitutional guarantee of the right to cross-examine witnesses is an open question. 5 ROP Intrm. 159, 171.

Prosecution’s failure to produce witness statements does not violate a criminal defendant’s constitutional right to a full opportunity to examine all witnesses. 5 ROP Intrm. 159, 171-72.

## ● **CONTEMPT OF COURT**

A court’s contempt power derives from statute and court rule, as well as from the inherent powers of the court; but a court’s inherent authority to sanction for contempt should only be used when the remedies provided by statute and court rule are not sufficient to adequately sanction the behavior of a party or counsel. 4 ROP Intrm. 216, 218, 221.

A civil contempt proceeding is primarily coercive because a contemnor is able to avoid punishment through compliance. Criminal contempt, on the other hand, is primarily punitive because a court imposes an unconditional sentence to punish the contemnor for disrespecting the court’s dignity or disobeying its order. 4 ROP Intrm. 216, 219.

The elements of civil contempt include the existence of a court order, actual or constructive notice of the order, and a violation that was neither accidental nor unintentional. Each of these elements must be established beyond a reasonable doubt. 4 ROP Intrm. 216, 219.

A finding of contempt for violating a court order must be based on an order that is clear and unambiguous. The order must be one that leaves no doubt or uncertainty, and it must be express rather than merely implied. All ambiguities will be resolved in favor of the person charged with contempt. 4 ROP Intrm. 216, 220.

Appellate Division will review the trial court’s exercise of its inherent power to issue either criminal or civil contempt citations under the abuse of discretion standard. 5 ROP. Intrm. 95, 98.

Where a trial court imposes a sanction to punish for conduct, as opposed to prompting compliance with a court directive, the contempt order is properly considered as a criminal matter. 5 ROP Intrm. 95, 98.

The inherent power of the court to impose contempt sanctions extends to punish an attorney who has acted in bad faith, vexatiously, wantonly, or for oppressive reasons. 5 ROP Intrm. 95, 100.

Where indirect contempt of court occurs outside the courtroom and serious sanctions are imposed, the trial court may have an obligation to invoke the procedural protections used in the criminal process. For a discrete category of indirect contempts, civil procedural protections may be insufficient. For this category, criminal procedural protections such as the right to counsel and proof beyond a reasonable doubt are both necessary and appropriate to protect the due process rights of parties and prevent the arbitrary exercise of judicial power. 5 ROP Intrm. 95, 101.

Although the legislature may certainly limit the scope of its contempt legislation, such a limitation does not affect the scope of the Trial

Division's inherent authority to punish or rectify contumacious behavior. 5 ROP Intrm. 95, 104.

## • **CONTRACTS**

**-Ambiguity** Whether contract is ambiguous to extent that would permit extrinsic or parol evidence is a question of law. 2 ROP Intrm. 211, 217.

**-Bailment** To terminate a bailment, bailee must return the property to bailor or put bailor on notice that he should remove the property. 1 ROP Intrm. 85, 86.

Bailee is liable for losses incurred as a result of placement of bailed truck in neighboring public lot for junked cars, exposing truck to damage. 1 ROP Intrm. 85, 87.

**-Compromise** Compromises, like other agreements, are ordinarily based upon the assumption by both parties that certain facts although not all the facts as claimed by one side exist. 1 ROP Intrm. 234, 236.

**-Employment Contracts** Employer who failed to pay his foreign workers in accordance with employment contract is liable for back wages and return airfare for the workers. 1 ROP Intrm. 16, 20.

Employee is entitled to indemnification for loss of wages when employer does not pay employee in accordance with Palauan employment laws. 1 ROP Intrm. 118, 118.

Employer, in accepting benefits under grant of authority to do business in Palau, effectively contracted with Republic to adhere to wages and benefits scale for employees as provided by the Republic's employment statutes. 1 ROP Intrm. 118, 121.

If employment contract provides an employee the right to avoid termination by correcting defaults upon notice thereof, employer must inform employee of default and give her

time to cure before terminating her. 1 ROP Intrm. 320, 324-25.

Former Trust Territory employee had no right to free housing even though his original contract provided housing because his current contract was silent on the matter and he had been entitled to housing only by virtue of former Trust Territory regulations. Personnel Action Form did not establish independent rights. 1 ROP Intrm. 658, 662-63.

Appellee's employment contract with House of Delegates superseded statutory employment guidelines. 1 ROP Intrm. 513E, 513K.

Letter from employee to employer informing him of her intention to resign was a voluntary waiver of her contractual right to cure defects in her work and receive notice of her termination. 1 ROP Intrm. 513E, 513L.

Government could lawfully terminate employment when no valid employment contract existed and the oral terms of employment, memorialized in the Personnel Action Form, allowed for termination at will. 2 ROP Intrm. 72, 77.

A contract for services that does not specify the duration of the contract is terminable at will by either party at any time. 2 ROP Intrm. 211, 221.

**-Fraud** Fraud cannot be founded on suspicion, innuendo, or conjecture. 4 ROP Intrm. 23, 25.

If a party to a transaction misrepresents the contents of a document, then the deceived party is excused from his normal obligation of reading the document or asking that it be read to him. 4 ROP Intrm. 163, 166.

A necessary element of a claim for fraud is reliance on the fraudulent misrepresentation. 5 ROP Intrm. 122, 127.



**-Formation** The formation of a contract requires a bargain in which there is a manifestation of mutual assent to the exchange and a consideration. 4 ROP Intrm. 37, 40.

Contracts may be formed by oral promises or by the conduct of the parties. 4 ROP Intrm. 37, 41.

An "implied in fact" contract is founded upon a meeting of the minds, which although not embodied in an express contract, is inferred from conduct of the parties showing their tacit understanding. 5 ROP Intrm. 216, 218.

Where an agreement involves repeated occasions for performance by either party, any course of performance accepted or acquiesced in without objection is given great weight in the interpretation of the agreement. 5 ROP Intrm. 216, 218.

Contract was effective to rescind an earlier warranty deed where it called for the return of the earlier payment in exchange for the land and the money was returned. The contract was not merely a receipt. 7 ROP Intrm. 53, 54.

**-Government Contracts** Contract that required all goods to be supplied by the government is a contract for services and therefore did not require the government to offer the contract for competitive bidding. 1 ROP Intrm. 634, 644.

The Republic of Palau is prohibited from entering into any contract that purports to obligate public funds without certification that funds are available for the contract. 1 ROP Intrm. 633A, 633B.

**-Guaranty** A transaction of guaranty involves at least three parties: a promisor, a creditor (the person to whom the promise is made) and a debtor. The usual guaranty situation arises when the promisor makes a promise to the creditor either as to the solvency of the debtor or as to payment of the debt. 2 ROP Intrm. 7, 19-20.

**-Interference with Contract** To prevail on a

claim for intentional interference with contract, claimant must prove by a preponderance of the evidence seven elements. *First*, there must be a valid, enforceable contract between the claimant and a third-party. *Second*, defendant must have knowledge of the existence of the contract, or knowledge of facts which should lead the defendant to inquire about the existence of the contract. *Third*, the third-party must actually breach the contract with the claimant. *Fourth*, defendant's action must have been the proximate cause of the third-party's breach of the contract. *Fifth*, at the time of defendant's action, defendant must have intended his or her action to induce the third-party to breach the contract. *Sixth*, defendant's actions must have been improper. *Seventh*, claimant must have suffered a pecuniary loss as a result of the breach by the third-party. 5 ROP Intrm. 105, 111.

In determining whether an actor's conduct in intentionally interfering with a contract or prospective contractual relation of another is improper or not, consideration is given to (a) the nature of the actor's conduct, (b) the actor's motive, (c) the interests of the other with which the actor's conduct interferes, (d) the interests sought to be advanced by the actor, (e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other, (f) the proximity or remoteness of the actor's conduct to the interference and (g) the relations between the parties. 5 ROP Intrm. 105, 111 n.2.

**-Interpretation** Construction and legal effect to be given unambiguous contract is a question of law even though ultimate inquiry in the interpretive process is the intent of the parties, an issue ordinarily considered inherently factual. 1 ROP Intrm. 634, 644; 2 ROP Intrm. 211, 217.

When interpreting agreements, courts give words their ordinary and plain meaning unless all parties have clearly intended otherwise. 4 ROP Intrm. 169, 170.

Trial court abdicated its role as finder of fact by concluding that the language barrier between the parties and the lack of contractual



documentation would make any finding regarding the intention of the parties speculative. 4 ROP Intrm. 37, 41-42.

**-“Meeting of the Minds”** Trial court erred in construing “meeting of the minds” as a contract requirement distinct from offer and acceptance. The correct approach is to infer manifestation of mutual assent from the offer and acceptance, absent any mistake or ambiguity. An enforceable contract does not require a “meeting of the minds.” 4 ROP Intrm. 37, 40-41.

In construing contractual language, courts do not attempt to ascertain the mental processes of the parties but rather look to the actual language used. A party's subjective, undisclosed intent is immaterial to the interpretation of a contract. 4 ROP Intrm. 169, 170-71.

**-Oral Agreements** When parties put their agreement in writing, all previous oral agreements merge in the writing and a contract as written cannot be modified or changed by parole evidence, in the absence of mistake or fraud. 1 ROP Intrm. 320, 325 n.1.

**-Rescission** Before a court will rescind a contract, it must find that the parties made a mutual mistake. Rescission involves a mutual release of further obligations. 1 ROP Intrm. 214, 224.

**-Settlement Agreements** A valid compromise and settlement is final, conclusive and binding upon the parties and upon those who knowingly accept the benefits of the settlement. 1 ROP Intrm. 12, 14.

A party's offer to convey disputed property in exchange for the dismissal of a lawsuit plus a six month period to negotiate a reconveyance became a valid contract once the suit was dismissed and negotiations began. 7 ROP Intrm. 36, 37.

**-Statute of Frauds** Statute of frauds does not bar a suit based on reliance on an oral agreement when the legality of the agreement is not at issue. 1 ROP Intrm. 261, 262.

**-Substantial Performance** Doctrine of substantial performance is an equitable doctrine that allows a contractor who has substantially completed a contract to sue on the contract rather than being relegated to a cause of action for quantum meruit. Contractor is entitled to recover the contract price minus deductions for any defects or incompletions. 2 ROP Intrm. 7, 13-15.

**-Time of Payment** Unless a contract indicates otherwise, payment is due when the services have been rendered. 4 ROP Intrm. 140, 141.

## ● CORPORATIONS

**-Agency** Where corporation was aware of its agent's actions in incurring debt but did nothing to remedy purportedly unauthorized acts of agents, conduct of agent deemed to be ratified by corporation. 1 ROP Intrm. 306, 309.

**-Audit** Evidence of discrepancies between in-house and outside audits was insufficient to show any misdealing. 1 ROP Intrm. 608, 614.

**-By-Laws** Actions taken by shareholders at meeting that did not comply with by-laws concerning notice and quorum were invalid. 1 ROP Intrm. 608, 615-16.

**-Corporate Existence** Company that holds itself out to public as corporation and incurs debts in its corporate name is estopped from denying its corporate existence to escape liability in an action brought against it. 1 ROP Intrm. 306, 309.

**-De Facto Corporation** Corporation without valid legal existence may nonetheless have corporation status in fact where the following elements are present: 1) the existence of a law under which the entity may validly incorporate; 2) a colorable attempt on the part of the corporation to comply with the law; and 3) some use or exercise of the corporate privileges. 1 ROP Intrm. 306, 308.

**-Derivative Action** Purpose of a derivative action is to allow shareholders to protect the rights of the

corporation where the corporation fails or refuses to take appropriate action for its own protection. Corporation itself should not be named as a party plaintiff. 1 ROP Intrm. 608, 611.

**-Fiduciary Duty** Officers and directors of corporation owe fiduciary duty to corporation. 1 ROP Intrm. 608, 612.

**-Government Agencies** Public corporation that functions as an instrumentality of the government is a government agency. College of Micronesia is a government agency. 1 ROP Intrm. 397, 399-400.

**-Inspection of Corporate Records** Shareholders enjoy a limited right to inspect the records of the corporation. 5 ROP Intrm. 337, 337.

Inspection of corporate records must be exercised at a proper and reasonable time and place, and for a proper purpose. 5 ROP Intrm. 337, 338.

**-Municipal Corporations** Essentials of a de facto municipal corporation are: a valid statute authorizing incorporation, organization in good faith under such statute, a colorable compliance with such statute and an assumption of corporate powers. 6 ROP Intrm. 57, 60.

**-Ultra Vires Acts** Corporation may not enter into ultra vires contracts; ultra vires contracts are agreements that require corporation to use powers it does not legally have. 1 ROP Intrm. 214, 223.

## ● COURTS

**-Creation** The Trial Division of the Supreme Court is not a creature of the legislative will. Rather, it is an entity created by Art. X, § 1 of the Constitution. Accordingly, unlike United States District Courts, the Trial Division is a creation of the Constitution, not the national legislature. 5 ROP Intrm. 95, 103-04.

**-Definition** Whether a body is a court depends upon its substance and not its name. 3 ROP

Intrm. 159, 162-63.

A court is a body in government to which the public administration of justice is delegated, being a tribunal officially assembled under authority of law, at the appropriate time and place, for the administration of justice, through which the state enforces its sovereign rights and powers, and consisting in its jurisdiction and functions and not its title or name. 3 ROP Intrm. 159, 162.

**-Docket Management** A busy trial judge, confronted with competing demands on his time, and with inevitable scheduling difficulties, is entrusted with wide latitude in setting his own calendar. 3 ROP Intrm. 336, 338.

In the ordinary course, Appellate Division will not intervene in a trial judge's management of a particular case or of his caseload as a whole, absent a statement or clear showing that he intends to abdicate his judicial responsibilities. 3 ROP Intrm. 336, 338.

**-Inherent Powers** While the Trust Territory remains in existence, Palau National Judiciary may not implement any provisions in conflict with, or limited by, any treaty, law or regulation of the United States or the Trust Agreement, or which allows for the violation of rights accorded a citizen of the Trust Territory by the Trust Territory Bill of Rights. 1 ROP Intrm. 254, 259.

The inherent powers of the Trial Division are derived from the Constitution, not the national legislature. 5 ROP Intrm. 95, 104.

The inherent power of a court can be invoked even if procedural rules exist which sanction the same conduct. 5 ROP Intrm. 95, 104.

Because a court's inherent powers are so potent, they should be exercised with restraint and discretion. 5 ROP Intrm. 95, 104.

The Supreme Court does not render advisory opinions. 6 ROP Intrm. 10, 13.

**-Judges** Judges of Palau Supreme Court are

required to have been practicing attorneys and members of a bar for at least five years and are presumed to know the law. 2 ROP Intrm. 251, 255.

**-Judicial Restraint** Courts should avoid judicial legislation, or the usurpation of legislative power, by judicially enlarging a legislative enactment. 1 ROP Intrm. 311, 313.

Trial court should not attempt to set durational residency requirements for elections; that is the legislature's role. 1 ROP Intrm. 366, 376.

Judicial branch has a passive role in our tri-partite system of government; courts are authorized to determine only those disputes that are placed before them by parties within their jurisdiction. 1 ROP Intrm. 383, 393.

**-Jurisdiction of Article X Courts** Trial Division exceeded its judicial domain and discretion by getting involved in the drafting of a bill calling for an Airai Constitutional convention. 1 ROP Intrm. 664, 679-80.

Trial Division has exclusive original jurisdiction over all matters involving a state government; Appellate Division is limited to reviewing Trial Division's decisions. 2 ROP Intrm. 306, 307.

In the absence of a constitutional restriction, the legislature may vest certain courts with concurrent jurisdiction, as it may vest certain courts with exclusive jurisdiction over certain kinds of cases. 3 ROP Intrm. 61, 65.

The Supreme Court may decline the exercise of original jurisdiction if such jurisdiction is not exclusive. 3 ROP Intrm. 61, 65.

Generally, a court having jurisdiction has not only the right and power but also the duty to exercise that jurisdiction. 3 ROP Intrm. 61, 65.

The Supreme Court's jurisdiction over cases in which the national government is a party

is fixed by Article X, Section 5 of the Constitution, and the legislature is without power to abridge or enlarge it. 3 ROP Intrm. 61, 66.

The provision of Article X, Section 5 providing that the Trial Division shall have "original and exclusive jurisdiction" over those matters in which the national or state government is a party applies only to cases where the national or state government is a real party in interest. 3 ROP Intrm. 305, 311.

**-LCHO** The LCHO is an inferior court of limited jurisdiction created by law pursuant to Article X, Section 1 of the Constitution. 3 ROP Intrm. 159, 168.

**-Special Judges** Constitution does not require that three judges sit on a murder case. Such cases should be presided over by one judge, just like all other Trial Division cases. 1 ROP Intrm. 254, 259. (Overruled by 1 ROP Intrm. 274).

Art. II, § 2 of the Constitution provides that the use of special judges for persons accused of murder is discretionary and permissible. Overrules ROP v. Kikuo, 1 ROP Intrm. 254. 1 ROP Intrm. 274, 276.

Special judges function as jurors, and they must follow the instructions of the presiding judge regarding the law to be applied to the facts. Special judges shall participate in the deliberations on non-murder charges. 2 ROP Intrm. 227, 233.



## • CRIMINAL LAW

**-Aiding and Abetting** An accessory (before the fact) is equally guilty with the person who has committed the crime and should receive the same punishment as if he were a principal. 2 ROP Intrm. 23, 31.

Whenever two or more persons commit a crime and leave the crime scene together, none of them can be said to be accessories after the fact by that action alone. 2 ROP Intrm. 227, 235.

To be guilty of aiding and abetting, the defendant must participate in a criminal offense as something he wishes to bring about and must seek by some act to make it succeed. The defendant must assist the perpetrator of the crime while sharing in the requisite criminal intent. Negligence is not enough to support accomplice liability. 5 ROP Intrm. 36, 39-42.

The test for aiding and abetting comprises two prongs: association and participation. To prove association, the prosecution must establish that the defendant shared the criminal intent of a principal in acting to bring about the criminal offense. To prove participation, the prosecution must establish that the defendant engaged in some affirmative conduct designed to advance the success of the venture. 5 ROP Intrm. 159, 173.

A person may be convicted for first degree murder on evidence showing that the person aided and abetted the commission of the offense. 5 ROP Intrm. 159, 173.

Words alone can constitute aiding and abetting if the words are said knowingly with the intention that they aid, abet, counsel, command, induce or procure the commission of a crime, and are designed to increase the probability that the offense will be committed. 5 ROP Intrm. 159, 175.

Aiding and abetting does not require "but for" causation; sufficient causation is present if the actor's conduct influenced the perpetration of the crime. 5 ROP Intrm. 159, 177.

A time lag between the actor's conduct and the commission of the crime does not necessarily show that aiding and abetting did not occur, but fact finders are free to take a time lag into account in determining whether the actor's conduct influenced the perpetration of the crime. 5 ROP Intrm. 159, 177-78 & n.15.

**-Appellate Review** Appellate court reversed murder convictions based on insufficiency of evidence where key witness had failed polygraph, recanted part of her testimony and lied about incidents. 1 ROP Intrm. 443, 465-66.

Larceny conviction reversed when necessary and requisite mental state required to convict was unsupported by the evidence. 2 ROP Intrm. 78, 82.

**-Arrest** Police officer had probable cause to arrest suspect where two individuals had informed him that suspect was in possession of a firearm. 1 ROP Intrm. 547A, 547M.

An arrest takes place when, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. Defendant was considered under arrest when police officer instructed him to drive his car to the police station. 1 ROP Intrm. 547A, 547N-O.

**-Assault and Battery** The offense of assault and battery with a dangerous weapon clearly incorporates the common law crime of assault and battery. 3 ROP Intrm. 262, 263.

Putting a handgun to a person's head and pulling that person into a house constitutes an assault and battery by means of a dangerous weapon. 6 ROP Intrm. 361, 365.

**-Circumstantial Evidence** Circumstantial evidence is of no greater or lesser importance than direct evidence. 2 ROP Intrm. 23, 31.

A crime may be proved beyond a reasonable doubt by purely circumstantial evidence, which may be as satisfactory as direct



evidence and even outweigh it. 4 ROP Intrm. 152, 156.

**-Common Law Crimes** The statutory mandate contained in 1 PNC § 303, that no person shall be subject to criminal prosecution except under the written law of the Republic of Palau, abolishes all common law crimes, and prohibits the courts from creating a crime, but it does not prevent the courts from construing a criminal statute by reference to common law where the statute itself borrows phrases or terms of art from the common law. 3 ROP Intrm. 262, 264.

**-Cruel and Unusual Punishment** Fifteen year mandatory sentence for possession of firearms was grossly disproportionate to gravity of crime and violates constitutional prohibition against cruel and unusual punishment. 1 ROP Intrm. 154, 170 (overruled by 2 ROP Intrm. 257).

Fifteen years sentence for “use” of firearm does not constitute cruel and unusual punishment. 1 ROP Intrm. 551, 555; 2 ROP Intrm. 23, 40-41.

Statutes that fix a minimum punishment but not a maximum one do not automatically constitute cruel and unusual punishment. 2 ROP Intrm. 23, 41.

