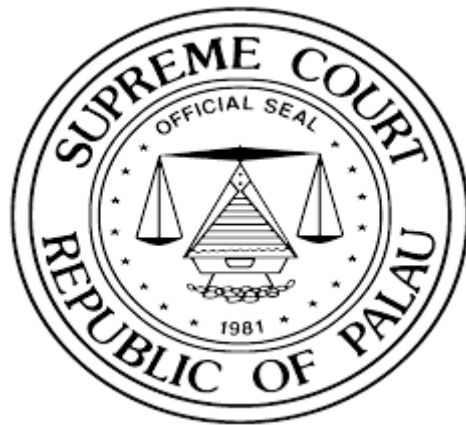


SUPREME COURT OF THE REPUBLIC OF PALAU



DIGEST OF PUBLISHED DECISIONS

For ROP Reporters Volumes 20 through 23

Compiled by the Office of Court Counsel

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ADMINISTRATIVE LAW

Regulations

Administrative regulations must be consistent with the constitutional or statutory authority by which they are authorized. Administrative rules may not enlarge, alter or restrict the provisions of the statute being administered. Whatever force and effect a rule or regulation has is derived entirely from the statute under which it is enacted, so administrative regulations that are inconsistent or out of harmony with the statute or that conflict with the statute, for instance by extending or restricting the statute contrary to its meaning, or that modify or amend the statute or enlarge or impair its scope are invalid or void, and courts not only may, but it is their obligation to strike down such regulations. *Palau Pub. Lands Auth. v. Ngatpang State Pub. Lands Auth.*, 20 ROP 174

An agency cannot expand by its regulations the power granted to it. *Palau Pub. Lands Auth. v. Ngatpang State Pub. Lands Auth.*, 20 ROP 174

Statutes

Pursuant to 35 PNC § 210(e), PPLA has authority “to sell, lease, exchange, use, dedicate for public purposes, or make other disposition of public lands with the approval of the government of the state within whose geographical boundaries the subject lands are situated.” The corollary of this provision is that PPLA lacks the authority to sell, lease, exchange, use, dedicate for public purposes or make other disposition of public lands without the approval of the government of the state within whose geographical boundaries the subject lands are situated. *Palau Pub. Lands Auth. v. Ngatpang State Pub. Lands Auth.*, 20 ROP 174

AGENCY

Successor in Interest

A public land authority is not a lawful agent that may bind a successor return-of-public-lands

claimant by the land authority’s promise. *Toribiong v. Tmetbab Clan*, 22 ROP 79

APPEAL AND ERROR

Abuse of Discretion

An abuse of discretion occurs when a relevant factor that should have been given significant weight is not considered; when an irrelevant or improper factor is considered and given significant weight; or when all proper and no improper factors are considered, but the court in weighing those factors commits a clear error of judgment in weighing those factors. *Kee v. Ngiraingas*, 20 ROP 277

Adequacy of Lower Court Decision

If the appellate court can discern the relevant findings of fact and conclusions of law from the lower court decision, meaningful review is possible. *Urebau Clan v. Bukl Clan*, 21 ROP 47

Basis of Appeal

We have long held that the scope of appellate review is, in general, limited to the claims and theories presented by the parties to the appeal. *Koror State Pub. Lands Auth. v. Palau Pub. Lands Auth.*, 22 ROP 30

It is the job of the appellant to identify and clearly present the issues on appeal. *Kebekol v. Koror State Pub. Lands Auth.*, 22 ROP 74

The obligation of clearly presenting the questions to be considered on appeal falls on the parties, and properly framed questions presented are to be included in the body of all briefs. *Minor v. Rechucher*, 22 ROP 102

Appellate courts generally should not address legal issues that the parties have not developed through proper briefing. It is not the Court’s duty to interpret broad, sweeping arguments, to conduct legal research for the parties, or to scour

the record for any facts to which the argument might apply. *Rudimch v. Rebluud*, 21 ROP 44

Briefs

The obligation of clearly presenting the questions to be considered on appeal falls on the parties, and properly framed questions presented are to be included in the body of all briefs. *Minor v. Rechucher*, 22 ROP 102

Factual arguments or references to the record not supported by adequately precise pinpoint citation to the record will not be considered by the Appellate Division. *Eklbai Clan v. Koror State Pub. Lands Auth.*, 22 ROP 139

Rule 28(a) requires a party to support asserted facts, including proper citations to the record below. The rule is clear and unambiguous, and failure to comply permits the Court to disregard any factual arguments unsupported by cites to the record. *Idid Clan v. Koror State Pub. Lands Auth.*, 20 ROP 270