Mandatory 15 year minimum sentence for possession of a firearm does not violate cruel and unusual punishment clause of Constitution. 15 year sentence is specifically mandated by Constitution itself. 2 ROP Intrm. 257, 268.

16 year sentence for the possession of a firearm does not violate the Constitution’s prohibition on cruel and unusual punishment. 7 ROP Intrm. 57, 62.

**-Deportation** Trust Territory Code requires that U.S. citizens be granted preferential treatment with respect to immigration. A U.S. citizen or national who is to be excluded for overstaying authority to remain in Palau must be dealt with through a civil action before criminal charges are instituted. 1 ROP Intrm. 271, 273.

**-Double Jeopardy** Jeopardy attaches once the court begins to hear evidence; here, jeopardy attached once first prosecution witness was sworn and began testifying. 1 ROP Intrm. 96, 102-03.

Only where the governmental conduct in question is intended to “goad” the defendant into moving for a mistrial may a defendant raise the bar of double jeopardy to a second trial after having succeeded in having the court grant a mistrial. Here, that was not the case and petitioner could be retried. 1 ROP Intrm. 96, 106-07.

Double jeopardy clause precludes a second trial once the reviewing court has found the evidence adduced at trial legally insufficient for conviction. 1 ROP Intrm. 443, 465.

The Constitution’s double jeopardy clause protects against 1) a second prosecution for the same offense after acquittal or conviction; and 2) multiple punishments for the same offense in a single trial. 3 ROP Intrm. 343, 346.

**-Discovery/Duty to Disclose** Principles enunciated in Brady v. Maryland apply to criminal prosecutions in Palau. 3 ROP Intrm. 269, 276.

Brady v. Maryland protections are encompassed within the due process clause of the Constitution. 5 ROP Intrm. 159, 172.

Suppression of exculpatory evidence by the prosecution in the face of a defendant’s request violates the due process clause if the evidence is material to guilt or punishment. The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. 5 ROP Intrm. 159, 172.

In light of other available impeachment evidence, missing interview tapes were not “material” for purposes of the Brady rule. 5 ROP Intrm. 159, 172.

**-Discovery/Sanctions** Whether to impose a discovery sanction is within the discretion of the trial judge, whose decision is reviewed for abuse of discretion. The trial court has a wide range of available sanctions for violation of discovery rules. 5 ROP Intrm. 136, 138.

Where prosecution violated Rule of Crim. P. 26.2 by destroying a key witness's tape-recorded statements, trial court did not abuse its discretion in issuing a cautionary instruction rather than striking the witness's testimony or declaring a mistrial. 5 ROP 159, 167-70.

In crafting an appropriate sanction for a violation of the discovery rules, the trial court should consider the totality of the circumstances, including the culpability of the prosecution and the harm to the defendant. 5 ROP Intrm. 159, 170.

**-Evidence** Field test of marijuana is not sufficient to prove that the suspect substance is marijuana; more scientific evidence must be presented. 6 ROP Intrm. 344, 346.

**-Experts/Indigent Defendants** A trial court has discretion in ruling on an indigent criminal defendant's motion for appointment of an expert; reversal is appropriate only when the discretion is abused. In exercising its discretion, a trial court should evaluate the value of the requested expert testimony to the defense, and, conversely, the effectiveness of the defense if it is deprived of the requested expert. 5 ROP Intrm. 159, 179.

Indigent defendant has burden of showing that expert should be appointed. Defendant must show a reasonable probability that the expert would provide admissible, noncumulative testimony that is helpful to the defense and will assist the fact finders. 5 ROP Intrm. 159, 179.

Trial court did not abuse its discretion by denying defendant the funds to retain an expert when the likelihood that the expert's testimony would be admissible was small. 5 ROP Intrm. 159, 180.

**-Extradition** Section 451 of Title 12 of the Trust Territory Code is a valid extradition law and need not relate to any statutory scheme for extradition created by the United States Congress in order to extradite individual from ROP to one of the United States. 1 ROP Intrm. 108, 110.

ROP extradition statute does not permit extradition from ROP to FSM. 1 ROP Intrm. 311, 313.

Extradition between the Republic of Palau and the United States is governed by the "Agreement on Extradition, Mutual Assistance in Law Enforcement Matters and Penal Sanctions Concluded Pursuant to Section 175 of the Compact of Free Association." 6 ROP Intrm. 22, 22-23.

For purposes of extradition, Guam is part of the United States. 6 ROP Intrm. 22, 25.

**-Homicide** Where a homicide occurs without justification or excuse, and without sufficient provocation, malice may be implied. 2 ROP Intrm. 257, 261.

"Malice" encompasses at least the following mental states: 1) intent to kill; 2) intent to cause serious bodily harm; and 3) intent to do an act that is so imminently dangerous to others that it evinces a depraved heart and disregard for human life. 5 ROP Intrm. 250, 251.

Involuntary manslaughter differs from voluntary manslaughter in that the absence of malice arises from lack of a culpable mental state, rather than arising from provocation induced passion. 5 ROP Intrm. 250, 251.

To be convicted of voluntary manslaughter, a defendant must have acted with the intent to kill or cause serious bodily harm, or with some other mental state that amounts to malice. 5 ROP Intrm. 250, 254.

In order to convict a defendant of murder where evidence of heat of passion has been presented, the government must prove beyond a

reasonable doubt that the homicide was not committed in the heat of passion. The government does not have to prove that the crime was committed in the heat of passion to convict a defendant of voluntary manslaughter. 5 ROP Intrm. 250, 255-56.

**-Identification of Suspects** Unduly suggestive pre-trial identification procedures will result in the exclusion of the out-of-court identification, and, sometimes, the in-court identification as well. 1 ROP Intrm. 443, 458 n.17.

**-Information** A criminal information is sufficient if it contains the elements of the offense charged and fairly informs a defendant of the charges against which he must defend. 6 ROP Intrm. 70, 70-71.

The requisite mental state for a particular crime is deemed incorporated into the information, even if not expressly stated therein. 6 ROP Intrm. 70, 73.

Pursuant to Criminal Procedure Rule 12(b), an objection based on defects in the information must be raised prior to trial. 6 ROP Intrm. 70, 71.

**-Instructions** An error in giving or refusing to give a particular instruction will not be considered reversible error unless, considering all the instructions, the evidence and the arguments that the jury heard, it appears that the jury was misled or did not have a sufficient understanding of the issues and its duty to determine them. Reversal is inappropriate unless the jury's understanding of the issues was seriously affected to the prejudice of the complaining party. 3 ROP Intrm. 269, 273; 5 ROP Intrm. 250, 254-55.

Court did not err in instructing special judges that "evidence of intoxication may be sufficient to create a reasonable doubt in your minds as to whether [defendant] was able to form the required intent to commit first degree murder." 3 ROP Intrm. 269, 273-74.

A defendant who is convicted of a greater

offense generally cannot obtain a reversal of his conviction by showing an error was made in an instruction on a lesser offense. The error is usually deemed to be cured by the conviction on the higher offense. 5 ROP Intrm. 250, 253.

**-Intoxication** Proof of intoxication may serve to reduce first degree murder to a lesser charge. 3 ROP Intrm. 269, 269-70.

**-Jurisdiction of Trial Division** Criminal cases may not be tried before any court except the Trial Division of the Supreme Court because it alone has original jurisdiction in matters in which the national government is a party. 2 ROP Intrm. 152, 159.

**-Jury Trial** Palau Constitution does not, by implication or otherwise, grant the right to trial by jury. 2 ROP Intrm. 227, 231.

**-Juveniles** Criminal law offenders under the age of 18 are subject to juvenile court jurisdiction. The protections of juvenile court are designed for those persons of average and below average physical and mental maturity; waiver of juvenile jurisdiction requires a finding that some deviation from the average is present. 1 ROP Intrm. 378, 381.

When a person commits a crime prior to his eighteenth birthday but reached eighteen prior to trial, he shall be prosecuted as a juvenile, although the prosecution may move to have him prosecuted as an adult. 1 ROP Intrm. 547EE, 547GG.

**-Malice** Malice denotes various mental states, such as intent to kill, intent to cause great bodily harm, and intent to do an act so imminently dangerous to others as to evidence a disregard for human life. To prove malice, one must infer the accused mental state from all the facts and circumstances surrounding his criminal conduct--his actions, his words, the type of weapon he used, etc. 5 ROP Intrm. 36, 37.

Blows with a fist ordinarily do not imply malice and an intent to kill. 5 ROP Intrm. 36, 37.



**-Mens Rea** When a statute incorporates an offense from the common law, a culpable state of mind must accompany the conduct proscribed. 3 ROP Intrm. 262, 263.

Where a statute incorporates an offense from the common law and is silent with respect to the requisite **mens rea**, the court will construe the statute as requiring the common law **mens rea**. 3 ROP Intrm. 262, 263.

The absence of a **mens rea** element in a criminal statute can violate a defendant's right to due process. 3 ROP Intrm. 262, 263.

Not every criminal offense requires **mens rea**. Strict liability crimes designed as regulatory measures have been upheld where the offense was unknown at common law, the penalty is relatively small, and the conviction does not gravely besmirch. 3 ROP Intrm. 262, 263.

Criminal intent required under the statute prohibiting assault and battery with a dangerous weapon is the intent to strike another person with such a weapon; the intent to violate the law or to injure in the sense of inflicting bodily harm is not necessary. 3 ROP Intrm. 262, 265.

Wilfulness, deliberateness and maliciousness are states of mind encompassed by malice aforethought and premeditation. 3 ROP Intrm. 269, 272.

As no one can look into the heart or mind of another, the only way to decide upon its condition at the time of a killing is to infer it from the surrounding facts, and that inference is one of fact. 3 ROP Intrm. 269, 276.

Intent to accomplish an object cannot be alleged more clearly than by stating that the parties conspired to accomplish it. 6 ROP Intrm. 70, 73.

**-Merger** Offenses merge only when proof of the elements of one necessarily establishes all of the elements of the lesser or included offense. Merger does not result simply because, in the

particular circumstances, one of the offenses had to be committed in order to commit the other. 2 ROP Intrm. 257, 269.

Proof of the elements of attempted murder in the second degree necessarily establishes all the elements of possession and use of a firearm and ammunition. 2 ROP Intrm. 257, 272.

Under the merger doctrine, two separate offenses are committed if each of the offenses requires proof of a different statutory element. This doctrine has nothing to do with the evidence presented at trial, but is concerned solely with the statutory elements of the offenses charged. 3 ROP Intrm. 343, 347-48.

**-Miranda Rights** Defendant who signed written confession after an interview by police officers who did not apprise him of his Miranda rights, 18 PNC § 218, was not entitled to have confession suppressed because he could not show a causal link between the officers' failure to read him his rights and his confession. 6 ROP Intrm. 326, 329.

**-Misconduct in Public Office** Police lieutenant who possessed illegal firearms did so "under color of office" because he took possession of firearms in his capacity as a police officer. 7 ROP Intrm. 57, 60-61.

**-Plain Error** Where an error affects the substantial rights of a criminal defendant, the Appellate Division may consider it even though neither party raised the error. 5 ROP Intrm. 1, 4.

**-Police** Police power rests within discretion of municipal authorities. Courts will not interfere unless the means employed amount to unreasonable and oppressive interference with individual and property rights. 1 ROP Intrm. 22, 27.

Being a police officer is not a defense to what otherwise are criminal acts. 6 ROP Intrm. 361, 363.

**-Probable Cause/Preliminary Hearing** The



Constitution requires a judicial determination of probable cause as a prerequisite to any extended pretrial restraint on the liberty of an arrested person, although this determination does not have to take the form of a preliminary examination. 4 ROP Intrm. 134, 135-36, 138.

A person arrested pursuant to a warrant issued by a judge after determining probable cause is not constitutionally entitled to a separate judicial determination that there is probable cause to detain him pending trial. 4 ROP Intrm. 134, 136.

**-Questions From the Bench** A trial judge in a criminal case may ask witnesses questions from the bench, and may elicit facts inadvertently overlooked by the prosecution which are necessary to its case. 5 ROP Intrm. 5, 8.

**-Reopening the Case for Further Testimony** Absent a showing of undue prejudice or surprise, the trial court may reopen a case for further testimony at any time prior to judgment as long as the parties are afforded an opportunity to cross-examine the recalled witness and to call any rebuttal witness necessary to eliminate undue prejudice. 5 ROP Intrm. 5, 7.

**-Search and Seizure** Police officer may seize contraband "in plain view" if a) there is probable cause to believe that the item is contraband, b) the initial police intrusion was lawful and c) the discovery of the contraband was inadvertent. Firearm that was discovered in car by officer using a flashlight was in plain view. 1 ROP Intrm. 551, 557-58.

An investigatory stop short of an arrest is valid if based upon a reasonable suspicion that criminal activity is afoot. 1 ROP Intrm. 551, 559.

Search warrants may only issue upon a showing of probable cause. Probable cause is present when an affidavit presents, in some trustworthy fashion, a likelihood that an offense has been committed and that a particular search will turn up evidence of that offense. 1 ROP Intrm. 547A, 547I.

Police officer's affidavit of probable cause was sufficient to justify search warrant for a car where two individuals had reported to officer that there was a gun in the car. 1 ROP Intrm. 547A, 547L.

Although Palau constitutional provision concerning search and seizure does not include the term "unreasonable," that does not mean that all searches must be preceded by a warrant. There are numerous situations in which it would not be practical to require police to obtain a warrant prior to taking action. 1 ROP Intrm. 547A, 547R-T.

In 18 PNC § 301, legislature intended to adopt American search and seizure law with respect to searches incident to arrest, as that law existed at time of adoption of § 460 of the Trust Territory Code. 6 ROP Intrm. 131, 137.

When a police officer has made a lawful custodial arrest of an occupant of a motor vehicle, the officer may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile. 6 ROP Intrm. 131, 139.

Under proper analysis of Art. IV, § 4 of Palau Constitution, privately-owned land surrounding a residence, as long as it is not generally accessible or visible to the public, should be protected from unwarranted searches regardless of whether it would be considered curtilage under U.S. law. 6 ROP Intrm. 305, 312.

Constitution does not require government to obtain a warrant before conducting search at Palau's international borders. Airai International Airport constitutes an international border for purposes of search and seizure analysis. 6 ROP Intrm. 340, 342.

An affidavit supporting a search warrant may be sworn in front of the Clerk of Courts; it does not have to be sworn in front of a judge. 7 ROP Intrm. 25, 26.

The question on review of the issuance of a search warrant is whether the issuing judge had a substantial basis for finding the existence of

probable cause to believe that contraband or evidence is located in a particular place. 7 ROP Intrm. 57, 61.

**-Sentencing** Trial court has discretion to determine whether the sentence it imposes should run concurrently or consecutively with a sentence anticipated, but not yet imposed, by another court in a separate criminal case. 3 ROP Intrm. 343, 344.

Trial court may properly order cumulative sentences for offenses of aggravated assault and use of a firearm. 3 ROP Intrm. 343, 349.

The specific sentencing mandate of a statute takes precedence over the general provisions of the statutes allowing for suspension of sentences. 4 ROP Intrm. 250, 254.

The fifteen year sentence contained in the Firearms Control Act cannot be suspended. 4 ROP Intrm. 250, 255.

Ten year sentence for attempted trafficking of methamphetamine was excessive where applicable statute provided for a maximum sentence of five years. 5 ROP Intrm. 1, 4.

**-Special Prosecutor** Special Prosecutor and the Attorney General have concurrent powers to prosecute elected officials and government employees; Special Prosecutor does not have exclusive authority in this regard. 2 ROP Intrm. 23, 29.

**-Speedy Trial** Trial court denied motion dismiss based on failure to provide speedy trial because defendant had not objected to prior continuance requests and showed no prejudice by the delay. Such motions are considered on a case by case basis. 2 ROP Intrm. 152, 163-66.

Trial court's denial of a motion to dismiss a criminal case based on an asserted violation of the speedy trial rule is to be reviewed for abuse of discretion. 4 ROP Intrm. 152, 158.

Under the four part test for determining if

the speedy trial rule was violated, the court considers 1) the length of the delay; 2) the reasons for the delay; 3) the defendant's assertion of his right to a speedy trial; and 4) the prejudice to the defendant. 4 ROP Intrm. 152, 158.

Court held that because defendants were released promptly after their arrest and were not subjected to any further restraint, their right to a speedy trial was not triggered until the information was filed twenty one months after their arrest. 4 ROP Intrm. 152, 159.

Six and a half month delay between filing of information and commencement of trial is not presumptively prejudicial under the speedy trial rule. 4 ROP Intrm. 152, 160.

**-Standard of Review** If the evidence in a criminal case is sufficient to support a conclusion of guilt beyond a reasonable doubt, taking the view most favorable to the prosecution's case, such finding will not be disturbed on appeal. 1 ROP Intrm. 254, 257; 2 ROP Intrm. 78, 81.

Findings of trial court in criminal case will not be set aside unless clearly erroneous; conclusions of law are reviewed de novo. 1 ROP Intrm. 551, 555; 2 ROP Intrm. 23, 31.

When the Appellate Division determines a challenge to the sufficiency of the evidence in a criminal case, it shall ascertain whether the conviction is clearly erroneous by viewing the evidence of the record in the light most favorable to the prosecution, giving deference to the Trial Division's opportunity to assess the credibility of the witnesses, treating direct and circumstantial evidence equally, and studying the record to learn whether there is sufficient competent evidence to support a rational fact-finder's conclusion of guilt beyond a reasonable doubt as to every element of the crime. 2 ROP Intrm. 227, 240.

Appellate Division's review of the sufficiency of evidence is extremely circumscribed, limited to the question whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of

fact could have found the essential elements of the crime beyond a reasonable doubt. 3 ROP Intrm. 269, 274; 5 ROP Intrm. 159, 173.

When reviewing attacks on the sufficiency of the evidence resulting in a conviction, Court will consider four factors: 1) the evidence is to be viewed in the light most favorable to the prosecution; 2) the conviction must be supported by sufficient competent evidence; 3) direct and circumstantial evidence are equally valid; and 4) deference should be given to the trial court's opportunity to hear witnesses and observe their demeanor. 4 ROP Intrm. 152, 156.

**-States' Power to Prosecute** States may prosecute violations of their criminal laws. 4 ROP Intrm. 208, 212.

**-Stay Pending Appeal** Request for stay pending appeal granted pursuant to R. App. P. 38 and R. Crim P. 8 and 46 where court found that substantial questions of law were raised in the notice of appeal. 1 ROP Intrm. 296, 297 (rev'd in 1 ROP Intrm. 441, revised opinion in 1 ROP Intrm. 443).

Request for stay pending appeal is governed by ROP R. App. P. 9(b). 1 ROP Intrm. 301, 302.

Bail may be imposed if defendant is granted stay pending appeal. 1 ROP Intrm. 301, 302; 1 ROP Intrm. 438, 439.

Motion for stay pending appeal granted because notice of appeal raised substantial questions of law. 1 ROP Intrm. 438, 439.

The "substantial question of law" test under Appellate Procedure Rule 9(b) requires the court to determine whether the question presented on appeal raises a substantial doubt, that is, whether it "could readily go either way." 3 ROP Intrm. 258, 259; 5 ROP Intrm. 131, 133; 5 ROP Intrm. 136, 137.

Trial court's finding that no conditions of

release could adequately ensure against the risk of flight or danger to the community is entitled to great deference. 3 ROP Intrm. 324, 326.

A defendant is not entitled to a hearing on his application for release pending appeal. 4 ROP Intrm. 29, 29.

Release pending appeal is proper only when 1) the applicant is not likely to flee or pose a danger to the safety of any person or the community if released, and 2) the appeal raises a substantial question of law or fact that is sufficiently important to the merits that a contrary ruling is likely to require the defendant's release or a new trial. 5 ROP Intrm. 131, 132; 5 ROP Intrm. 136, 137.

**-Trial Counselor Representation** Pursuant to a memorandum of the Chief Justice, trial counselors may represent only those criminal defendants facing maximum punishments of five years or less. Defendant's representation by trial counselor violated that policy, therefore matter remanded to Trial Division to allow defendant to withdraw her guilty pleas. 2 ROP Intrm. 152, 161-62.

**-Trial Court Bias** A finding of partiality on the part of the trial court must come, if at all, from an abiding impression left from a reading of the entire record, not selected excerpts. 5 ROP Intrm. 5, 9.

**-Vagueness** The vagueness doctrine traditionally relates to whether a criminal statute adequately informs potential offenders of the proscribed conduct. 4 ROP Intrm. 250, 255.

## ● **CUSTOM**

**-Alienating Land** Under Palauan custom, the consent of the strong senior members of a lineage is necessary to alienate lineage land. 3 ROP Intrm. 101, 105; 6 ROP Intrm. 259, 260; 7 ROP Intrm. 38, 44.

In some cases, because of the passage of



time since a transfer took place, and in light of evidence that lineage members were aware of the transfer, the court may assume that proper strong member consent was given. 7 ROP Intrm. 38, 44.

**-Assessor** The trial court may appoint an assessor to resolve conflicts between expert testimony or to confirm evidence relating to custom. 3 ROP Intrm. 91, 93.

**-Chiefs** Purported removal of Reklai by majority of Ngara Bai Melekeok violated Palauan custom where the record showed that Reklai may have had explanations for some or all of the concerns raised by his critics and where Reklai had no notice of the meeting at which he was removed. 1 ROP Intrm. 30, 32-33.

**-Clan Membership** Under Palauan custom, true ochell descendants are the strongest members of a clan, followed in order of authority by ulehell members, by adoptive members and finally, members by “drifting.” A party who is a member of the clan through his father or his paternal line is a “weak member” of the clan. 1 ROP Intrm. 267, 269.

Absence of clan member, no matter how long continued, does not work as a forfeiture of clan membership or right to share in clan assets. 1 ROP Intrm. 267, 269.

Adopted members of lineage can be “strong members” and can participate in process of determining how the lineage’s assets should be administered. 1 ROP Intrm. 695, 696-97.

Burden of proof is on individual who seeks to establish his or her status as a member of clan. 3 ROP Intrm. 58, 59.

Trial court’s determinations regarding whether a group is a clan or a lineage, who are members of that group and who the title holders of that group are is reviewed under the “clearly erroneous” standard. 5 ROP Intrm. 181, 182.

Finding that one clan had been split into two separate clans, based primarily on evidence

that the clans had separate male and female titleholders, is not clearly erroneous. 6 ROP Intrm. 48, 50.

Ochell descendants are the strongest members of a clan. An ochell member is the natural child of a female member of a clan. 6 ROP Intrm. 259, 260 n.3.

“Terruaol” refers to unrelated persons who have been brought into a clan by one of its members. Ochell members are stronger than ulehell members who, in turn are stronger than terruaol members. 6 ROP Intrm. 265, 265 n.2.

**-Distribution of Assets** Customary law that applies to the distribution of ordinary assets of a lineage or clan is not directly applicable to the distribution of a war claims award. 1 ROP Intrm. 695, 698-99.

Paternal lineage’s failure to act with respect to disposal of decedent’s property bars an individual member of that lineage from later arguing that the land belongs to the lineage. 7 ROP Intrm. 85, 87.

**-Elbechiil** Under Palauan custom, Chief’s sister’s daughter was obligated to pay Elbechiil upon Chief’s death; such obligation did not include any right on daughter’s part to receive replacement or reimbursement for payment. 1 ROP Intrm. 130, 131.

**-Income** Income from sources such as war claims payments, leases and other sources are not directly governed by custom, but the Court should look to custom for guidance in deciding how the income should be distributed. 6 ROP Intrm. 355, 357.

**-Judicial Intervention** Court may take over and supervise customary processes in order to quiet controversy, but court must be mindful of the scope of its role. Court adheres to a policy of judicial restraint and opts for the exercise of the least supervision necessary and the provision of the greatest freedom of customary action as may be accorded. 1 ROP Intrm. 578, 581-82; 7 ROP



Intrm. 79, 81.

Injunction ordering the selection of title holder of clan by customary procedures reversed because it was not in compliance with spirit of Palauan custom that requires consensus and agreement. 1 ROP Intrm. 578, 582-83.

Trial court committed no error in suggesting, without determining, who is the proper successor to a clan title. 3 ROP Intrm. 58, 60.

Court has jurisdiction to decide whether a clan title has been properly removed pursuant to custom when clan members cannot decide amongst themselves. 3 ROP Intrm. 240, 245.

Management and distribution of assets within a clan is a private matter, in which the clan is entitled to wide discretion. However, when a clan is unable to resolve a dispute among its members, the court will intervene. 5 ROP Intrm. 225, 229.

Court ordered senior strong members of clan to reach consensus on distribution of Anguar Mining Trust Fund payments; not an issue for court to resolve. 6 ROP Intrm. 355, 360.

**-Marital Property** Under Palauan custom, property acquired during the marriage of a husband and wife is considered marital property. 6 ROP Intrm. 321, 323.

**-Marriage** Trial court did not err in finding that the parties were married pursuant to Palauan custom even though there was no transfer of bus or ngader. 4 ROP Intrm. 112, 116-17.

**-Notice** Under Palauan custom, Reklai must be given notice of a meeting of the Council of Chiefs; notice of clan actions and decisions must be made with due regard for the interests of its members. 1 ROP. Intrm. 30, 32.

**-Palauan Money** Assignment of Palauan money by Chief to daughter at Chief's death was binding obligation where assignment was made pursuant

to Palauan custom, which dictates that if a father spends money left to his child by another he must replace it prior to his death or at his Eldecheduch. 1 ROP Intrm. 130, 131.

Under Palauan custom, if a person pawns Palauan money and dies without redeeming it and then a family member obtains it by chasing it after the redemption period, the money becomes house money unless the person who pawned it had designated it as somebody's money before he died. 6 ROP Intrm. 62, 64.

Chased money returns to the original status it held before it was pawned. 6 ROP Intrm. 62, 64.

**-Proof of Custom** Viability of a custom is not abrogated merely because of the relative infrequency of its implementation. 1 ROP Intrm. 22, 28.

Law of custom must be reduced to written form by the record at trial and with clear and convincing evidence. 1 ROP Intrm. 114, 117.

Custom is defined as a law established by long usage and by common consent and uniform practice so that it becomes the law of the place or of subject matter to which it relates. 2 ROP Intrm. 23, 35.

Conclusions of law regarding custom must be supported by clear and convincing evidence. Expert witnesses may testify as to the application of custom to particular facts, but that testimony must show facts clearly supporting a conclusion of law, and may not be based on opinion as to what custom is or how it applies. 3 ROP Intrm. 91, 92-93.

Palauan custom is normally established by expert testimony that traces the historical application of the custom to the facts. 4 ROP Intrm. 55, 59.

Existence of an asserted customary law is a question of fact that must be established by clear and convincing evidence. 5 ROP Intrm. 225, 227.

Trial court findings may differ from uncontradicted expert testimony if trial court believes expert's testimony lacked credibility on certain points. 6 ROP Intrm. 62, 65 n.3.

Where trial court applies custom, it must include a written description of such custom in the record. 6 ROP Intrm. 152, 153.

**-Relation to Criminal Law** Criminal cannot use custom to excuse his criminal conduct. 1 ROP Intrm. 22, 27.

**-Relation to Statutory Law** Where custom conflicted with statute requiring recordation of deed, custom was superseded by statute. Otherwise, statute would be rendered void. 1 ROP Intrm. 197, 203-04.

Under the Trust Territory Code, customary law was on a par with statutory law only to the extent it did not conflict with statutes. 3 ROP Intrm. 107, 108.

**-Selection/Removal of Title Holder** Under Palauan custom, a male title holder of a clan must be appointed by the senior female members of the clan, and the appointment must be consented to by the Council of Chiefs. 1 ROP Intrm. 267, 269; 3 ROP Intrm. 240, 244.

A weak member of the clan may become title holder if that is what the senior female members and the council of chiefs desire. 1 ROP Intrm. 267, 269-70.

All the ourrot of each lineage of a clan must agree on the selection of the clan's female titleholder. 3 ROP Intrm. 91, 95-96.

Palauan custom requires consensus and agreement on the selection of a clan titleholder. 3 ROP Intrm. 91, 95.

The removal of a clan title amounts to a deprivation of a vested right. 3 ROP Intrm. 240, 246.

Under Palauan custom, clan member

whose title is to be removed must be given notice of the Council of Chiefs meeting at which such removal is to be considered. 3 ROP Intrm. 240, 245-46.

**-Statute of Frauds** No written evidence is required under Palauan custom to effect a binding transfer of land. 1 ROP Intrm. 197, 200.

**-Title Land** A chief's title land belongs to him only as long as he remains chief, and then it reverts to the clan or lineage. 3 ROP Intrm. 101, 105.

Chief's title land (omsol a blai) passes from chief to chief for use during the period he is head of the clan. 6 ROP Intrm. 4, 5.

**-Ulsiungel** Ulsiungel is payment for services rendered. 4 ROP Intrm. 257, 257.

Ulsiungel is a "gift of land for services performed by the donee for the donor when the donor was ill or infirm." 6 ROP Intrm. 142, 144.

**-Use Rights** Under Palauan custom, certain misbehavior or failure to meet customary obligations may trigger a right to cancel a use right. 6 ROP Intrm. 334, 339.

## • DAMAGES

**-Attorney Fees** Pursuant to 14 PNC § 702, defendant should be awarded attorney fees only if court finds that plaintiff's complaint is frivolous or in bad faith. 2 ROP Intrm. 122, 128.

**-Contractual** Measure of damages in third party beneficiary employment contract cases is what the employee would have earned had he been compensated at the proper scale less the compensation he received. 1 ROP Intrm. 118, 121.

Generally, damages for breach of contract are limited to the pecuniary loss sustained. Punitive damages are recoverable only in those exceptional circumstances where the conduct

constituting the breach is also a tort for which punitive damages are recoverable. 1 ROP Intrm. 320, 327.

**-Custom** Defendants were ordered to pay damages to Reklai for blatant act of disrespect committed by attempting to remove Reklai without giving him proper notice of the meeting at which he was removed. Defendants could pay damages in Palauan money or in U.S. currency. 1 ROP Intrm. 30, 33.

**-Evidence** Notwithstanding party's failure to formally introduce exhibit that included list of items destroyed as part of illegal eviction, appellate court sustained trial court's award of damages where list was read into evidence without objection. 1 ROP Intrm. 22, 28.

**-Lost Profits** To prove claim for lost profits, a party must show: 1) that the lost profits can be proved with a reasonable degree of certainty; 2) that the wrongful act of defendant caused loss of profits; and 3) that the profits were reasonably within the contemplation of the defaulting party at the time the contract was made. 2 ROP Intrm. 211, 220-21.

**-Mitigation** Plaintiff could not recover lost profits where he took no action to mitigate his loss. 1 ROP Intrm. 85, 87.

**-Punitive Damages** In the absence of statutory authority, there is no right to recover punitive damages against a municipal corporation. 1 ROP Intrm. 22, 28.

Court denied request for punitive damages where defendant did not act out of malice or with evil intent in not passing Palauan money to Chief's daughter upon Chief's death. 1 ROP Intrm. 130, 132.

Plaintiff awarded punitive damages for defendant's intentional, false misrepresentations to plaintiff. 1 ROP Intrm. 193, 195.

Punitive damages may be awarded for conduct that is outrageous, because of the

defendant's evil motive or his reckless indifference to the rights of others. 6 ROP Intrm. 234, 242.

Trier of fact may consider the actual or probable cost incurred by the plaintiff in bringing the action, including attorney fees. 6 ROP Intrm. 234, 243.

Where no evidence concerning defendant's wealth is offered, a court may set a punitive damages award without taking into account the wealth of the defendant, as long as the court seeks to achieve the goals of punishment and/or deterrence. 6 ROP Intrm. 234, 243.

Wealth of defendant is relevant factor to consider in assessing punitive damages. Court did not assess punitive damages against defendant where she had no job, no land and no bank accounts. 6 ROP Intrm. 330, 334.

While either plaintiff or defendant may introduce evidence of defendant's wealth with respect to a claim for punitive damages, such evidence is not a mandatory element of a plaintiff's claim. 7 ROP Intrm. 22, 24.

## • DEEDS

**-Delivery** Delivery of a deed in a legal sense is different than a mere transfer of physical possession or custody of the deed. Generally, delivery of a deed imports that the grantor has transferred the deed to the grantee, or to a third person for the grantee's use, or otherwise placed the deed within the control of the grantee, with the intent that it presently become operative as a conveyance. 5 ROP Intrm. 74, 76.

The burden of proof rests on the party disputing delivery of the deed to establish lack of delivery. 5 ROP Intrm. 74, 76.

The recording of an executed deed raises a presumption of delivery which is entitled to great weight; the presumption can only be overcome by clear and convincing evidence.



5 ROP Intrm. 74, 77.

**-Description in Deed** In order for a deed to operate as a legal conveyance of title, the land intended to be conveyed by the grantor must be described with sufficient definiteness and certainty to locate and distinguish it from other lands of the same kind. If the land intended to be conveyed cannot be identified from the deed, with the aid of extrinsic evidence, the deed is inoperative. 3 ROP Intrm. 212, 214.

Merely labeling a delivery of property as an escrow does not make it such. 4 ROP Intrm. 43, 49.

It is not essential that a deed follow any exact or prescribed form of words. All that is required is that a grantor sufficiently declare his intent to pass title. 4 ROP Intrm. 68, 72.

In general, a deed is void if the language used to describe the land being conveyed is not sufficiently certain. 6 ROP Intrm. 43, 44.

**-Extrinsic Evidence** A court may look to extrinsic evidence to resolve ambiguities in a deed. 3 ROP Intrm. 212, 215.

Parole evidence is admissible to remove a deed's uncertainty and reveal the intent of the drafter. 6 ROP Intrm. 43, 44.

In general, when a grantor executes and delivers a deed containing unambiguous language, his unexpressed or secret purpose cannot be considered in the construction of the deed. 6 ROP Intrm. 148, 151 n.4.

**-Fraud** Where the grantor's signature to a deed is procured by fraudulently concealing the character of the instrument as a deed or inducing him to believe he is signing something other than a deed, the instrument is regarded as a forgery and is for that reason absolutely void. 4 ROP Intrm. 163, 167.

**-Notice** Dumping of gravel and sporadic improvements by plaintiff to a piece of property

were not sufficient to constitute notice of plaintiff's claim to property. 1 ROP Intrm. 197, 199.

**-Prohibited Transaction** A deed which seeks to effectuate a prohibited transaction is void. 3 ROP Intrm. 314, 320.

**-Recording** An instrument is not "duly recorded" for purposes of the recording statute, 39 PNC § 402, unless an entry is made in the recording books. 4 ROP Intrm. 43, 47.

Clerk of Courts' notation on deed that it was recorded is not conclusive evidence that the deed was actually recorded. 4 ROP Intrm. 43, 47.

Trial court erred in concluding that a deed was not duly recorded merely because it was not recorded at the specific book and page noted on the deed. 4 ROP Intrm. 43, 48.

Person who presents a deed for recording has the responsibility for seeing that it is properly recorded. 5 ROP Intrm. 260, 261.

Pursuant to 39 P.N.C. § 402, in order for a transferee of real property to prevail over an earlier transferee, he must do more than simply record his deed first. He must also pay valuable consideration for the property, in good faith and without notice of the prior transfer. 7 ROP Intrm. 1, 2.

## ● DESCENT AND DISTRIBUTION (INHERITANCE)

**-Adoption by Estoppel** Doctrine of adoption by estoppel may help to prevent harsh or contradictory results. 1 ROP Intrm. 653A, 653C.

**-Choice of Law** A Palauan court will usually apply Palauan law in determining the intestate succession of Palauan land. 5 ROP Intrm. 122, 128.

**-Clan's Reversionary Interest** Clan has no reversionary interest in individually owned land.



4 ROP Intrm. 77, 79.

**-Determination of Heirs by LCHO** 35 PNC § 1116, authorizing the LCHO to determine the heirs or devisees of a person who had any land registered under the Palau Land Registration Act, is constitutional. 3 ROP Intrm. 195, 197-98.

**-Eldecheduch** Under Palauan custom, senior family members can transfer the decedent's individually owned land at an eldecheduch. 3 ROP Intrm. 39, 41.

Under Palauan custom, it is the responsibility of the deceased man's nearest relatives within his lineage to take care of distributing his property. 5 ROP Intrm. 327, 331.

What is not discussed at an eldecheduch is not settled. 3 ROP Intrm. 364, 369-70.

To apply contract theory to an eldecheduch is ridiculous. 3 ROP Intrm. 364, 369-70.

Recognizing the actions taken at an eldecheduch is not inconsistent with the rule that individually owned land does not revert to a clan or lineage on the death of its owner. 4 ROP Intrm. 230, 235.

**-Equity** In matters pertaining to descent and distribution, courts are instructed to interpret the law with what is most consonant with equity. 1 ROP Intrm. 653A, 653C.

**-Probate Proceedings/Attorney Fees** Court may not charge attorney fees to the estate in probate proceedings because there is no statute authorizing the court to do so. 6 ROP Intrm. 142, 147.

**-Rimelel** If a husband predeceases his wife, the wife has the right under the custom of "rimelel" to take certain property with her when she returns to the family. 6 ROP Intrm. 321, 323-24.

**-Testamentary Intent** Oral agreement as to the distribution of property does not constitute a will.

3 ROP Intrm. 386, 387.

Statement of intended heirship on a land registration application form is not the equivalent of a will and does not have any testamentary force. 5 ROP Intrm. 79, 81.

**-Time That Title Transfers** An inheritor acquires title to land at the time of inheritance, not at some later date when a dispute over title is settled by the courts. 4 ROP Intrm. 43, 50 n.1.

**-Wills** The best evidence of the contents of a lost or destroyed will is a copy or draft of the will, clearly and satisfactorily identified, if it can be obtained, and ordinarily this is sufficient. 6 ROP Intrm. 154, 155 n.1.

The solicitation of a testator to make a will, without an attempt to influence him as to the specific provisions thereof, does not constitute undue influence. 6 ROP Intrm. 154, 156.

When a will that was last in possession of the testator cannot be found after he or she dies, a presumption arises that the testator destroyed it with the intention of revoking it; this presumption, however, is never conclusive but may be overcome by proof that the will was not revoked by the testator. 6 ROP Intrm. 154, 157.

If the will of the testator is expressed in clear and unambiguous language, it must prevail, even though it disinherits the heirs. 6 ROP Intrm. 154, 158.

**-39 PNC § 102 and Its Predecessors** Law of succession as prescribed by 39 PNC § 102 does not apply retroactively. 3 ROP Intrm. 39, 41; 6 ROP Intrm. 178, 182.

Palau District Code Section 801 in place in 1968 did not include the "bona fide purchaser for value" provision of its successor statute, 39 PNC § 102(c). 3 ROP Intrm. 107, 108.

For 39 PNC § 102(c) to apply, court must find that the decedent was a bona fide purchaser for value of the land in question. 3 ROP Intrm.

386, 388.

A child's right of inheritance, to the extent it exists, extends no further than the right to receive properties devised to him by his parent. 39 PNC § 102(c) does not violate the due process rights of a decedent's child. 3 ROP Intrm. 386, 391.

Distribution of land that a decedent inherited, as opposed to land purchased for value, is governed by 39 PNC § 102(d). 4 ROP Intrm. 68, 74.

A decedent's land does not automatically devolve to his children under 39 PNC § 102(d). Although the lineage responsible for caring for the decedent may direct that the decedent's children receive his property, such a disposition is not mandated by 39 PNC § 102(d). 4 ROP Intrm. 68, 75.

Trial court erred in concluding that 39 PNC § 102(d) only applies where the decedent dies without issue. Section also applies where decedent acquired the land other than as a bona fide purchaser for value. 4 ROP Intrm. 80, 81 n.3.

Palau District Code § 801(c) differs from its successor 39 PNC § 102(c) in that the former contains no express requirement of legitimacy. Thus, the term "oldest living male child" in Section 801 includes illegitimate as well as legitimate children. 4 ROP Intrm. 189, 193.

Palau District Code § 801(c) was plainly intended to displace custom. 4 ROP Intrm. 189, 193 n.3; 5 ROP Intrm. 201, 203.

Custom is displaced by 39 PNC § 102(c). 5 ROP Intrm. 117, 120.

In electing to use the term "adopted" without qualification, the OEK understood and intended to incorporate within the scope of 39 PNC § 102(c) the various types of adoptions of children recognized by Palauan custom, including the adoption by an uncle of his maternal nephew. 5 ROP Intrm. 117, 121.

Palau District Code § 801(c) shall not be applied retroactively. 5 ROP Intrm. 201, 203.

The OEK intended to create two separate methods for devising real property, one under Chapter 25, Title 1 and one under 39 PNC § 102(b). The OEK did not intend 39 PNC § 102(b) to be a limitation on the power of a testator to devise land pursuant to 25 PNC § 102. 5 ROP Intrm. 339, 341.

The common law plays no role in the devise of real property in Palau. 5 ROP Intrm. 338, 343.

Child support obligations end upon the death of the obligor. 5 ROP Intrm. 350, 351.

In determining who shall inherit a decedent's property, the statute in effect at the time of the decedent's death applies. 6 ROP Intrm. 38, 39.

Section 801(c) applies to individually-owned land, no matter how many individuals share in the ownership, but does not apply to lands owned by clans or lineages. 6 ROP Intrm. 38, 39-40.

## • **DIVORCE**

The court may grant a divorce to aliens, even if only one of the parties to the action are physically present in Palau, as long as the party in Palau has satisfied the residence requirement found in 21 PNC § 332. 2 ROP Intrm. 65, 67.

The court may order a party to pay child support even if the children do not reside in Palau as long as the court has personal jurisdiction over the party being ordered to pay support. 2 ROP Intrm. 65, 68.

Under circumstances of the case, it was proper to award house to the spouse retaining custody of the children. 4 ROP Intrm. 112, 117.