Burden of Proof

With respect to specifications of legal error, the burden is on the party asserting error to cite relevant legal authority in support of his or her argument. *Suzuky v. Gulibert*, 20 ROP 19

Collateral Order Doctrine

The collateral order doctrine permits immediate appeal of a trial court order when: (1) it conclusively determines a disputed question, (2) resolves an important issue that is completely separate from the merits of the action, and (3) it is effectively unreviewable on appeal from a final judgment. *First Com. Bank v. Wong*, 20 ROP 132

Credibility Determinations

A party seeking to set aside a credibility determination must establish extraordinary circumstances for doing so. *Ngermengiau*

Lineage v. Estate of Isaol, 20 ROP 68

Extraordinary circumstances to set aside a credibility determination do not exist where the record shows the trial judge considered the content of one side's testimony and their credibility, did the same to the other side's witnesses, weighed the competing stories, and concluded that one side was unpersuasive. *Ngermengiau Lineage v. Estate of Isaol*, 20 ROP 68

Absent additional indices of incredibility, a trial judge does not commit reversible error when he credits self-serving and unsupported testimony. *Ngermengiau Lineage v. Estate of Isaol*, 20 ROP 68

The Appellate Division will only overturn credibility determinations of a trial court in extraordinary circumstances. *Sungino v. Benhart*, 20 ROP 215

Dismissal

Dismissal of an appeal leaves the underlying decision intact and in effect, as if the appeal had never been brought in the first place, so nothing further occurs. *Rengulbai v. Klai Clan*, 22 ROP 56

Even where excusable neglect is shown regarding an appellant's failure to file an opening brief, dismissal is warranted where the appellant fails to show excusable neglect in failing to respond to an order to show cause why the appeal should not be dismissed. *Koror State Pub. Lands Auth. v. Kebekol*, 22 ROP 122

Excusable Neglect

Appellant's reliance on former counsel's incorrect statement that an opening brief had been filed did not constitute excusable neglect where former counsel's error was the result of mere inadvertence or negligence. *Koror State Pub. Lands Auth. v. Kebekol*, 22 ROP 122

Even where excusable neglect is shown regarding an appellant's failure to file an opening brief, dismissal is warranted where the appellant fails to show excusable neglect in failing to respond to an order to show cause why the appeal should not be dismissed. *Koror State Pub. Lands Auth. v. Kebekol*, 22 ROP 122

A party cannot avoid the consequences of failing to timely respond to an order of the Court by simply claiming that, for some undetermined reason, it never received actual notice of the order. *Koror State Pub. Lands Auth. v. Kebekol*, 22 ROP 122

Fact Finding

Where a lower court has not clearly set forth the basis for its decision, remand for further elaboration is appropriate. *Anson v. Ngirachereang*, 21 ROP 58

Factual findings of a trial court will be overturned only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion. *Shiro v. Estate of Reyes*, 21 ROP 100

An appellate court's role is not to determine issues of fact or custom as though hearing them for the first time. The trial court is in the best position to hear the evidence and make credibility determinations, and if the evidence before it is insufficient to support its findings, the Court should remand rather than determine unresolved factual or customary issues on appeal. *Elsau Clan v. Peleliu State Pub. Lands Auth.*, 20 ROP 87

An appellate court's role is not to determine issues of fact or custom as though hearing them for the first time. The trial court is in the best position to hear the evidence and make credibility determinations, and if the evidence before it is insufficient to support its findings, the Court should remand rather than determine unresolved factual or customary issues on appeal. *Ngiraingas*

v. Tellei, 20 ROP 90

Filing Deadlines

The Trial Court can only extend the time for filing the notice of appeal by 30 days and only for good cause or excusable neglect. *Henry v. Shizushi*, 21 ROP 52

Frivolous Appeal

Empirically, appeals challenging the factual determinations of the Land Court are extraordinarily unsuccessful. Given the standard of review, an appeal that merely restates the facts in the light most favorable to the appellant and contends that the Land Court weighed the evidence incorrectly borders on frivolous. *Heirs of Giraked v. Koror State Pub. Lands Auth. v. Tellei*, 20 ROP 241

Empirically, appeals challenging the factual determinations of the Land Court are extraordinarily unsuccessful. Given the standard of review, an appeal that merely restates the facts in the light most favorable to the appellant and contends that the Land Court weighed the evidence incorrectly borders on frivolous. *Koror State Pub. Lands Auth. v. Giraked*, 20 ROP 248

Grounds for Dismissal

Failure to timely file an opening brief will result in dismissal of the appeal without further notice and such dismissal will not be undone absent truly extraordinary and unanticipated circumstances. *Rengiil v. Warren*, 23 ROP 6