Party is statutorily obligated to pay child

support if his or her physical cruelty toward spouse caused the marriage to terminate. 4 ROP Intrm. 112, 117.

Divorce is a legislatively created remedy, not existing at common law. 5 ROP Intrm. 350, 351.

In matters of divorce, the court has only such jurisdiction as is given by statute. 5 ROP Intrm. 350, 351.

A cause of action for a divorce is purely personal; such a cause of action terminates on the death of either spouse. 5 ROP Intrm. 350, 351.

## ● **ELECTIONS**

**-Absentee Ballots** Use of service stations whereby absentee voters deliver their ballots to a representative of the Referendum Commissioner does not comport with requirements of election law. Absentee ballots submitted at the ballot service stations are void. 1 ROP Intrm. 401, 402; 1 ROP Intrm. 406, 415.

**-Airai State** When a recall petition is filed and in the absence of enabling legislation, Airai State governor must take a number of steps to help carry out the election. 2 ROP Intrm. 201, 208.

**-Apportionment** Palau Reapportionment Committee was required by law to use the 1980 U.S. Census Bureau data, as opposed to data collected by the Palau Community Action Agency, in formulating its 1984 apportionment plan for Senate seats. 1 ROP Intrm. 134, 140.

**-Ballot Language** As long as the printed matter on the ballot means the same thing to all the voters as the words used in the statutory form, the ballot is lawful. Ballot found invalid where Palauan translation was misleading and confusing. 1 ROP Intrm. 65, 68-69.

Challenges based on lack of clarity of ballot language will not be permitted to negate the results of an election unless the court is convinced

that the language was so confusing as to prevent the average voter from comprehending what was at issue and from making an intelligent voting decision. 4 ROP Intrm. 1, 9.

Word for word exactitude is not required in translating ballot language. 4 ROP Intrm. 1, 12.

In deciding whether a ballot's language accurately informs the voter about the true nature of a proposed amendment, the sole focus should be on the ballot itself, and not on such things as the sufficiency of "voter education." The ballot is assessed without reference to outside materials. 4 ROP Intrm. 1, 13.

In determining whether a ballot is impermissibly confusing and misleading, court must decide whether ballot is so confusing that the average voter is prevented from making an intelligent voting decision. Plaintiffs bear the burden of proof. 5 ROP Intrm. 353, 360.

**-Burden of Proof** In all election contests, the challenging party has the burden of proof. 3 ROP Intrm. 398, 403.

**-Cancellation** Where court found procedure to be used for referendum to be in violation of public law, court determined that only remedy was cancellation of election. 1 ROP Intrm. 406, 415.

**-Certification of Petitions** Regarding the certification of an initiative petition, all that is required is that the Election Commission establish a process reasonably calculated to confirm that an initiative petition has in fact been subscribed to by the requisite number of registered voters. 4 ROP Intrm. 1, 8.

**-Delay** Court has authority to suspend any election to safeguard the right to vote, but the measure is extraordinary and court must carefully weigh circumstances before doing so. 1 ROP Intrm. 278, 279.

Because absentee ballots were invalid, election was cancelled and a new one was



scheduled. 1 ROP Intrm. 401, 402.

**-Election Commission** Issues not properly presented to Election Commission pursuant to 23 P.N.C. § 1571 were outside jurisdiction of trial court. 1 ROP Intrm. 548, 549.

Upon receipt of information that state has no applicable state law governing a state election, Election Commissioner must formulate election regulations. 2 ROP Intrm. 201, 207.

Election Commission may promulgate procedures to conduct a recall election for a state government. 3 ROP Intrm. 372, 374-75.

**-Jurisdiction** Supreme Court has jurisdiction to entertain claim that plaintiffs' right to vote had been violated. 1 ROP Intrm. 65, 70; 1 ROP Intrm. 366, 375.

**-Polling Places** Service stations that were converted into unsupervised polling places did not have required safeguards and were illegal. 1 ROP Intrm. 406, 414.

**-Popular Initiative** Court ordered Ngaraard State government to schedule a referendum on constitutional amendments proposed by citizen initiative where citizens had followed initiative procedure and state government had not fulfilled its responsibility to hold referendum. 1 ROP Intrm. 278, 279.

The power to call a referendum is not one that is granted to the people by their government: it is a power reserved by them and is one of the most precious rights of our democratic process. 3 ROP Intrm. 385A, 385F.

The people's right of initiative is independent of the legislature. The OEK may, so long as it does not diminish the rights of initiative and referendum, enact laws to promote their exercise. Any statute that limits, curtails or destroys the right to initiative is invalid. 3 ROP Intrm. 398, 403-04.

An initiative ballot should be sufficient to

inform the voter of the main issue being voted upon and should indicate to the voter how to mark it so as to express his preference. Defects in the form of the ballot which do not mislead the voters are not sufficient to void the results. Those seeking to void an election must prove that the ballot language was so misleading that enough voters were misled as to change the results of the election. 3 ROP Intrm. 398, 404 & 411.

The right of the people to bring an initiative is one of the most precious rights of our democratic process and it is the duty of the court to jealously guard it. 4 ROP Intrm. 1, 4.

OEK may not alter the percentage of registered voters, fixed by Article XIV, Section 1(b) of the Constitution, required to place an initiative on the ballot. 4 ROP Intrm. 1, 5.

Once a valid initiative petition is filed it is constitutionally incumbent on the OEK to enact legislation to facilitate the voter initiative. 4 ROP Intrm. 1, 7.

Courts presume that initiative petitions which are circulated, signed and filed are valid. 4 ROP Intrm. 1, 7.

**-Reapportionment** Plan of Palau Reapportionment Commission establishing the number of Senate seats was not flawed because it failed to consider future population shifts when there was no sound statistical data on future population trends. 1 ROP Intrm. 134, 137-38. (Aff'd in part, rev'd in part, 1 ROP Intrm. 150).

Certain deviations in apportionment plan for senatorial seats from precise mathematically equal representation are justified to conform to the political subdivisions created by traditionally separate villages, each with their own culture and history. 1 ROP Intrm. 134, 143. (Aff'd in part, rev'd in part, 1 ROP Intrm. 150).

The advantages of assured political equality, unit voter integrity and geographical homogeneity warrants division of the Fifth Senatorial District into two separate units.



Essence of reapportionment lies in maximization of voter equality. 1 ROP Intrm. 150, 151-52.

Petitioners' assertion that they were registered voters and that they were under-represented under a reapportionment plan: 1) stated a claim; 2) properly invoked the jurisdiction of the court pursuant to Article IX, Section 4(c) of the Constitution; and 3) gave the petitioners standing to challenge the plan. 3 ROP Intrm. 174, 180.

When reviewing a reapportionment plan, courts will first examine existing deviations (from exact proportional representation) and determine if they can be reduced. If the deviations can be reduced, courts must consider arguments made in favor of the existing plan to see if the plan protects legitimate national interests. Finally, courts will strike a balance between the deviation from strict mathematical equality and the asserted national interests. 3 ROP Intrm. 174, 182.

The one person-one vote principle need only encompass citizens, and not all residents of Palau; thus, the phrase "based on population" in Article IX, Section 4(a) of the Constitution means "citizen population." 3 ROP Intrm. 174, 184.

**-Recall** Upon notice of proper recall petition, Airai State legislature had responsibility to appropriate the necessary funds so that the governor could schedule recall election. Governor had responsibility to take further steps to implement recall election. 2 ROP Intrm. 201, 205-08.

The right of recall is a fundamental right of the people. Statutes governing the exercise of the power to recall are to be liberally construed in favor of the ability to exercise it, and any limitation on that power must be strictly construed. 3 ROP Intrm. 372, 375.

**-Registered Voters** Peleliu state ordinance that established durational residency requirement to vote is valid; inconsistent ROP public law did not supersede Peleliu law. Purported voters who had not met residency requirement did not have

standing to challenge that requirement. 1 ROP Intrm. 62, 64.

Votes cast by persons not satisfying state's residency requirements were illegal; because the votes were sufficient to alter the results of the election, election was void. 1 ROP Intrm. 366, 375-76.

The requirement in Article XIV, Section 1(b) of the Constitution that at least 25% of the registered voters must sign petitions before a popular initiative to amend the Constitution may be placed on the ballot means that 1) initiative petition signatories must be registered voters at the time they sign; and 2) the most recent voting list available at the time the petition is turned in should be used to determine if the 25% requirement of the initiative clause has been met. 4 ROP Intrm. 1, 5.

Woman who lived in Sonsorol until she was 15 and then moved away but still retained an intent to make her permanent home in Sonsorol was a "resident" of Sonsorol who was eligible to vote in Sonsorol State elections. 6 ROP Intrm. 185, 190-91.

**-Voter Education** Even if not constitutionally mandated, the legislature has an implied duty to inform the public of the contents and effect of a proposed ballot measure. A court may look to voter education to determine whether they were misled by ballot language. 3 ROP Intrm. 398, 412.

## • **EQUITY**

**-Estoppel** Mere silence or inaction will not work an estoppel. There must be some element of turpitude or negligence connected with the injury or inaction by which the . . . party is misled to his injury. 1 ROP Intrm. 701, 706.

**-Mistake** A mistake of law occurs where a party, having knowledge of the facts, is ignorant of the legal consequences of his conduct or reaches an erroneous conclusion as to the effect thereof. 6

ROP Intrm. 105, 107.

In general, a payment induced by a mistake of fact is recoverable, while one induced by a mistake of law is not. 6 ROP Intrm. 105, 107 n.3.

**-Restitution** A person confers a benefit upon another if he gives the other possession of, or some other interest, in money or in any way adds to the other's security or advantage. 6 ROP Intrm. 105, 108.

A change of circumstances occurs when the recipient of money incurs liabilities in good faith reliance upon, and due to, the receipt of that money. 6 ROP Intrm. 105, 109.

Restitution is an equitable remedy. 6 ROP Intrm. 105, 110.

The government retains the right to recover, by offset or otherwise, sums illegally or erroneously paid. 6 ROP Intrm. 105, 117.

A person who, in the mistaken belief that he is the owner, has caused improvements to be made upon the land of another, is not thereby entitled to restitution from the owner for the value of such improvements. The sole exception to this general rule applies only if the person who made the improvements had made a "reasonable" mistake in believing that he owned the land upon which such improvements were erected. 6 ROP 159, 166-67.

A person who has conferred a benefit upon another in compliance with a judgment, or whose property has been taken thereunder, is entitled to restitution if the judgment is reversed or set aside. 6 ROP Intrm. 267, 268.

Owner of property that is improperly sold is entitled to its fair market value rather than merely the amount received from its sale. 6 ROP Intrm. 267, 269.

National legislators who collected compensation in the form of official expense

payments made by the government in violation of the Constitution must reimburse the government in the amount of the unconstitutional payments. Government may off set the amount owed by withholding official expense payments. 6 ROP Intrm. 283, 284 (aff'd in part and rev'd in part 6 ROP Intrm. 105).

Where a party has no legal obligation to pay restitution and is paying such restitution only out of a "moral obligation," that party has no obligation to pay interest on the restitution amount. 7 ROP Intrm. 73, 75.

## • **EVIDENCE**

**-Absence of Evidence** In the absence of testimony on a particular issue, the trial court is not free to engage in speculation. 1 ROP Intrm. 682, 690.

**-Best Evidence Rule** Trial court did not err in admitting a copy of a contract when there was no evidence that the original was destroyed in bad faith. ROP Evid. Rule 1004(1). 4 ROP Intrm. 68, 71.

**-Circumstantial Evidence** Circumstantial evidence is of no greater or lesser import than direct evidence. 1 ROP Intrm. 254, 255; 2 ROP Intrm. 23, 31.

**-Clear and Convincing** When a case boils down to a "swearing contest" between an approximately equal number of witnesses, and the evidence on each side is internally consistent, the party challenging the presumption has not rebutted it by clear and convincing evidence. 2 ROP Intrm. 315, 320.

**-Direct Evidence** Direct evidence is evidence of facts that are proved directly by way of the testimony of an eye witness to an event or a writing that proves a fact on its face or by other means not requiring the drawing of inferences or other mental processes. 1 ROP Intrm. 254, 255.

**-Document Authentication** Lack of direct

evidence as to whom prepared foreign shipping documents goes to the weight of the document, but does not require exclusion of those documents under ROP Evidence Rule 901(a). 5 ROP Intrm. 1, 3.

Bullets are admissible evidence pursuant to ROP Evid. Rule 901 where witness identifying bullets is a police officer with ten years of experience who testified that items had the look and heft of real bullets. 6 ROP Intrm. 131, 139.

A specific firearm may be identified even if there is a break in the chain of custody. The break affects the weight to be given to the evidence, not its admissibility. 6 ROP Intrm. 131, 140.

**-Judicial Notice** Under ROP Evid. Rule 201, court may take judicial notice of recording books in the Clerk of Courts office. 4 ROP Intrm. 43, 47.

The taking of judicial notice is addressed to the discretion of the trial court, and the court's determination will not be disturbed unless it is shown that the court abused this discretion. 4 ROP Intrm. 189, 194.

**-Polygraph** Polygraph examination results generally are not admissible as evidence in criminal trials, because the polygraph examination has not been shown to have a sufficiently high degree of reliability. However, court found ample reason to credit results of polygraph examination in this case. 1 ROP Intrm. 443, 453.

**-Prejudicial Effect** Rule 403 favors admissibility in that relevant evidence is to be excluded only if the danger of unfair prejudice substantially outweighs its probative value. 6 ROP Intrm. 95, 96.

Rule 403 balancing of prejudice against probative value requires an exercise of discretion that is better performed by trial judges than by appellate courts. 6 ROP Intrm. 95, 96.

Rule 403 applies to photographic

evidence in the same way it applies to other evidence. 6 ROP Intrm. 95, 97.

**-Prior Convictions** Only convictions for crimes punishable by imprisonment in excess of one year are admissible evidence. Guilty plea to a misdemeanor did not change judge's view of evidence. 6 ROP Intrm. 330, 332.

**-Uncontradicted Testimony** While a finder of fact may not arbitrarily disregard testimony, it is not bound to accept uncontradicted testimony, especially where the witness has an interest in the outcome of the case. 6 ROP Intrm. 229, 232.

**-Witnesses** Where clerk's office lost tape recording of trial testimony of witness who had since died, court ordered that counsel attempt to agree on testimony and file agreement pursuant to ROP R. Civ. Pro. 10(e). 1 ROP Intrm. 592, 593.

Trial court should determine whether alleged expert witness has appropriate qualifications to testify about a subject. Absent a showing of abuse of discretion, an appellate court will not overturn the trial court's decision. 2 ROP Intrm. 23, 33.

Trial court could use its ordinary experience in Palau to determine that witness's raising of eyebrows was a gesture in conflict with his negative response to a question and therefore detracted from his credibility. 2 ROP Intrm. 23, 35.

## ● EXECUTIVE BRANCH

Purpose of Art. VIII, §§ 2 and 5 of Constitution is to have the Vice President appointed by the President to head a major executive department. 1 ROP Intrm. 1, 10.

U.S. Secretary of Interior Order 3039 calls for all executive, legislative, and judicial functions not contrary to or in conflict with U.S. law to be transferred to the governments of Trust Territories. U.S. had no intention of retaining extradition powers. 1 ROP Intrm. 108, 111.



Interior Order 3039 did not automatically transfer governmental powers. System for transfer was established by a memorandum of understanding between the High Commissioner and the President of the ROP on March 20, 1981. 1 ROP Intrm. 108, 111.

It is the duty and function of the Attorney General to represent the executive branch in all civil litigation. 1 ROP Intrm. 127, 128.

Fact that President and Minister of Justice approved agreement involving expenditure of public funds did not make ROP a party thereto where not certification as to the availability of funds had been given. 1 ROP Intrm. 633A, 633C.

Legislative branch cannot qualify or diminish powers accorded to executive branch by Constitution. Art. IX, § 6 of Constitution gives president implicit power to impound public funds approved through the budget process. 2 ROP Intrm. 206, 208-09.

Complaint filed against executive branch defendants alleging that they violated the Constitution by making expenditures exceeding their budgetary authority was dismissed because it failed to allege any negligence or lack of due diligence by defendants. 6 ROP Intrm. 317, 320.

#### • **FOREIGN INVESTMENT ACT**

Injunction against obtaining a license and license revocation provisions of the Foreign Investment Act are civil remedies, while the fine and imprisonment provisions are criminal penalties. 3 ROP Intrm. 205, 207.

"Private attorney general" provision of Foreign Investment Act does not violate the separation of powers set forth in Article VII, Section 7(1) of the Constitution. 3 ROP Intrm. 205, 209-10.

Section 12 of the Foreign Investment Act, providing that the Board "may" modify, suspend,

or revoke a license, requires that, if a violation occurs, the Board must modify, suspend, or revoke a license. 3 ROP Intrm. 205, 210.

Whether a business is being carried on in Palau is a separate and distinct question from whether the business is "established in the Republic for the purpose of carrying on a business." Since statutes should be construed to give effect to every word, establishing a business in the Republic must be different than carrying on a business in the Republic. 6 ROP Intrm. 54, 55.

Some degree of permanency must exist before a business can be "established." 6 ROP Intrm. 54, 56.

#### • **GAMBLING**

Video poker machines that offer coin returns upon winning are illegal gambling devices subject to anti-gambling statute. Machines that offer free games are not gambling devices. 1 ROP Intrm. 417, 421-22.

Payment of taxes on gambling machine profits does not furnish a defense or justification for operation of the machine in violation of the anti-gambling statute. 1 ROP Intrm. 417, 423.

#### • **GOVERNMENTAL IMMUNITY**

Where a municipality, through its officials, agents or employees is engaged in positive misfeasance or wrongful acts (as distinguished from mere negligence) the municipality has no immunity from tort liability. 1 ROP Intrm. 22, 25.

Palau constitutional provision waiving immunity for unlawful arrests or damage to private property "as prescribed by law" is not superseded by the supremacy clause in the Constitution. It does not matter that immunity was waived under Trust Territory government and not by the OEK. 1 ROP Intrm. 185, 186.



Acts taken by president in his official capacity and as party to contract were discretionary acts on which president is immune from suit. 1 ROP Intrm. 188, 191.

Pursuant to 6 TTC §§ 251-52, the states of Palau enjoy the same sovereign immunity that the Republic of Palau has. 1 ROP Intrm. 261, 263.

Plaintiff could bring suit against police officer in his individual capacity on allegations that officer committed assault and battery while on duty. However, plaintiff could not bring sue officer in his official capacity or the director of Public Safety, the President of the Republic or the Republic itself because they were immune. 1 ROP Intrm. 316, 318.

The national government is immune from lawsuits except to the extent it consents to be sued, and the terms of that consent define a court's jurisdiction to entertain the suit. 4 ROP Intrm. 224, 227; 5 ROP Intrm. 305, 311; 6 ROP Intrm. 267, 271.

Pursuant to 14 PNC § 502(e), private individual may not sue the government for interference with existing contracts or for interference with prospective economic advantage. 5 ROP Intrm. 305, 310.

A waiver of sovereign immunity must be unequivocally expressed by statute; attorney general has no power to waive immunity in the absence of statutory authority to do so. 6 ROP Intrm. 267, 271.

Although ROP had waived sovereign immunity with respect to restitution claim, that did not mean it had waived immunity with respect to prejudgment interest. Thus, appellate court reversed trial court's award of prejudgment interest. 6 ROP Intrm. 267, 272.

#### ● **HABEAS CORPUS**

Writ of habeas corpus granted because warrants of arrest and detention issued by the

federal district court for the Territory of Guam have no force and effect in Palau. 1 ROP Intrm. 238, 239.

Purpose of writ of habeas corpus is to inquire into the cause of a person's imprisonment. Writ designed for purpose of effecting speedy release of persons who are illegally deprived of their liberty. 1 ROP Intrm. 282, 283.

Writ of habeas corpus denied to individuals being held pursuant to warrants of arrest issued by the federal district court for the Territory of Guam. 1 ROP Intrm. 282, 287.

Writ of habeas corpus granted to individuals arrested for extradition to the FSM because ROP extradition statute did not allow extradition from ROP to FSM. 1 ROP Intrm. 311, 313.

Proper format for a challenge based upon ineffective assistance of counsel is a writ of habeas corpus so that the facts can be developed, unless the record is clear as to the ineffective assistance, in which case it can be brought on appeal. 2 ROP Intrm. 152, 167-68.

A trial court's determination that a petition for a writ of habeas corpus is sufficiently pleaded will be reviewed for abuse of discretion. 4 ROP Intrm. 15, 17.

The habeas corpus pleading requirements in 18 PNC § 1102 are designed to insure that a court can adequately assess the viability of a petition, and that the party who is allegedly restraining the petitioner has enough information to intelligently respond. 4 ROP Intrm. 15, 17.

Petitions for writs of habeas corpus should be liberally construed. 4 ROP Intrm. 15, 18.

#### ● **INTERNATIONAL LAW**

Republic of Palau, while sovereign in

some respects, does not enjoy a level of sovereign independence that would allow it to be classified as a full fledged nation for purposes of applying international comity. 1 ROP Intrm. 311, 314.

An international agreement is to be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in light of its object and purpose. 6 ROP Intrm. 22, 24.

## ● JUDGMENTS

**-Law of the Case Doctrine** The law of the case doctrine states that a judge should not overrule a previous decision or order of the first judge on the same court level. The rule is limited to subsequent rulings in the same case and does not apply to rulings in separate cases. 2 ROP Intrm. 131, 135; 5 ROP Intrm. 284, 286.

The law of the case doctrine is not a bar to reconsideration where there has been an intervening change or clarification of the law. 5 ROP Intrm. 295, 298.

**-Relief from Judgment** Rule 60(b) is remedial in nature and must be applied liberally. 3 ROP Intrm. 4, 9.

Civil Rule 60(b) governs motions to set aside default judgments. 3 ROP Intrm. 4, 9.

Trial court properly denied motion for new trial based on newly discovered evidence where such evidence was merely cumulative. 4 ROP Intrm. 177, 180.

For relief to be granted under Civil Rules 59 or 60(b)(2), the failure to produce the allegedly newly discovered evidence at trial must not have been caused by the moving party's lack of due diligence. 4 ROP Intrm. 177, 181.

Granting or denying a motion for relief from judgment lies within the sound discretion of the trial court. 4 ROP Intrm. 177, 181.

Pursuant to Rule 54(b), orders may be revised unless a judgment has been entered adjudicating all the claims and the rights and liabilities of all the parties. 5 ROP Intrm. 295, 298.

In determining whether to grant a trial de novo, existence of severe deficiencies in the record is an important consideration. 6 ROP Intrm. 10, 14.

A Rule 60(b) motion for reconsideration may be filed in the trial court after a notice of appeal has been filed. The trial court has jurisdiction to deny the motion because such a ruling is in aid of the appeal but has no jurisdiction to grant the motion. If the trial court is inclined to grant the motion, it must indicate that to the court of appeals, which may then remand the action. 6 ROP Intrm. 29, 30.

Motions for relief from judgment under Rule 60(b) should be directed to the Trial Division. 6 ROP Intrm. 29, 30; 6 ROP Intrm. 273, 275.

Motions for relief from judgment under Rule 60(b) must be made within a reasonable time. 6 ROP Intrm. 83, 85.

"Fraud on the court" as it pertains to Rule 60(b) is not fraud between the parties or fraudulent documents, false statements or perjury, but concerns incidents in which the impartial functions of the court have been directly corrupted. 6 ROP Intrm. 83, 89.

Where a party cannot demonstrate "excusable neglect" justifying relief from a judgment under Rule 60(b)(1), it may not obtain relief on the basis of "inexcusable neglect" under Rule 60(b)(6). 6 ROP 221, 224.

Rule 60(a) does not allow correction of errors made by the parties in a lease; it only allows correction of errors in a judgment. 6 ROP Intrm. 273, 274.

Rule 60(b) does not permit relief from

judgment because of an attorney's inexcusable neglect. 7 ROP Intrm. 27, 28.

Appellate review of a trial court decision made pursuant to 60(b) is limited to the question whether the trial court abused its discretion. 7 ROP Intrm. 66, 68.

**-Res Judicata** No res judicata effect can be given to case that resulted in voluntary dismissal. 1 ROP Intrm. 521, 542.

Before applying doctrine of res judicata, court must find that the issue before it has been determined in a prior case between the same parties. 1 ROP Intrm. 595, 595.

Doctrine of res judicata does not apply to party who was not involved in the prior suit. 2 ROP Intrm. 122, 126.

Dicta cannot form the basis of a res judicata claim. 4 ROP Intrm. 68, 73.

The doctrine of res judicata applies only to final judgments based on the same cause of action between the same parties or their privies. 4 ROP Intrm. 189, 194.

Collateral estoppel, or issue preclusion, may apply even where the parties are not the same as in the first case. 5 ROP Intrm. 284, 287; 5 ROP Intrm. 327, 328.

Extensive discussion of collateral estoppel and res judicata. 5 ROP Intrm. 284, 288-90.

Issue preclusion may not be used if there is a clear and convincing need for a new determination of the issue. 5 ROP Intrm. 327, 330.

When in two actions inconsistent final judgments are rendered, it is the later, not the earlier, judgment that is accorded conclusive effect in a third action under the rules of res judicata. 6 ROP Intrm. 245, 249.

Where party or his privy is not party to previous proceedings and determination in previous proceeding is not essential to the judgment, issue preclusion does not apply. 6 ROP Intrm. 346, 352.

A judgment based on determination of two issues, either of which standing independently would be sufficient to support the result, is not conclusive with respect to either issue standing alone. 6 ROP Intrm. 346, 353.

Filing a claim that is obviously barred by res judicata, collateral estoppel or the statute of limitations may subject a litigant to sanctions. 7 ROP Intrm. 76, 76 n.1.

Principles of issue preclusion do not apply to cases in which its application would "defeat the ends of justice." However, such cases are rare and this was not one of them. 7 ROP Intrm. 76, 78.

**-Satisfaction of Judgments** When a plaintiff opts for a money judgment instead of a foreclosure of a chattel mortgage, its only collection recourse following judgment is 14 PNC § 2100 et seq. 3 ROP Intrm. 247, 249.

Once a writ of execution is issued, the proper proceedings for third parties to lay claim to the property subject to execution is by supplemental proceedings. 3 ROP Intrm. 247, 249-50.

Once title to an asset is determined to be in the judgment debtor, the provisions of 14 PNC § 2103 can be implemented and the sale pursuant to 14 PNC § 2104 may proceed. 3 ROP Intrm. 247, 250.

If there is no stay pending appeal, trial court may proceed to satisfy the judgment under a writ of execution even if judgment is on appeal. 3 ROP Intrm. 247, 250.

The statutory provisions for the sale of an asset of a judgment debtor have equitable underpinnings. Statute's purpose is to assure as



near as possible that a fair and reasonable price is obtained for the judgment debtor's asset so that the judgment can be satisfied to the maximum extent. 3 ROP Intrm. 247, 250.

Judgment creditor's bond properly forfeited and applied to money judgment after trial court found that judgment creditor failed to adequately maintain the asset (a boat) while it had possession. However, title to the asset should not have vested in judgment creditor upon the bond's forfeiture, as this rewarded judgment creditor for its failure to maintain the asset. 3 ROP Intrm. 247, 251.

The general rule is that a valid judgment constitutes a sufficient justification for all acts done in its enforcement and that acts done under such a judgment cannot be made the basis for an action in tort. 4 ROP Intrm. 290, 303 n.10.

#### • **LACHES**

Plaintiffs challenging municipal ordinance were not guilty of laches where they voiced objections to the ordinance three days after it was passed. 1 ROP Intrm. 181, 183.

Laches is defined as sleeping on one's right to the extent of permitting such action to mislead another to his detriment. 1 ROP Intrm. 197, 203; 3 ROP Intrm. 145, 147.

Party's failure to assert its claim when a principal to a contract was still living and able to provide first hand knowledge of the transaction was to the opposing party's detriment and therefore the claim was barred by laches. 3 ROP Intrm. 145, 148.

Laches is a purely equitable doctrine which cannot be invoked in legal, or non-equitable, actions. Thus, laches may not be used to defeat a claim where such claim was filed within the time limit established by the appropriate statute of limitations. 4 ROP Intrm. 140, 141.

#### • **LAND COMMISSION/LCHO/LAND COURT**

**-Appeals** Deadline for filing appeals of Land Commission decisions is 120 days from the date when notice of the determination is given. 1 ROP Intrm. 513A, 513D.

A party that fails to appeal a determination of ownership is not permitted to later make a collateral attack on that determination, unless it is contending that it was deprived of due process of law. 7 ROP Intrm. 12, 16.

**-Civil Action When Matter Pending Before LCHO** Language of 35 PNC § 922 stating that courts shall not entertain any action relating to interests in land within an LCHO registration area is not mandatory, and does not deprive a court from hearing such a case if it chooses. 3 ROP Intrm. 116, 117-18.

**-Claimant's Appearance at Hearing** Claimant who chooses not to appear at LCHO hearing does so at his peril, but a claim cannot be dismissed solely because claimant chose not to appear. 6 ROP Intrm. 313, 316.

**-Concurrence of Land Commissioners/Hearing Officers** Statutory requirement that a majority of the Land Commissioners hearing a claim concur in the decision distributing land applies only to the initial adjudication of a land claim. Senior Commissioner had the authority to unilaterally cancel certificates in some circumstances. 4 ROP Intrm. 95, 100-01.

**-Constitution** Claims for the return of land made pursuant to Art. XIII, § 5 of Constitution cannot be thwarted by Art. XV, §3(b), which provides that all judgments existing at the time the Constitution is passed shall remain in force and effect. 6 ROP Intrm. 346, 350.

**-Continuing an LCHO Hearing** LCHO abused its discretion by not granting a party's request for a short continuance when the party was unable to attend a hearing due to illness. 3 ROP Intrm. 225, 228.



**-Delays In Adjudication** In the absence of a showing of prejudice, LCHO's delay in issuing a determination of ownership did not deny due process to the non-prevailing party in that determination. 5 ROP Intrm. 19, 21.

Long delay experienced by all parties before the LCHO finally held a hearing is not grounds for awarding the property to one party because all the parties were prejudiced equally by the delay. 5 ROP Intrm. 53, 54.

**-Due Process/Notice** Land Commissioner's error in canceling certificate of title without notifying owner was cured by owner's opportunity to challenge the action in a trial *de novo* before the Trial Division on appeal. 4 ROP Intrm. 95, 101.

Burden is on person attacking a prior land title determination to show any lack of due process that would render it invalid. 5 ROP Intrm. 86, 89. Such a showing must be made by clear and convincing evidence. 5 ROP Intrm. 142, 147.

Notice by publication is adequate under the due process clause for unknown potential claimants. 5 ROP Intrm. 142, 145.

**-Evidence** The ROP Rules of Evidence do not apply in LCHO proceedings. It is appropriate for the LCHO to rely on hearsay and unauthenticated documents. 7 ROP Intrm. 82, 83.

**-Extension of Time to Appeal** Land Court has authority as a trial court to grant extensions of time for filing a notice of appeal pursuant to ROP R. App. Pro. 4(c). 6 ROP Intrm. 262, 264.

**-Impartiality of Hearing Officers** Claims filed in an LCHO proceeding should be determined by hearing officers who not only are in fact impartial, but also whose impartiality may not reasonably be questioned. 6 ROP Intrm. 302, 304.

**-Jurisdiction** Determination of property boundaries is synonymous with determination of land ownership and is within the jurisdiction of the LCHO. 5 ROP Intrm. 205, 206.

Lack of subject matter jurisdiction is a defect that cannot be waived. 5 ROP Intrm. 205, 206 n.1.

35 P.N.C. §§ 1104(a) and 1110(c) prevented the LCHO from issuing determinations of ownership for lands that were already registered or that had been "finally determined by the Land Commission or by a court of competent jurisdiction." These provisions did not divest the LCHO of jurisdiction to reexamine determinations of ownership made by the Land Title Office. 7 ROP Intrm. 12, 15; 7 ROP Intrm. 38, 40.

**-Land Commission** Trial court that vacated determinations of ownership issued by the Land Commission should not remand the case to the LCHO just because the LCHO is the commission's successor. Instead, trial court should conduct a *de novo* hearing. 2 ROP Intrm. 84, 88.

**-LCHO** When presented with claims for multiple Tochi Daicho lots, and upon determining that one claimant owns them all, LCHO had no statutory duty to survey each lot individually before adjudicating title to the whole. 4 ROP Intrm. 85, 88.

LCHO was certified as functioning in December 1987. 7 ROP Intrm. 38, 40 n.2.

**-Naming Trustee** LCHO has no authority to determine who the chief of a particular clan is or who shall represent the clan for the purpose of establishing a trustee for the land. But the LCHO may note a "contact person" on its ownership determination. 3 ROP Intrm. 155, 156-57.

The notation of a trustee for clan land by the LCHO is not binding on the clan nor is it subject to judicial review. 3 ROP Intrm. 328, 330.

**-Preclusive Effect of Land Title Decisions** District Land Title Officer's Determinations of Ownership should be accorded *res judicata* effect by Land Commission pursuant to 67 TTC § 112 and Dept. of the Interior Order 2969. 1 ROP Intrm. 620, 623-24.

A decision of the LCHO is to be given preclusive effect unless a timely appeal is filed. 2 ROP Intrm. 146, 150.

Land Commission decisions are given preclusive effect unless a timely appeal is filed. 4 ROP Intrm. 23, 28; 6 ROP Intrm. 245, 246.

By not filing a claim before the Land Commission and/or appealing its determination of ownership, party barred from claiming title to property under an agreement signed prior to the Land Commission's determination. 4 ROP Intrm. 68, 72.

A party does not waive his right to contest property ownership by failing to appeal an LCHO certificate of title issued pursuant to 35 PNC § 1116. No appeal is necessary (or possible) under that section. 5 ROP Intrm. 31, 35.

Absent a showing that the then-applicable regulations concerning public and private notice of hearings, a Palau District Land Title Officer's determinations are conclusive against all persons, whether or not that person was a party to the proceedings before the Officer. 5 ROP Intrm. 86, 88.

A certificate of title issued as a result of a LCHO determination of ownership is conclusive upon all persons who have had notice of the proceedings and all those claiming under them. "Notice" for these purposes may be actual or constructive. 5 ROP Intrm. 142, 145.

Pursuant to § 112 of Title 67 of the Trust Territory Code, Land Title Officer determinations are entitled to res judicata effect; failure to give res judicata effect to Land Office determinations can constitute reversible error. Section 112 does not impose a jurisdictional limitation. 6 ROP Intrm. 245, 247-48.

**-Record on Appeal** If appellant opts to pay only for the translation of the LCHO's Summary and Adjudication and not for a translation of the hearing itself, then the record before the trial court and the Appellate Division consists only of the

Summary and Adjudication. 3 ROP Intrm. 140, 140-41.

Where a party contends that the record before the LCHO is incomplete, party is required to make a reasonable effort to supplement the record with an agreed statement of facts or some offer of proof concerning the missing testimony unless it would be impractical under the circumstances of the case. 6 ROP Intrm. 10, 14; 6 ROP Intrm. 229, 232.

**-Redetermining Title** LCHO may not redetermine title claims between parties or their successors when such claims have already been finally determined by the Land Commission. 3 ROP Intrm. 219, 223-24.

Land Commission had authority to withdraw an erroneous certificate of title when the certificate contravened the parties' stipulation regarding a disputed boundary and when there was no subsequent action taken in reliance upon the certificate. 4 ROP Intrm. 95, 100 & 102.

**-Standard of Review** Trial court is not bound by the clearly erroneous standard when reviewing the LCHO's findings. 3 ROP Intrm. 140, 141; 5 ROP Intrm. 139, 140; 5 ROP Intrm. 150, 154.

The trial court has discretion to review the facts of an LCHO matter *de novo*, but the Appellate Division does not. 3 ROP Intrm. 140, 141.

LCHO determinations of ownership are appealed to the Trial Division, which reviews both the findings of fact and conclusions of law *de novo*. Trial Division has discretion to grant a trial *de novo*, but such a trial is not a matter of right. 3 ROP Intrm. 159, 169-70.

Although the trial court is free to make its own findings, it is error for the trial court to adopt an LCHO finding that in fact the LCHO never made and to rest its decision on the adopted finding. 4 ROP Intrm. 80, 82.

The Trial Division may adopt in whole or

in part the LCHO findings, may disregard them altogether and make its own findings based on the existing record (trial *de novo* on the record), may make its own findings based on evidence and testimony presented in a new trial (trial *de novo*), or may proceed with any combination of the above. 5 ROP Intrm. 61, 62; 5 ROP Intrm. 150, 153; 5 ROP Intrm. 201, 202; 6 ROP Intrm. 178, 183; 7 ROP Intrm. 56, 57; 7 ROP Intrm. 82, 83.

Trial court may consider plain error below, regardless whether it was briefed by the parties. 5 ROP Intrm. 201, 202.

The Appellate Division reviews for clear error the trial court's findings of fact in an appeal of LCHO proceedings. 5 ROP Intrm. 139, 142.

Trial Division did not abuse its discretion where it denied a request for a trial *de novo* based on the argument that the Trial Division might come to a different conclusion than the LCHO were it to hear the testimony itself. 7 ROP Intrm. 82, 84.

Upon an appeal from an LCHO determination of ownership, the Trial Division has a great deal of discretion in considering new legal issues, whether raised by the parties or by the Court itself. 7 ROP Intrm. 85, 86.

**-Statutory Notice** A person who collaterally attacks a determination of ownership rendered by a Land Title Officer, the Land Commission, or the Land Claims Hearing Office on the grounds that statutory procedural requirements were not complied with has the burden of proving noncompliance by clear and convincing evidence. 5 ROP Intrm. 142, 147.

Notice of the LCHO hearing by radio broadcast is permissive, not mandatory. 5 ROP Intrm. 142, 147.

**-Transcript** Party has no right to a free transcript on an LCHO appeal. 3 ROP Intrm. 159, 171.

It is permissible to go forward with an appeal on the LCHO's summary and adjudication

alone, without the benefit of a transcript of the LCHO proceeding. 6 ROP Intrm. 31, 33.

**-Who May Appeal** Broad language of regulations governing hearings before the Palau District Land Title Officer suggests that any person, even someone who had not participated in the hearing, could appeal the Officer's determination. 5 ROP Intrm. 86, 89.

Any party aggrieved by a determination of ownership issued by the LCHO may appeal to the trial division. Generally, in order to be "aggrieved," the party must have been a party to the action from which the appeal is taken. 6 ROP Intrm. 174, 176; 6 ROP Intrm. 245, 249.

#### • **POWER OF ATTORNEY**

A power of attorney terminates upon the death of the grantor. 4 ROP Intrm. 80, 81.

#### • **PRE-JUDGMENT INTEREST**

Party was entitled to pre-judgment interest, but only at statutory rate of 9%. Pre-judgment interest is not to be compounded. 2 ROP Intrm. 211, 215.

Pre-judgment interest as damages in a contract case is permitted where the amount owed is fixed by the contract or can be determined with reasonable certainty. 3 ROP Intrm. 29, 30.

In the absence of statute, the Court is as competent to determine the amount of interest awarded as compensation for the lost use of money as it is any other item of damages. 3 ROP Intrm. 29, 31.

In the absence of a valid contract stipulating otherwise, the statutory interest rate for post-judgment interest awards (9%) is an appropriate rate to use in calculating pre-judgment interest awards as well. 3 ROP Intrm. 29, 31.

National legislators who were ordered to



repay government for unconstitutional expense account payment they received were also required to pay prejudgment interest. 6 ROP Intrm. 297, 298 (aff'd in part, rev'd in part 6 ROP Intrm. 105, 117-18).

## ● **PROFESSIONAL RESPONSIBILITY**

### **—Aggravating/Mitigating Circumstances**

Attitude of respondent attorney at disciplinary hearing may properly be considered a mitigating or aggravating circumstance in determining sanction. 3 ROP Intrm. 12A, 12G.

Aggravating and mitigating circumstances set forth in the ABA Standards for Imposing Lawyer Discipline provide guidelines for selecting appropriate sanction for ethical violation. 4 ROP Intrm. 121, 131-32.

Previous violations of disciplinary rules is an aggravating factor to be considered in imposing sanctions. 5 ROP Intrm. 265, 270.

**-Appeal** Appellate Division has no jurisdiction to entertain a writ of certiorari from a Disciplinary Panel decision. 3 ROP Intrm. 37, 38.

Under Disciplinary Rule 5(k), a sanctioned attorney may not appeal a Disciplinary Tribunal decision to the Appellate Division. 4 ROP Intrm. 198, 199.

Although a trial court need not make findings of fact in all cases when imposing sanctions, the court must ensure that the record is sufficient to allow for meaningful review of the sanction. 5 ROP Intrm. 207, 208.

**-Appropriate Sanction** An attorney's failure to grapple with established law and to construct a meaningful legal argument are factors to consider in imposing Rule 11 sanctions. 2 ROP Intrm. 306, 313.

In considering the appropriate sanction, it is the Disciplinary Tribunal's duty to impose the discipline that is necessary to protect the public,

the legal profession, and the courts. 4 ROP Intrm. 121, 132.

When imposing sanctions under 14 PNC § 702, the trial court may consider the attorney's ability to pay, but such consideration is not mandatory. 5 ROP Intrm. 239, 247.

An attorney has the burden of proving his inability to pay if he is urging the trial court to consider this as a factor in determining the amount of the sanction. 5 ROP Intrm. 239, 247.

In determining an appropriate sanction, court refers to factors considered as either aggravating or mitigating circumstances by the ABA Standards for Imposing Lawyer Discipline. 6 ROP Intrm. 252, 257; 7 ROP Intrm. 28, 32.

Attorney who had made false statements to the court and who had two prior disciplinary offenses ordered to perform 25 hours of free legal services representing indigent criminal defendants and to pass multi-state bar ethics examination. 6 ROP Intrm. 252, 257.

**-Attorney/Client Transactions** Governor of Ngardmau State, who also served as the state's attorney, violated rules concerning attorney/client business transactions when he failed to follow procurement laws and could not prove that the deals he entered into with the state were fair and reasonable to the state. 7 ROP Intrm. 28, 31.

**-Authority to Discipline** Supreme Court has inherent authority to control the admission of those who wish to practice before it and to discipline those so admitted. 3 ROP Intrm. 229, 235.

Supreme Court has authority to require an attorney who has been the subject of a disciplinary proceeding to pay the attorney fees of the disciplinary counsel. 6 ROP Intrm. 141, 141.

Disciplinary Tribunal has the authority to enlarge the time frames established in the disciplinary rules. 6 ROP Intrm. 206, 206.

**-Commingling Funds** An attorney commingles funds when he intermingles his client funds with his own. 3 ROP Intrm. 12A, 12C.

Under Model Rule 1.15(c), counsel has ethical obligation to promptly notify client upon receiving funds for client. 3 ROP Intrm. 12A, 12D.

Once a dispute arises regarding client funds, counsel must establish a separate account for the funds. 3 ROP Intrm. 12A, 12D.

Claims of inexperience, ignorance of disciplinary rules, and absence of harm are no defense to charge of commingling funds. 3 ROP Intrm. 12A, 12G.

**-Communicating With Client** An attorney should apprise his client of the status of a case through written communication at every critical stage of the litigation. 5 ROP Intrm. 116, 116.

**-Communicating With Non-Client** Counsel may not request that a non-client refrain from voluntarily giving relevant information to another party unless one of the narrow exceptions to Model Rule 3.4 applies. 5 ROP Intrm. 155, 155.

**-Communicating With Represented Party** Violations of Model Rule 4.2 require proof of three elements: 1) communication with a party; 2) who is represented by another lawyer; and 3) without the other lawyer's consent. 3 ROP Intrm. 285, 296.

Delivery of documents to a third person with the understanding that such documents would be given to a represented party constitutes "communications" under Model Rule 4.2. 3 ROP Intrm. 285, 297.

Model Rule 4.2, which prohibits *ex parte* communications with represented parties, serves the twin purposes of protecting represented parties from the dangers of dealing with adverse counsel and of preventing the inadvertent disclosure of privileged information. 4 ROP Intrm. 182, 183-84.

The relevant focus when determining whether the ban on *ex parte* communications applies to an employee of a represented party is on the employee's relationship with the represented party, rather than on how the party chooses to organize his business. 4 ROP Intrm. 182, 184-85.

Former employees of a represented party are covered by the rule against *ex parte* communications only if their acts or omissions gave rise to the underlying litigation, or if their statements involve privileged communications. 4 ROP Intrm. 182, 185.

Rule against *ex parte* communications only extends to those upper-level officers and employees who have speaking authority for the organization. 4 ROP Intrm. 182, 185.

When a lawyer communicates with an employee of a represented party he must disclose to such employee his identity and the fact that he represents a party with a claim against the employee's employer. 4 ROP Intrm. 182, 186.

A lawyer may communicate with an opposing party represented by counsel only after obtaining the consent of the opposing party's counsel. 5 ROP Intrm. 50, 50.

**-Conduct Prejudicial to the Administration of Justice** An attorney prejudices the administration of justice within the meaning of Model Rule 8.4(d) when he makes foul and unfounded aspersions upon the character and conduct of other members of the bar. 5 ROP Intrm. 184, 185.

Counsel's interrogation of witness who was brought to him by counsel's client (who was prohibited from having contact with witness by court order) was conduct prejudicial to the administration of justice and misconduct pursuant to Model Rule 8.4(d). 6 ROP Intrm. 205, 214.

Lawyer's offer to witness of free legal services in exchange for her testimony is a violation of the rules of professional responsibility. 6 ROP Intrm. 205, 215.

**-Conflict of Interest** Attorney did not violate Model Rule 1.7(b) by representing a clan against third parties in one action and certain members of the same clan in a second action pitting members of the clan against each other. 3 ROP Intrm. 285, 289.

Model Rule 1.7(a) imposes a flat ban on representing one client against another client absent the consent of both. 3 ROP Intrm. 285, 289.

Individual members of a clan are not considered clients of an attorney representing the clan with respect to Model Rule 1.7(a). 3 ROP Intrm. 285, 290.

The client of an attorney who represents a clan is the clan itself, not the clan's representative. 3 ROP Intrm. 285, 292.

Strong members of a clan are most closely analogous to partners for purposes of Model Rule 1.7. 3 ROP Intrm. 285, 293-94.

An attorney may not represent a client if that client's interests are directly adverse to another client. 4 ROP Intrm. 63, 65.

**-Contingency Fees** Counsel may not add on charges to an already established contingency fee agreement merely because the matter is costing him more than he anticipated. 3 ROP Intrm. 12A, 12E.

If client is retained on contingency fee agreement under which counsel is entitled to reimbursement for costs of collecting on the judgment, counsel may not keep sanction awarded because of opposing party's procrastination in paying judgment. 3 ROP Intrm. 12A, 12E.

**-Cooperation of Respondent** Failing to cooperate with a disciplinary investigation is a separate sanctionable offense. 3 ROP Intrm. 12A, 12F.

**-Disbarment** Disciplinary Tribunal rejected attorney's resignation from the Bar when such resignation was tendered after tribunal determined

that he violated professional conduct rules but before it had determined his penalty. Attorney was disbarred. 5 ROP 249, 249.

**-Disciplinary Actions in Other Jurisdictions** An attorney suspended in another jurisdiction may not be certified to practice in Palau. 3 ROP Intrm. 229, 234.

Admission Rule 2(a) requires an attorney to provide a certificate of good standing in all jurisdictions in which he has been admitted prior to his application and to divulge not just current but all prior disciplinary actions against him. 3 ROP Intrm. 229, 236.

Reciprocal discipline proceedings begin only upon an attorney's sanction in another jurisdiction. 3 ROP Intrm. 253, 255.

Under Disciplinary Rule 11(a), an attorney need only report a sanction from another jurisdiction, not the initiation of proceedings against him. 3 ROP Intrm. 253, 256.

**-Dishonesty** Model Rule 8.4(c) and ROP Rule of Professional Conduct 2(a) prohibit attorneys from engaging in any dishonest conduct. 5 ROP Intrm. 265, 267.

Rules pertaining to attorney dishonesty apply only if the attorney had a deceitful intent. 7 ROP Intrm. 28, 32.

**-Duty of Candor** Sanctions are appropriate where counsel at oral argument has supplied the court with inaccurate information in an attempt to mislead the court. 5 ROP Intrm. 207, 212.

**-Duty of Inquiry** Before filing any claims against a party, an attorney has a duty to conduct a reasonable inquiry into the underlying facts and law on which the claims are predicated. 5 ROP 207, 211.

**-Duty to Know Disciplinary Rules** Members of the bar have an ethical and professional duty to make themselves aware of all rules applicable to the practice of law. 3 ROP Intrm. 12A, 12G.



**-Duty to Report Client's Actions** Attorney had no duty to report his client's violation of bail terms where such violation was not a criminal act or likely to result in imminent death or substantial bodily harm. 6 ROP Intrm. 205, 213.

It is the duty of the sanctioned attorney to ascertain from the Disciplinary Tribunal what his rights and responsibilities are. 4 ROP Intrm. 121, 126.

All attorneys and trial counselors have a professional and ethical duty to make themselves aware of all rules applicable to the practice of law. 4 ROP Intrm. 121, 127.

**-False Statements** Attorney found in violation of Model Rule 3.3(a) by knowingly making false statements of material fact to court with respect to his alleged representation of local bank. 6 ROP Intrm. 252, 256.

**-Mootness of Charges** Because a disbarred attorney may apply for reinstatement at a later time, charges of misconduct against him do not become moot upon disbarment. 6 ROP Intrm. 206, 206.

**-Notice to Clients of Suspension** Attorney violated Disciplinary Rule 12(a), requiring a suspended attorney to promptly notify his clients of his suspension by registered or certified mail, by merely orally informing a representative of the client. 4 ROP Intrm. 121, 128-29.

**-Notice to Respondent** Leaving a copy of a formal complaint at respondent attorney's office satisfies notice provision of Disciplinary Rule 4. 3 ROP Intrm. 229, 233.

Before imposing sanctions, a trial court must provide the person facing sanctions with notice that informs the person of the fact that the court is considering the imposition of sanctions, the basic reason why the court is considering the imposition of sanctions and the form of sanctions it is considering. 5 ROP Intrm. 207, 208.

**-Practice of Law** The preparation of legal

documents, not the attorney's signature, is the activity which constitutes unauthorized practice of law. 4 ROP Intrm. 121, 124.

The practice of law includes legal advice as well as the preparation of legal documents, and includes services that are performed both remuneratively and gratuitously. 4 ROP Intrm. 121, 124-25.

Lawyer may not make misleading communications stating or implying that he is a specialist in an area of law when he is not. 5 ROP Intrm. 51, 52.

**-Public Censure** Public censure is appropriate where disciplinary decision may provide necessary guidance on the questions posed to both the bar and the general public. 3 ROP Intrm. 285, 301-02.

**-Racist Remarks** Attorney sanctioned for including racist, irrelevant remarks in papers attorney filed with the court. 5 ROP Intrm. 51, 52.

**-Time to Judge Respondent's Actions** The reasonableness of an attorney's action under disciplinary rules must be judged as of the time they were taken. 3 ROP Intrm. 285, 299 n.11.

## • **PROPERTY**

**-Acquisition/Limited to Palauans** Acquisition (but not ownership) of land is limited to Palauan citizens. 5 ROP Intrm. 122, 127.

A person who acquires ownership of land while he is a citizen of Palau does not lose that interest when he is divested of Palauan citizenship. 5 ROP Intrm. 122, 128.

**-Adverse Possession** The concept of adverse possession did not apply in Palau until May 28, 1951 when "Section 316" went into effect. 2 ROP Intrm. 90, 91.

The existence of a family relationship

between an owner and a party claiming adverse possession defeats the requirement that possession be hostile or adverse. 2 ROP Intrm. 90, 92.

To acquire title by adverse possession, the claimant must show that the possession is actual, open, visible, notorious, continuous (for twenty years) hostile or adverse, and under a claim of right or title. 5 ROP Intrm. 55, 56.

There is no affirmative requirement for an owner of land to live on a lot to retain ownership. 5 ROP Intrm. 55, 56.

The general rule is that actual possession of real estate is constructive notice of the rights of the possessor and of all facts connected therewith which a reasonable inquiry, made of the possessor, would disclose. 5 ROP Intrm. 74, 78.

While possession of land is not always an indication of ownership, court believed it was fair inference that party's occupation of the land for past thirty or more years was a tacit or de facto disposition of land to them. 6 ROP Intrm. 229, 233.

**-Alienating Land** Under Palauan custom, the consent of the strong senior members of a lineage is necessary to alienate lineage land. 3 ROP Intrm. 101, 105.

A bonafide purchaser for value cannot buy what the seller does not own. Therefore, such a purchaser did not acquire any interests in lands that the seller did not own. 5 ROP Intrm. 122, 126-27.

**-Boundary Disputes** Palauan custom that agreement to alienate land must be made with the consent of the strong and senior members of a clan does not apply to an agreement establishing boundaries between parcels of land. 4 ROP Intrm. 95, 98.

**-Conveyance** A proper transfer of Central Market Area in Koror was not rendered void merely because it was joined with improper conveyances. Invalidity of the whole only results when

ineffectiveness of the tainted parts thwarts or prevents the purpose of the original transaction. 1 ROP Intrm. 383, 391-92.

**-Destruction of Property** One is privileged to commit an act which would otherwise be a trespass to a chattel or a conversion if the act is, or is reasonably believed to be, necessary to protect the actor's land or chattels or his possession of them. 6 ROP Intrm. 234, 237.

**-Ejectment** To prevail in an ejectment action, plaintiff must present proof of title superior to that of defendant. Defendant is not required to offer proof of title or right to possession until plaintiff has made a prima facie case of title sufficient to recover possession. 2 ROP Intrm. 122, 129.

**-Eviction** Municipality held liable for compensatory damages where eviction by municipality involved wilful, positive misfeasance in wrongfully evicting resident. 1 ROP Intrm. 22, 29.

**-Fraudulent Conveyance** Assignment agreement that was executed by debtors to protect themselves from creditors was set aside as a fraudulent conveyance. Debtor cannot purposefully place land or goods beyond the reach of his creditors; any such transactions must be set aside. 1 ROP Intrm. 289, 291-92.

Defendant's sale of a house that he did not own was void. 1 ROP Intrm. 193, 195-96.

**-Land Held In Trust** A trustee can sell property if a power of sale is specifically granted by the trust terms or if such sale is necessary or appropriate to enable the trustee to carry out the purposes of the trust, unless such sale is specifically prohibited. 4 ROP Intrm. 89, 91.

If a transferee of property knows a trust exists but does not know its terms, he will be charged with the knowledge a reasonable inquiry would have provided him. He should at least ask the transferor for the terms of the trust. 4 ROP Intrm. 89, 93.

**-Landlord/Tenant** Lessor cannot grant lessee any greater interest in land than what is possessed by lessor. 5 ROP Intrm. 122, 126.

**-Lease** Lease held invalid because it did not contain a sufficient description of the property and did not specify the rent to be paid. 6 ROP Intrm. 334, 337-38.

**-Marital Property** Property that has been acquired in anticipation of or during marriage, and which has been possessed and used by both spouses is presumed to be held jointly. 6 ROP Intrm. 321, 322.

Upon husband's death, wife had right to two vehicles owned by the couple jointly during their marriage. 6 ROP Intrm. 321, 325.

**-Micronesian Land Claims Act** Trial court will distribute War Claims monies in a manner that is fair and equitable. 1 ROP Intrm. 695, 699-700; 5 ROP Intrm. 216, 218.

Purpose of Micronesian Land Claims Act is to compensate persons who suffered losses as a result of the war. 1 ROP Intrm. 34, 44; 5 ROP Intrm. 216, 219.

**-Property Seized by Occupying Powers** Pursuant to Art. XIII, § 10 of the Constitution and 35 P.N.C. § 1104(b), lands seized by occupying powers are to be returned to their original owners. However, the original owners do not take title to any improvements constructed on the property after it was taken by the occupying powers. 7 ROP Intrm. 33, 35.

**-Quiet Title** Challenger cannot defeat claimant in quiet title action by arguing that third persons who are not parties to the suit have superior title; it is sufficient that the interest asserted by the complainant is superior to that of the other parties in the suit. 5 ROP Intrm. 122, 129.

**-Statute of Frauds** Under Palauan custom, a transfer of land was effective even if not written. However, under 57 TTC § 302, the failure to record a transfer invalidates it with respect to

subsequent bona fide purchasers who lack actual or constructive notice of that prior unrecorded transfer. 1 ROP Intrm. 197, 200-01.

Palau did not have a statute of frauds that required land transactions to be in writing until 1977. 5 ROP Intrm. 205, 206; 6 ROP Intrm. 259, 260 n.1.

**-Tangible Cultural Property** Before the government commences any project that might affect a registered historical site or a tangible cultural property it must first seek permission from the Division of Cultural Affairs. This requirement applies whether the tangible cultural property is "registered" or not. 6 ROP Intrm. 277, 283.

**-Tenancies** Concept of joint tenancy, whereby a joint tenant's interest disappears when he dies and the entire ownership continues with the surviving joint tenant, is foreign to Palauan custom. Trial court finding that land held in joint tenancy is reversed; land to be administered pursuant to Palauan custom. 1 ROP Intrm. 597, 605-06.

Concepts of joint tenancy and tenancy in common, which conform with Anglo-Saxon notions of property and property ownership, fail to fit within the Palauan framework of property law. 6 ROP Intrm. 31, 36.

Co-owners of land each own undivided, equal interests in the land. Thus, when some of the land is sold, the co-owners each retain an undivided, equal interest in the land. 6 ROP Intrm. 38, 41.

The concept of joint tenancy is foreign to Palau. Thus, it is only sustainable where the intention of the owners to create a joint tenancy is clearly established by an instrument. 6 ROP Intrm. 38, 41.

**-Tochi Daicho** Tochi Daicho is presumed to be accurate in Koror and Babeldaob. However, that presumption does not apply in Peleliu and Anguar. 1 ROP Intrm. 625, 629; 1 ROP Intrm. 701, 703; 2 ROP Intrm. 315, 319.



Content of lost Tochi Daicho documents was not established by oral evidence. 1 ROP Intrm. 597, 604.

The presumption in favor of the Tochi Daicho is strong; the rebuttal evidence must be particularly clear and convincing. Here, the presumption was not rebutted. 2 ROP Intrm. 315, 318-21.

Tochi Daicho listing provides actual or constructive notice of adverse claim effective to commence running of statute of limitations. 3 ROP Intrm. 110, 114.

No reason to assume that an individual owner listed in the Tochi Daicho is also a bona fide purchaser for value. 3 ROP Intrm. 386, 390.

Clan member's opinion, formed without consulting other clan members, as to who owned a parcel of land is insufficient to overcome presumption of Tochi Daicho's accuracy. 4 ROP Intrm. 77, 78.

When the Tochi Daicho for an area has been destroyed, no presumption of correctness attaches to the listing although the court may make a finding concerning how the property was listed in the Tochi Daicho. 4 ROP Intrm. 203, 205-06.

Where the listing in the Tochi Daicho is for individual ownership, the evidence needed to rebut it must be particularly clear and convincing. 5 ROP Intrm. 19, 21.

Tochi Daicho is presumed accurate for lands in Koror and Babeldaob. 5 ROP Intrm. 222, 223.

Where the Tochi Daicho stated that the Japanese Government owned the land in question, the LCHO and the Trial Division did not err by looking to ownership prior to the Tochi Daicho to determine who the rightful owners were. 7 ROP Intrm. 17, 20.

**-Transfer by Co-Owners** When property is

owned jointly it may not be transferred without the consent of all the co-owners. 4 ROP Intrm. 68, 72.

Cases holding that the head of a clan, lineage or family cannot transfer property owned by the clan, lineage or family without the consent of their senior members do not apply to land owned beneficially by some members of a family with legal title in the hands of a trustee having no beneficial interest. 4 ROP Intrm. 89, 91.

**-Use Rights** Grantor cannot cancel use right where grantee has changed his position or acted in detrimental reliance on the use right. 6 ROP Intrm. 334, 339.

## ● **PUBLIC FUNDS**

Appropriations by the legislative branch can constitute ratification of executive action. 5 ROP Intrm. 313, 319.

To the extent that he did not personally gain from unauthorized expenditures, governor will be held personally liable for unauthorized expenditures only if he acted without due diligence, prudence and good faith. 5 ROP Intrm. 321, 324.

## ● **PUBLIC LANDS AUTHORITIES**

Palau Public Lands Authority is an entity of the Palauan government. Therefore, any debts due and owing by the authority shall be paid from public funds. 1 ROP Intrm. 127, 128.

Alien Property Custodian holds the position of a bona fide purchaser without notice. 1 ROP Intrm. 214, 218.

Palau Public Lands Authority lacks authority to convey national public lands to Koror State Public Lands Authority. Therefore, deeds attempting to make such conveyance are void. PPLA cannot terminate its own existence by simply disposing of property that it had been

created to manage. Public lands are intended to be held in trust for the use and benefit of all Palauans. 1 ROP Intrm. 214, 223.

PPLA's authority to transfer public land to the states is permissive, not mandatory. PPLA has a superior position to the state public lands authorities and can deny a state's request to return land. 2 ROP Intrm. 43, 47.

The term "state government" as it is used in Article X, Section 5 of the Constitution does not encompass state public lands authorities, because state public lands authorities are separate legal entities. 3 ROP Intrm. 305, 308.

The PPLA does not have the power to decide where to direct revenue generated by the management of public lands. 3 ROP Intrm. 314, 320-21.

The "administration and management" clause of 35 PNC § 217 includes the leasing of public lands to private concerns. 3 ROP Intrm. 314, 322.

Airai State Public Lands Authority need not prove that a majority of the board of trustees approved of litigation before intervening. Defendants are not in a position to contest the action taken by the ASPLA on the grounds that safeguards for ASPLA beneficiaries were not taken. 6 ROP Intrm. 159, 162-63.

#### ● *STATE GOVERNMENT*

Passage of local legislation was null and void where prior legislation required a quorum and a quorum was not present. 1 ROP Intrm. 181, 183.

State's ownership of resources within its territorial waters is subject to the OEK's powers to provide for the general welfare, peace and security. 3 ROP Intrm. 419, 421.

The OEK has authority to regulate state taxation. Law stating that state governments may

not tax persons, goods, services, sales, income, activities, or objects already taxed by the national government is within the OEK's constitutional authority to enact. 3 ROP Intrm. 127, 128.

The Constitution does not expressly delegate to the states the power to enact and prosecute criminal laws, but such authority has been delegated to the states by the OEK. 4 ROP Intrm. 208, 210-12.

#### ● *STATUTE OF LIMITATIONS*

Trial court cannot raise issue of statute of limitations; statute of limitations is an affirmative defense that must be raised by the parties. Failure to raise it constitutes waiver. 1 ROP Intrm. 587, 589.

Pursuant to 14 PNC § 410, twenty year time period for commencing actions accruing prior to May 28, 1951 does not run until May 28, 1971. 3 ROP Intrm. 110, 114.

Tochi Daicho listing provides actual or constructive notice of adverse claim effective to commence running of statute of limitations. 3 ROP Intrm. 110, 114.

Statute of limitations laws reflect a sound public policy that promotes the peace and welfare of society by compelling the settlement of claims within a reasonable period after their origin. 3 ROP Intrm. 116, 119.

Party's belief that it owns particular land does not relieve that party from pressing its claim within the time allotted by the statute of limitations. 3 ROP Intrm. 116, 119-20.

Before the LCHO, the statute of limitations defense may be raised by implication. 3 ROP Intrm. 191, 193.

Party is estopped from asserting a statute of limitations defense when its actions lead the party against whom the defense is asserted to justifiably believe that the time limit would be

tolled. 4 ROP Intrm. 103, 108.

Filing of land claims with the Land Commission is sufficient to toll the statute of limitations for filing in the Trial Division. 7 ROP Intrm. 17, 21.

Filing a claim that is obviously barred by res judicata, collateral estoppel or the statute of limitations may subject a litigant to sanctions. 7 ROP Intrm. 76, 76 n.1.

A complaint based on acknowledgment of a debt and a promise to pay may be brought within 6 years of the time the acknowledgment and the promise is made, despite the fact that the debt was incurred longer than 6 years ago. 7 ROP Intrm. 76, 78.

## • **STATUTES**

**-Application of Foreign Statutes** Statutes and laws of the Trust Territory are applicable to Palau unless repealed or modified by the laws or Constitution of Palau. 1 ROP Intrm. 188, 190.

Palau courts lacked subject matter jurisdiction to hold fugitives from Guam in custody where the warrants for their arrest had been issued pursuant to U.S. federal statutes. United States statutes apply to Trust Territory only if explicit inclusion is made in the statute. Palau's judicial system cannot enforce laws that are not intended to have effect in Palau. 1 ROP Intrm. 238, 240-42.

United States has authority to enforce its drug laws against Palauan citizens who import drugs into Guam. 1 ROP Intrm. 282, 287.

**-Interpretation** All statutory interpretations that tend to injuriously encroach upon the affairs of a constitutional government must receive an interpretation most favorable to the general public at large. 1 ROP Intrm. 214, 221.

Penal statutes are to be strictly construed because the lawmaking body owes the duty to

citizens of making unmistakably clear which acts are considered criminal. 1 ROP Intrm. 230, 231 (vacated in 1 ROP Intrm. 417).

Seemingly conflicting statutes should be reconciled whenever possible. 1 ROP Intrm. 230, 235 (vacated in 1 ROP Intrm. 417).

OEK is presumed to know the meaning of the words it uses. Therefore, statute is to be construed and applied in the form enacted. 1 ROP Intrm. 311, 312.

If possible, statutes should be construed in a manner to uphold their constitutionality. 1 ROP Intrm. 513A, 513D.

Where the language of a statute is plain and admits of no more than one meaning, the duty of interpretation does not arise. 3 ROP Intrm. 174, 182.

Ambiguity concerning the interpretation of criminal legislation should be resolved in favor of lenity. 2 ROP Intrm. 257, 263.

Silence regarding the specific definition of a term used in a statute leads to the assumption that the legislative purpose is expressed by the ordinary meaning of the term. 2 ROP Intrm. 257, 264.

Words used in a statute are presumed, unless the contrary appears, to be used in their ordinary and usual sense, and with the meaning commonly attributed to them. 3 ROP Intrm. 174, 182-83.

Statutes supersede and prevail over simple recitals by one house of the legislature. 3 ROP Intrm. 426, 431 n.6.

When construing statutory language, court must give ambiguous provisions a reasonable, rational, sensible, and intelligent construction. 4 ROP Intrm. 68, 74 n.2.

After a bill is signed by the Speaker of the House and the President of the Senate, and after it



receives the President's approval, its authentication as a bill that the OEK has duly passed becomes complete and unimpeachable. 4 ROP Intrm. 264, 267 n.2.

Severability of a statutory provision is a matter of legislative intent that may vary from one piece of legislation to the next. 5 ROP Intrm. 236, 237.

Statutory construction and discerning legislative intent present questions of law. 5 ROP Intrm. 313, 317.

Where the language of a statute is plain and admits of no more than one meaning, the language of the statute controls without resort to other materials. 5 ROP Intrm. 313, 317.

Statutes concerning the same subject, although in apparent conflict, are construed to be in harmony whenever possible. 5 ROP Intrm. 339, 341.

Where a statute is clearly designed as a substitute for the common law, such purpose should be given effect. Further, a statute will be deemed to abrogate the common law where its provisions are so inconsistent with and repugnant to the common law that both cannot be in force. 5 ROP Intrm. 339, 343.

Statutes should be construed to give effect to every word. 6 ROP Intrm. 54, 55.

Statutory provisions should be interpreted consistently with the purposes and objectives of the statute. 6 ROP Intrm. 54, 55.

In the interpretation of statutes, the all-important or controlling factor is the legislative will. 6 ROP Intrm. 277, 278.

**-Legislative History** Legislative finding is not an operative part of a statute. 3 ROP Intrm. 127, 128.

A trial court's decision to order the deletion of legislative findings from a statute,

though unnecessary, is not grounds for reversal. 3 ROP Intrm. 127, 128.

Reliance on legislative history in divining the intent of the legislature is a step to be taken cautiously. 6 ROP Intrm. 277, 280.

Under appropriate circumstances, a committee report may be a helpful aid in statutory interpretation. Nonetheless, a committee report does not establish the intent of the legislature as a whole. 6 ROP Intrm. 277, 281.

## • ***TORTS***

**-Emotional Distress** Litigant may recover damages for mental distress he suffers when his property is destroyed. 6 ROP Intrm. 234, 242.

**-Negligence** Defenses of contributory negligence and comparative negligence do not apply in connection with intentional torts. 6 ROP Intrm. 234, 239.

**-Sexual Harassment** Plaintiff failed to prove her claim of sexual harassment. 1 ROP Intrm. 320, 326.

## • ***UNITED STATES***

**-Compact of Free Association** Court granted injunction to delay plebiscite on Compact because Palauan translation of ballots was inaccurate and inconsistent with enabling legislation. 1 ROP Intrm. 65, 69.

Compact cannot be implemented without approval of harmful substances section by 75% of the votes cast; harmful substances section not severable from rest of Compact. 1 ROP Intrm. 80, 81.

Although Palau is self-governing, it will not be sovereign until the United Nations terminates the trusteeship. 1 ROP Intrm. 108, 111.

Four verbs in the nuclear control provisions of Constitution “use, test, store or dispose of” were meant to be a brief summation of all that could possibly be done with nuclear substances; in short, a general prohibition against the introduction of nuclear substances into Palau. 1 ROP Intrm. 333, 348.

Government of Palau could carry out its obligations to make designated land sites available to the U.S. under Compact without violating Palau Constitution’s eminent domain provision as long as exercise of eminent domain powers are for sole benefit of Palauans. 1 ROP Intrm. 333, 356.

Article XIII, § 6 of the Constitution required 75% voter approval of nuclear provision before Compact could be approved. Compact was not properly approved where the specific question required by the Palau Constitution had not been presented to voters. 1 ROP Intrm. 521, 539.

Inconsistency between the Constitution and the Compact of Free Association does not allow execution of that portion of treaty not in conflict with constitution. 1 ROP Intrm. 521, 539.

**-Precedent** Palau Supreme Court is not bound by the letter of U.S. law, constitutional or otherwise; it is free to forge its own interpretations of Palau Constitution and laws in light of community standards of justice unique to Palau. 1 ROP Intrm. 96, 99.

Palau Supreme Court is not bound by decisions of U.S. law. However, since Palau is still in its early stages of jurisprudential development, it will look to law of other jurisdictions on matters of first impression. 1 ROP Intrm. 154, 172 n.43.

**CITATOR  
FOR THE  
INTERIM REPORTERS**

*Compiled by the Office of Court Counsel*





***INSTRUCTIONS***

This Citator works like Shepard's. For example,

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means that the case beginning at page 30 of the First Interim Reporter is cited on page 245 of the Third Interim Reporter.

Note: The letter “s” means “same case.”

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*Compiled by the Office of Court Counsel*

***INSTRUCTIONS***

This Citator works like Shepard's. For example,

Art. I

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1ROP350

means that Article I, section 1 of the Constitution is cited on page 350 of the First Interim Reporter.

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***INSTRUCTIONS***

This Citator works like Shepard's. For example,

**Title 14**

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5ROP114**

means that Title 14, section 702 of the PNC is cited on page 114 of the Fifth Interim Reporter.

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—§ 402(a)— 3ROP113 3ROP143 3ROP193 5ROP124			

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<p>—§ 2202(b)— 5ROP104</p> <p>—§ 2202(c)— 5ROP104</p> <p>—§ 2203— 4ROP218 5ROP103-04</p> <p>—§ 2204— 4ROP218</p> <p><b>TITLE 17</b></p> <p>—§ 102— 2ROP31 2ROP79 5ROP39 5ROP173 5ROP175</p> <p>—§ 103— 2ROP234</p> <p>—§ 104— 2ROP272 5ROP44n.1</p> <p>—§ 104(b)— 2ROP260 5ROP37</p> <p>—§ 107— 2ROP163 2ROP181</p> <p>—§ 501— 6ROP366</p> <p>—§ 502— 3ROP343 3ROP347 5ROP50n.4</p>	<p>6ROP367n.5</p> <p>—§ 503— 5ROP50n.4 6ROP332 6ROP364</p> <p>—§ 504— 3ROP262-65 5ROP50n.4 6ROP364</p> <p>—§ 1401— 6ROP363</p> <p>—§ 1601— 1ROP418-22</p> <p>—§ 1701— 2ROP260 3ROP270 4ROP252 5ROP173 5ROP251</p> <p>—§ 1702— 2ROP260 2ROP272 4ROP252 5ROP37 5ROP44n.1 5ROP251</p> <p>—§ 1703— 5ROP25 5ROP252</p> <p>—§ 1903— 2ROP179</p> <p>—§ 1904— 1ROP439 5ROP30</p> <p>—§ 2301—</p>	<p>7ROP60</p> <p>—§ 2701— 4ROP252</p> <p>—§ 3109— 4ROP250-53</p> <p>—§ 3110— 4ROP250-53</p> <p>—§ 3301 <i>et seq</i>— 2ROP214 3ROP345</p> <p>—§ 3302(c)— 4ROP251-55</p> <p>—§ 3303(a)— 2ROP270</p> <p>—§ 3306— 1ROP553 2ROP260 2ROP267 4ROP281 6ROP131 7ROP62</p> <p>—§ 3306(a)— 1ROP428B 1ROP547L 2ROP27 2ROP36-41 2ROP265 3ROP343-47 4ROP250-51</p> <p>—§ 3306(b)— 2ROP270</p> <p>—§ 3307— 4ROP281</p>	<p><b>TITLE 18</b></p> <p>—§ 210— 6ROP362</p> <p>—§ 211— 1ROP547G 6ROP134 6ROP363</p> <p>—§ 217— 6ROP363</p> <p>—§ 218— 6ROP327-30 6ROP363</p> <p>—§ 220— 6ROP327-30 6ROP362n.1</p> <p>—§ 301— 1ROP547G 6ROP134-35 6ROP137</p> <p>—§ 303— 7ROP26</p> <p>—§ 305— 7ROP26</p> <p>—§ 312— 6ROP340</p> <p>—§ 501— 4ROP214-15</p> <p>—§ 504— 4ROP137</p> <p>—§ 504(a)— 4ROP136</p>
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# PALAU NATIONAL CODE CITATOR

—§ 506— 4ROP136	<b>TITLE 19</b>	—§ 301— 3ROP422	1ROP398-400
—§ 602— 1ROP297 1ROP439	—§ 102(c)— 6ROP279-80	—§ 302— 3ROP420	—§ 311— 1ROP399
—§ 802— 4ROP160	—§ 103— 6ROP277-83	—§ 304— 3ROP420	<b>TITLE 23</b>
—§ 1001— 6ROP27-28	—§ 111— 6ROP279-80	—§ 306— 3ROP420	—§ 101 <i>et seq</i> — 1ROP676-77 3ROP385F-G
—§ 1001(c)— 1ROP312-15	—§ 114— 6ROP279-80	<b>TITLE 21</b>	—§ 101— 3ROP429
—§ 1002— 1ROP311	—§ 131— 6ROP279-80	—§ 101— 1ROP66	—§ 102— 1ROP374 1ROP676-77
—§ 1003(b)— 6ROP28	—§ 151— 6ROP277-83	—§ 301— 2ROP67-67	—§ 103— 3ROP426n.8 6ROP187-91
—§ 1024— 1ROP311-12	—§ 153— 6ROP282	—§ 302— 2ROP68 5ROP350	—§ 103(b)— 3ROP385J
—§ 1102— 4ROP17-18	—§ 154— 6ROP279-80n.3	—§ 332— 2ROP67 2ROP70	—§ 103(f)— 3ROP436
	—§ 181— 6ROP281	—§ 335— 5ROP350	—§ 103(h)— 3ROP436
	—§ 182— 6ROP280	—§ 335(a)— 4ROP117	—§ 105— 1ROP374 1ROP676-77
	—§ 183— 6ROP283	—§ 409— 4ROP195	—§ 106(a)— 1ROP375 3ROP429
	—§ 201-03— 6ROP278n.1	—§§ 501-81— 2ROP68	—§ 106(c)— 1ROP375 3ROP429 3ROP385G
	—§ 214— 6ROP279-80	<b>TITLE 22</b>	
	—§ 301 <i>et seq</i> — 3ROP420	—§ 301—	

# PALAU NATIONAL CODE CITATOR

<p>—§ 107— 1ROP376 3ROP435-36 6ROP187-91</p> <p>—§ 107(b)— 1ROP371 1ROP375</p> <p>—§ 107(c)— 3ROP429 3ROP434 3ROP436-38 3ROP441</p> <p>—§ 1005— 2ROP206-09 3ROP375</p> <p>—§ 1107— 3ROP430</p> <p>—§ 1201— 3ROP430</p> <p>—§ 1201(a)— 3ROP385J</p> <p>—§ 1201(b)— 5ROP359</p> <p>—§ 1202(b)— 4ROP9</p> <p>—§ 1202(e)— 3ROP375</p> <p>—§ 1403— 4ROP369</p> <p>—§1407— 4ROP369</p> <p>—§ 1408— 4ROP367-68</p>	<p>6ROP186</p> <p>—§ 1503(b)— 5ROP357</p> <p>—§§ 1521-26— 1ROP402 1ROP413</p> <p>—§ 1522— 1ROP414</p> <p>—§ 1523— 1ROP402n.1 1ROP549</p> <p>—§ 1524— 1ROP402n.1 1ROP413-15 1ROP549-50</p> <p>—§ 1525— 1ROP415</p> <p>—§ 1525(a)— 1ROP414</p> <p>—§ 1525(b)— 1ROP413</p> <p>—§ 1526— 1ROP549</p> <p>—§ 1571— 1ROP549</p> <p><b>TITLE 24</b></p> <p>—§ 1302(c)— 4ROP152 4ROP154</p>	<p><b>TITLE 25</b></p> <p>—§ 102— 5ROP340,341</p> <p>—§ 105— 5ROP80 5ROP340 5ROP342</p> <p>—§ 107— 3ROP369 3ROP387</p> <p><b>TITLE 28</b></p> <p>—§§ 101-21— 3ROP206 5ROP345 6ROP55</p> <p>—§ 105(1)— 5ROP308</p> <p>—§ 112— 3ROP206 3ROP210-11</p> <p>—§ 113— 3ROP206 3ROP210</p> <p>—§ 120— 3ROP206-09</p> <p>—§ 141— 1ROP635 1ROP642</p> <p>—§ 167— 1ROP642</p>	<p><b>TITLE 30</b></p> <p>—§ 101 <i>et seq</i>— 1ROP7398-400</p> <p>—§ 103(c)— 1ROP398-99</p> <p><b>TITLE 33</b></p> <p>—§ 101 <i>et seq</i>— 3ROP63-64 3ROP67 4ROP109-10 5ROP63 5ROP71 5ROP116</p> <p>—§ 102— 5ROP69-70 5ROP73</p> <p>—§ 202— 5ROP70</p> <p>—§ 202(e)— 5ROP72</p> <p>—§ 204— 5ROP315</p> <p>—§ 205— 1ROP513K</p> <p>—§ 306— 5ROP72</p> <p>—§ 306(a)— 5ROP70</p> <p>—§ 402— 5ROP68-71</p>
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# PALAU NATIONAL CODE CITATOR

<p>—§ 403— 5ROP64-73</p> <p>—§ 404— 5ROP70 5ROP72</p> <p>—§ 406— 5ROP71</p> <p>—§ 418— 5ROP70</p> <p>—§ 423— 5ROP70 5ROP73</p> <p>—§ 425— 5ROP69 5ROP70 5ROP73 5ROP280</p> <p>—§ 426— 3ROP66-67 5ROP67 5ROP70</p> <p>—§ 426(a)— 3ROP62-67 4ROP105-09</p> <p>—§ 426(b)— 3ROP67</p> <p>—§ 2052— 5ROP316</p> <p><b>TITLE 34</b></p> <p>—§ 3002— 5ROP4 6ROP345</p>	<p>—§ 3102— 6ROP72</p> <p>—§ 3104— 6ROP345</p> <p>—§ 3106(c)(2)— 5ROP4</p> <p>—§ 3301— 6ROP72</p> <p>—§ 3301(a)— 5ROP1-3</p> <p>—§ 3301(b)— 5ROP4</p> <p>—§ 3302— 6ROP345</p> <p>—§ 3305— 5ROP1-4</p> <p>—§ 5003— 6ROP133</p> <p>—§ 6101 <i>et seq</i>— 1ROP547GG-II</p> <p>—§ 6101— 1ROP547HH</p> <p>—§ 6102(a)— 1ROP547HH-JJ</p> <p>—§ 6102(b)— 1ROP380n.1 1ROP547FF-HH</p> <p>—§ 6103— 1ROP547HH</p>	<p><b>TITLE 35</b></p> <p>—§ 201— 2ROP46 6ROP164</p> <p>—§ 210(b)— 2ROP46</p> <p>—§ 210(c)— 2ROP46 3ROP318-9</p> <p>—§ 210(d)— 2ROP46</p> <p>—§ 210(e)— 2ROP46</p> <p>—§ 210(f)— 2ROP46</p> <p>—§ 210(g)— 2ROP46</p> <p>—§ 210(j)— 2ROP46-47 3ROP318-20</p> <p>—§ 215(a)— —3ROP308 3ROP318 3ROP320n.2</p> <p>—§ 215(b)— 3ROP308 6ROP201</p> <p>—§ 215(c)— 2ROP47 3ROP308 3ROP318</p> <p>—§ 217—</p>	<p>3ROP314-23</p> <p>—§ 901— 7ROP40</p> <p>—§ 902 <i>et seq</i>— 3ROP165</p> <p>—§ 902— 3ROP165</p> <p>—§ 905— 3ROP165</p> <p>—§ 922— 3ROP118</p> <p>—§ 926— 6ROP177 7ROP15n.4</p> <p>—§ 930— 2ROP148 3ROP223 6ROP247n.1 7ROP39</p> <p>—§ 932— 1ROP513C-D</p> <p>—§ 933— 1ROP625n.1</p> <p>—§ 933(a)— 1ROP513A-D 3ROP169n.2 4ROP28</p> <p>—§ 933(b)— 3ROP169n.2</p> <p>—§ 934— 1ROP625n.1</p> <p>—§ 941(a)—</p>
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# PALAU NATIONAL CODE CITATOR

1ROP693	—§ 1108— 4ROP87 5ROP206	—§ 1116— 3ROP102 3ROP196-97 5ROP33 5ROP35	3ROP107-08 3ROP387-91 3ROP397n.6 4ROP192 4ROP242 5ROP117-21 5ROP292 5ROP203 5ROP327 5ROP331 6ROP157
—§ 941(b)— 1ROP693 4ROP72	—§ 1109— 5ROP145	—§ 1123— 6ROP303	—§ 102(d)— 3ROP102 3ROP368 3ROP387 3ROP391-96 4ROP74-75 4ROP81 5ROP117-19 5ROP129 5ROP292 6ROP42 6ROP144 6ROP181 7ROP85
—§ 1101 <i>et seq</i> — 3ROP156 3ROP161-62 3ROP65 3ROP196 5ROP28 6ROP175	—§ 1109(c)— 5ROP145	—§ 1127— 2ROP85-87 5ROP53-54 6ROP177	—§ 402— 4ROP46 5ROP261
—§ 1102— 3ROP166	—§ 1109(e)— 5ROP147	—§ 1128— 3ROP165	
—§ 1103(a)— 3ROP166	—§ 1110(a)— 3ROP168	—§ 1304— 6ROP238n.5 7ROP33n.1	
—§ 1103(b)— 3ROP166	—§ 1110(b)— 3ROP168 5ROP220		
—§ 1103(c)— 3ROP166	—§ 1110(c)— 3ROP74-76 3ROP222-24 4ROP357 7ROP14 7ROP40n.2	<b>TITLE 39</b>	
—§ 1103(e)— 3ROP166	—§ 1112— 4ROP83n.4	—§ 102— 3ROP41 3ROP387 3ROP393n.3 5ROP203 5ROP331 5ROP341 6ROP40 6ROP323n.4	
—§ 1104(a)— 3ROP156 3ROP168 7ROP14	—§ 1113— 1ROP513A n.1 3ROP168-69 3ROP196 3ROP227 6ROP176 6ROP315	—§ 102(b)— 3ROP387 5ROP80 5ROP117n.1 5ROP294 5ROP340 5ROP341	<b>TITLE 40</b>
—§ 1104(b)— 4ROP355-57 4ROP361-63 5ROP88n.2 6ROP11-12 6ROP302-03n.1 6ROP347-48 7ROP33-34	—§ 1114— 5ROP35	—§ 40(c)— 5ROP324	—§ 351(a)— 5ROP318
—§ 1104(f)— 3ROP166	—§ 1114(a)— 4ROP100 5ROP145	—§ 102(c)— 3ROP41-42 3ROP102-03	—§ 401— 1ROP642 6ROP318
			—§ 401(b)—



# PALAU NATIONAL CODE CITATOR

<p>1ROP633B 2ROP73-75</p> <p>—§ 402— 1ROP547NN 1ROP641-46 7ROP1</p> <p>—§ 403— 1ROP547NN 1ROP641-44</p> <p>—§ 601 <i>et seq</i>— 7ROP29</p> <p>—§ 1001 <i>et seq</i>— 1ROP424</p> <p>—§ 1002(o)— 5ROP334</p> <p>—§ 1204— 5ROP333</p> <p>—§ 1402— 1ROP418-19 1ROP422</p> <p><b>TITLE 41</b></p> <p>—§ 604(a)— 5ROP91-92</p> <p>—§ 650(b)— 5ROP91-92</p>			
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**CITATOR  
FOR THE  
RPPLs**

*Compiled by the Office of Court Counsel*

***INSTRUCTIONS***

This Citator works like Shepard's. For example,

4-9

4ROP270

means that RPPL 4-9 is cited on page 270 of the Fourth Interim Reporter.

# CITATOR FOR THE RPPLS

1-16 1ROP208-10	1ROP135-36 1ROP139-40 1ROP150	3-64 5ROP92-93
1-17 1ROP52 1ROP117 1ROP257-59 1ROP274-75	1-67 1ROP147	3-73 4ROP254
1-22 1ROP63-64 1ROP70 1ROP73 1ROP279-80 1ROP371n.5	2-3 2ROP87 4ROP210 6ROP135 6ROP247n.1	3-76 3ROP385C-E 3ROP385J n.1 3ROP385N 3ROP399-404 3ROP414-17 4ROP2-3 4ROP7 4ROP13n.7 4ROP247-48 4ROP264-69 4ROP275 4ROP367n.4 5ROP358
1-25 1ROP154-56 1ROP160 1ROP167-75	2-7 2ROP28	4-1 5ROP316 5ROP317 5ROP318 5ROP319
1-27 1ROP58-61	2-14 1ROP335	4-9 4ROP3 4ROP245-47 4ROP265-66 4ROP270 4ROP273 4ROP275 4ROP335-38
1-37 1ROP513K 1ROP659 1ROP661	2-18 2ROP87	4-10 5ROP300 5ROP301 5ROP303 5ROP304 6ROP110 6ROP284-85
1-38 1ROP659 1ROP661	2-24 1ROP513A n.1 2ROP87	
1-43 1ROP66-70 1ROP74-76	2-27 1ROP402 1ROP406-07 1ROP410-14	
1-61 1ROP206-10	2-30 1ROP525-26 1ROP529 1ROP532-33 1ROP545-46	
1-63 1ROP230-37 1ROP423	3-7 2ROP128	
1-64	3-35 3ROP128	
	3-45 3ROP177	



<div>4-23</div> <div>5ROP66n.3</div> <div>5ROP68n.4</div> <div>5ROP69n.7</div> <div>5ROP72</div>		
<div>4-28</div> <div>5ROP93</div>		
<div>4-40</div> <div>6ROP320</div>		
<div>4-43</div> <div>6ROP348,354n.8</div>		
<div>4-47</div> <div>6ROP368-69</div>		

**CITATOR**  
**FOR THE**  
**RULES OF APPELLATE PROCEDURE**

*Compiled by the Office of Court Counsel*

***INSTRUCTIONS***

This Citator works like ~~Shepard's~~. For example,

—3(b)—  
3ROP18

means that Rule 3(b) of the Rules of Appellate Procedure is cited  
on page 18 of the Third Interim Reporter.

# **RULES OF APPELLATE PROCEDURE CITATOR**

—1— 2ROP312	7ROP5	—10— 1ROP547W	—21(c)— 2ROP308-09
—1(a)— 1ROP124 2ROP4 2ROP308-09	—4(b)— 1ROP123-24 1ROP650-52 3ROP1	—10(a)— 5ROP199	—22— 1ROP283
—1(b)— 2ROP309	—4(c)— 5ROP149 6ROP264	—10(b)— 1ROP518 2ROP3 2ROP5 2ROP329 3ROP87 5ROP135 5ROP157 5ROP197	—23— 1ROP283
—2— 1ROP577B-C 2ROP210	—7— 1ROP124	—24— 3ROP171	—24(a)— 4ROP200n.1 4ROP236
—3(a)— 1ROP124 1ROP514 2ROP57 2ROP98 3ROP28 5ROP14	—8— 1ROP297 1ROP439 2ROP197	—10(c)— 1ROP125 2ROP329 3ROP87	—25(a)— 3ROP27
—3(b)— 3ROP18 3ROP133	—8(a)— 1ROP124 1ROP266 1ROP302 2ROP247 5ROP189	—10(d)— 1ROP125 3ROP86	—25(b)— 1ROP126 3ROP23
—3(c)— 5ROP241	—8(b)— 1ROP124-25	—10(e)— 1ROP125 1ROP593 3ROP135 5ROP215 6ROP99-100	—26(a)— 1ROP365 1ROP652 2ROP228
—3(e)— 1ROP124	—8(c)— 1ROP302	—27— 3ROP100 4ROP173n.1 5ROP58n.2	
—4(a)— 1ROP404 1ROP547OO 1ROP547SS 1ROP650-51 2ROP228 3ROP2 3ROP322 5ROP13-14 5ROP149 6ROP52 6ROP90	—9(a)— 2ROP247 5ROP132	—21— 2ROP209 2ROP311-12 7ROP48	—27(a)— 1ROP719-23 4ROP262
	—9(b)— 1ROP302 2ROP197-98 2ROP199 3ROP324-25 4ROP143 5ROP132 7ROP26	—21(a)— 2ROP308	—27(b)— 1ROP126 1ROP721 3ROP28 3ROP80 3ROP84 4ROP239
		—21(b)— 2ROP209-10 2ROP308 4ROP134 4ROP146	



# **RULES OF APPELLATE PROCEDURE CITATOR**

<p align="center"><b>—28—</b></p> <p>1ROP547BB 1ROP547DD 5ROP89 7ROP7</p> <p align="center"><b>—31(b)—</b></p> <p>1ROP364 1ROP428B 1ROP440B-E 1ROP515 1ROP547AA-CC 1ROP563 1ROP564 1ROP577A 1ROP594 1ROP632-33 1ROP654-56 2ROP63 2ROP117-19 2ROP177 2ROP225 2ROP245-47 2ROP302 2ROP329 3ROP78 3ROP84-85 3ROP88-89 3ROP99 3ROP266 4ROP61-2 5ROP118 5ROP143 5ROP197 5ROP222 7ROP7</p> <p align="center"><b>—31(c)—</b></p> <p>1ROP182 1ROP428A-C 1ROP440B-E 1ROP514-18 1ROP519 1ROP547BB-CC 1ROP563</p>	<p>1ROP565-66 1ROP577A-C 1ROP720 2ROP98 2ROP117-20 2ROP177 2ROP245-47 2ROP267 2ROP302 2ROP330 2ROP332 4ROP263 5ROP143 5ROP236 5ROP235 7ROP7</p> <p align="center"><b>—34(a)—</b></p> <p>3ROP328 5ROP61 5ROP132 5ROP137 5ROP151 6ROP103 7ROP27n.1 7ROP36n.1 7ROP46n.1 7ROP70</p> <p align="center"><b>—34(d)—</b></p> <p>3ROP122</p> <p align="center"><b>—37—</b></p> <p>5ROP248</p> <p align="center"><b>—38—</b></p> <p>1ROP427 5ROP58n.2 5ROP248 6ROP3 6ROP104 6ROP191</p> <p align="center"><b>—40—</b></p> <p>4ROP145</p>	<p>7ROP64</p> <p align="center"><b>—40(a)—</b></p> <p>1ROP466 2ROP1 4ROP146 5ROP135</p> <p align="center"><b>—40(b)—</b></p> <p>2ROP1</p> <p align="center"><b>—43—</b></p> <p>2ROP247</p>
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**CITATOR**  
**FOR THE**  
**RULES OF CIVIL PROCEDURE**

*Compiled by the Office of Court Counsel*

***INSTRUCTIONS***

This Citator works like Shepard's. For example,

—8—  
2ROP312

means that Rule 8 of the Rules of Civil Procedure is cited on  
page 312 of the Second Interim Reporter.

# **RULES OF CIVIL PROCEDURE CITATOR**

<p align="center"><b>—1—</b> 5ROP83</p> <p align="center"><b>—4(b)—</b> 4ROP350</p> <p align="center"><b>—4(e)—</b> 4ROP349</p> <p align="center"><b>—4(g)—</b> 4ROP282-83</p> <p align="center"><b>—4(i)—</b> 4ROP349</p> <p align="center"><b>—5—</b> 4ROP350-51</p> <p align="center"><b>—5(a)—</b> 7ROP72</p> <p align="center"><b>—5(b)—</b> 1ROP404 4ROP350 7ROP72</p> <p align="center"><b>—6(a)—</b> 1ROP404</p> <p align="center"><b>—6(d)—</b> 6ROP206</p> <p align="center"><b>—7(b)(1)—</b> 6ROP251</p> <p align="center"><b>—8—</b> 2ROP312</p> <p align="center"><b>—8(a)—</b> 2ROP139 2ROP306 2ROP312</p>	<p align="center"><b>—8(c)—</b> 1ROP588-89 5ROP202</p> <p align="center"><b>—8(e)—</b> 2ROP139</p> <p align="center"><b>—8(f)—</b> 2ROP140</p> <p align="center"><b>—9(b)—</b> 3ROP125</p> <p align="center"><b>—11—</b> 2ROP139 2ROP142 2ROP310-14 4ROP222 4ROP283n.2 4ROP347-48 4ROP353 5ROP104 5ROP114 5ROP242 7ROP71 7ROP76n.1</p> <p align="center"><b>—12—</b> 2ROP141</p> <p align="center"><b>—12(a)—</b> 4ROP350</p> <p align="center"><b>—12(b)—</b> 2ROP140 6ROP317 7ROP46</p> <p align="center"><b>—12(b)(6)—</b> 1ROP206 1ROP213 3ROP180 3ROP226 5ROP284 6ROP317</p>	<p align="center"><b>—12(c)—</b> 1ROP640 2ROP140 5ROP107 7ROP67n.2</p> <p align="center"><b>—12(e)—</b> 2ROP140</p> <p align="center"><b>—12(h)—</b> 4ROP53</p> <p align="center"><b>—13(a)—</b> 5ROP85n.3</p> <p align="center"><b>—13(h)—</b> 4ROP53</p> <p align="center"><b>—14—</b> 4ROP218 4ROP221-23</p> <p align="center"><b>—14(a)—</b> 4ROP53 4ROP221n.3 4ROP223n.6</p> <p align="center"><b>—15(a)—</b> 2ROP140 4ROP266</p> <p align="center"><b>—15(b)—</b> 1ROP394 1ROP588-89 4ROP316n.2 5ROP202</p> <p align="center"><b>—17—</b> 7ROP53n.1</p> <p align="center"><b>—19—</b> 2ROP126 4ROP53</p>	<p align="center"><b>—19(a)—</b> 3ROP248n.1</p> <p align="center"><b>—23(c)—</b> 1ROP635</p> <p align="center"><b>—23.1—</b> 1ROP610 1ROP635</p> <p align="center"><b>—25(a)—</b> 3ROP153</p> <p align="center"><b>—26(c)—</b> 5ROP83</p> <p align="center"><b>—37(b)—</b> 4ROP218</p> <p align="center"><b>—41—</b> 2ROP192</p> <p align="center"><b>—41(a)—</b> 1ROP527-28</p> <p align="center"><b>—41(b)—</b> 6ROP143</p> <p align="center"><b>—42(a)—</b> 5ROP274</p> <p align="center"><b>—43(e)—</b> 2ROP287</p> <p align="center"><b>—44—</b> 2ROP39 5ROP129 6ROP346n.1</p> <p align="center"><b>—52—</b> 5ROP321 6ROP335 6ROP355</p>
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# **RULES OF CIVIL PROCEDURE CITATOR**

—52(a)— 1ROP360 1ROP601 1ROP626 1ROP688 1ROP697 2ROP35 2ROP81 2ROP129 2ROP200 2ROP259 3ROP46 4ROP88 4ROP97 4ROP151 4ROP234 4ROP258 5ROP140 5ROP142 6ROP2 6ROP143 6ROP153 6ROP219 6ROP262	3ROP5-7  —55(c)— 1ROP571-72 3ROP5 3ROP8-9 6ROP104 7ROP67  —55(e)— 4ROP246  —56— 1ROP663B  —56(a)— 3ROP196  —56(b)— 3ROP196  —56(c)— 2ROP281-82 2ROP286 3ROP196 4ROP51 5ROP34 5ROP64-65 5ROP93 5ROP109-10 5ROP338 6ROP251 6ROP286  —56(e)— 2ROP283-86 2ROP290 4ROP365 5ROP34 6ROP103  —56(f)— 2ROP291 5ROP108-09	—58— 1ROP547RR-SS 3ROP2 6ROP299  —59— 4ROP181  —59(a)— 5ROP13 6ROP51 6ROP222-23  —59(d)— 2ROP86  —59(e)— 5ROP13 7ROP7  —60(a)— 6ROP273-75  —60(b)— 1ROP571-72 3ROP5 3ROP8-9 3ROP18 4ROP180-81 5ROP194 5ROP215 6ROP29-31 6ROP53-54 6ROP83-89 6ROP146 6ROP221-24 6ROP273-75 7ROP27 7ROP67  —61— 5ROP84 5ROP248 5ROP242 6ROP24	—62— 3ROP250n.3  —65(a)— 1ROP231  —79(a)— 3ROP2
—53(c)— 3ROP93	—53(c)— 3ROP93		
—54(b)— 1ROP547PP-SS 5ROP11 5ROP17 5ROP119 5ROP296 6ROP197 7ROP48 7ROP80	—54(b)— 5ROP93 5ROP109-10 5ROP338 6ROP251 6ROP286	—54(b)— 4ROP180-81 5ROP194 5ROP215 6ROP29-31 6ROP53-54 6ROP83-89 6ROP146 6ROP221-24 6ROP273-75 7ROP27 7ROP67	
—54(c)— 1ROP362	—54(c)— 6ROP103		
—55(a)— 3ROP9	—55(a)— 3ROP9		
—55(b)—	—55(b)—		

**CITATOR**  
**FOR**  
**ALL OTHER COURT RULES**

Rules of Admission  
Rules of Criminal Procedure  
Rules of Evidence  
Small Claims Rules  
Disciplinary Rules  
ABA Model Rules of Professional Conduct  
Code of Judicial Conduct

*Compiled by the Office of Court Counsel*

### ***INSTRUCTIONS***

This Citator works like Shepard's. For example,

**CRIM.PRO**

**—11(a)—  
2ROP166**

means that Criminal Procedure Rule 11(a) is cited on page 166 of the Second Interim Reporter.

Note: "ADMISSION" means the Rules of Admission;  
"CRIM.PRO" means the Rules of Criminal Procedure;  
"EVIDENCE" means the Rules of Evidence; "SM.CLAIMS"  
means the Small Claims Rules; "DISC.RULES" means the  
Disciplinary Rules; "PRO.CONDUCT" means the ABA  
Model Rules of Professional Conduct; "JUD.CONDUCT"  
means the Code of Judicial Conduct.

# CITATOR FOR ALL OTHER COURT RULES

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—7(a)— 6ROP367	—46(c)— 1ROP303 2ROP197 2ROP199 3ROP325-26	—403— 6ROP95-97	—2(f)— 3ROP237
—11(a)— 2ROP157-58 2ROP166	—48(b)— 4ROP154 4ROP158-60	—702— 6ROP146 6ROP345	—2(h)— 3ROP12D n.3 3ROP237 3ROP255 3ROP287n.3 4ROP183 6ROP255 7ROP30n.4
—12(b)— 2ROP181 6ROP71	—52(a)— 3ROP272 6ROP24 7ROP26	—801(d)— 6ROP212	—3— 3ROP238 3ROP301 4ROP130 5ROP200
—12(f)— 2ROP181	—52(b)— 2ROP170 5ROP4 6ROP20	—803— 6ROP346n.1 6ROP332	—4— 3ROP231-33
—26.2— 5ROP165		—901(a)— 5ROP3	—4(b)— 5ROP155
—38— 1ROP297 1ROP439 2ROP197		—901(b)— 6ROP139-41 6ROP346n.1	
—38(a)— 1ROP302		—1004(1)— 4ROP71	



# CITATOR FOR ALL OTHER COURT RULES

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—5(b)— 5ROP155	—14— 4ROP130	—1.15(a)— 3ROP12D	—7.1— 5ROP51-52
—5(e)— 3ROP301 5ROP116 6ROP255	—15— 4ROP123-25 4ROP130	—1.15(b)— 3ROP12D	—7.4— 5ROP51-52
—5(g)— 3ROP285 4ROP130	—16— 3ROP37	—1.15(c)— 3ROP12D	—8.1— 3ROP12F 3ROP237
—5(k)— 4ROP198	<b>PRO. CONDUCT</b>	—2(a)— 5ROP267 5ROP269	—8.4— 3ROP286n.2
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—8.4(c)— 5ROP267 5ROP269	—1.5(e)— 3ROP12E	—3.3— 3ROP12G	—12(e)— 5ROP249
—11(a)— 3ROP254-57	—1.6— 6ROP213	—3.4— 6ROP212	
—11(c)— 3ROP257	—1.7— 3ROP285-86 3ROP293 3ROP301	—3.4(b)— 5ROP155 6ROP215	<b>JUD. CONDUCT</b>
—12(a)— 4ROP128-30	—1.7(a)— 3ROP287-90 3ROP293-95 4ROP66	—3.4(f)— 5ROP155	Can. 3(B) 4ROP147
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—12(c)— 4ROP126	—1.9— 3ROP285n.1	—4.1— 6ROP212	
—12(d)—	—1.13—	—4.2— 3ROP286	

**CITATOR**  
**FOR THE**  
**TRUST TERRITORY REPORTS**

*Compiled by the Office of Court Counsel*

### ***INSTRUCTIONS***

This Citator works like Shepard's. For example,

**VOL. 1**

**—597—**

**3ROP105**

means that the case beginning at page 597 of volume 1 of the Trust Territory Reports is cited on page 105 of the Third Interim Reporter.

Note: This citator lists only those Trust Territory cases cited in the Interim Reporter. If the page number of the Trust Territory case you have found is not listed in the citator, it means that the case has not been cited in a published opinion by the Palau Supreme Court.

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—284— 1ROP601 1ROP603 1ROP628 2ROP318	—543— 1ROP218 3ROP10304	—258— 1ROP547X	—603— 2ROP236 2ROP269
—290— 1ROP32 3ROP245 5ROP229 7ROP51	—578— 1ROP28 2ROP321	—275— 3ROP93-94	—620— 3ROP264
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# TRUST TERRITORY REPORTS CITATOR

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**CITATOR  
FOR THE  
RESTATEMENTS**

*Compiled by the Office of Court Counsel*



***INSTRUCTIONS***

This Citator works like Shepard's. For example,

**TORTS(2d)**

—§ 433—

4ROP320

means that section 433 of the Restatement of Torts Second is  
cited on page 320 of the Fourth Interim Reporter.

Note: "FOR.REL." means "Foreign Relations."

# CITATOR FOR THE RESTATEMENTS

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<b>—§ 236—</b> 5ROP128	<b>—§ 325—</b> 6ROP24	<b>—§ 154—</b> 1ROP390n.5
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