Harmless Error

The application of an incorrect standard of proof is a structural error that requires remand unless the outcome of the case clearly shows that the error was harmless, such as when a heightened burden of proof is imposed on a party who prevails nonetheless. *Kebekol v. Koror State Pub. Lands Auth.*, 22 ROP 38

The Appellate Division need not determine whether a particular conclusion of the Trial Division was erroneous if any error found would be deemed harmless. *Palau Pub. Lands Auth. v. Emesiochel*, 22 ROP 126

We review for harmless error the Land Court possible failure to consider a piece of evidence. *Tucherur v. Rudimch*, 21 ROP 84

A misallocation of the burden of proof is harmless error where the record is so clear that the allocation of the burden of proof would make no difference. *Bechab v. Anastacio*, 20 ROP 56

The Appellate Division will not reverse a lower court decision due to an error where that error is harmless. *Idid Clan v. Koror State Pub. Lands Auth.*, 20 ROP 270

Errors made by a lower court do not require reversal where the error is unrelated to the matter's ultimate determination, rendering it harmless. *Ngoriakl v. Rechucher*, 20 ROP 291

Interlocutory Appeal

The Appellate Division's review under ROP R. Civ. P. 54(b) is limited to the issues certified for immediate appeal by the trial court. *Toribiong v. Seid*, 23 ROP 1

A partial summary judgment declaring that a party's rights have been violated, but expressly reserving for future litigation the matter of appropriate relief, does not constitute a final judgment for purposes of ROP R. Civ. P. 54(b). *Toribiong v. Seid*, 23 ROP 1

Where a claim for relief has been brought against one party in a multiparty suit, that claim is not fully resolved for purposes of ROP R. Civ. P. 54(b) certification until the trial court determines the appropriate relief with respect to that party. *Toribiong v. Seid*, 23 ROP 1

The "real world events" exception to the final judgment rule does not apply to orders merely allowing a claimant to participate in a hearing. *Koror State Pub. Lands Auth. v. Ngarameketii/Rubekul Kldeu*, 22 ROP 1

In considering the proper timing of a review of a lower court's decision, we have applied the "final judgment rule," which holds that a party may not appeal a trial court's orders until a final judgment has been rendered. *First Com. Bank v. Wong*, 20 ROP 132

The "collateral order" exception to the final judgment rule permits an immediate appeal of an interlocutory order entered during trial that determines important rights of the parties but that is not related to the relevant cause of action. *First Com. Bank v. Wong*, 20 ROP 132

Invited Error

Parties cannot seek review of alleged errors of the trial court when they made no objection to the Court's actions at the time. *Koror State Pub. Lands Auth. v. Idid Clan*, 22 ROP 21

A party who induces or invites an error at the trial level cannot contest that error on appeal. *Eklbai Clan v. Koror State Pub. Lands Auth.*, 22 ROP 139

Jurisdiction

The Appellate Division is without jurisdiction to entertain an appeal where the notice of appeal is untimely filed. *Bechab v. Anastacio*, 20 ROP 56

Although most orders fixing an amount of security are not immediately appealable, an appeal challenging the power of the trial court to issue such an order may be appealed immediately. *First Com. Bank v. Wong*, 20 ROP 132

Notice of Appeal

The Rules of Appellate Procedure control the time limits in which to file a notice of appeal. *Henry v. Shizushi*, 21 ROP 79

Preserving Issues

With limited exceptions, new arguments may not be raised on appeal. A claim asserting an interest in property does not fall within any of the exceptions. *Fritz v. Materne*, 23 ROP 12

The standard of appellate review concerns only whether the Appellate Division must give any deference to those conclusions of the trial court that are properly before it for review; *de novo* review is not a free license for parties to re-litigate a case arguing new legal claims or entirely different legal theories than those presented below. *Fritz v. Materne*, 23 ROP 12

Considering and resolving issues in the first instance on appeal is contrary to the design and purpose of the appellate process. *Fritz v. Materne*, 23 ROP 12

A party who has properly made and preserved an objection to the trial of issues outside the pleadings does not grant implicit consent to such trial merely by cross-examining witnesses and proceeding despite an adverse or reserved ruling. *Minor v. Rechucher*, 22 ROP 102

Arguments raised for the first time on appeal will not be considered. *Rudimch v. Rebluud*, 21 ROP 44

Where no challenge to the information is raised until after the verdict has been rendered, the information must be construed liberally in favor of its sufficiency. *Yano v. Republic of Palau*, 21 ROP 90

Generally, arguments not raised in the Land Court proceedings are deemed waived on appeal. *Kumer Clan/Lineage v. Koror State Pub. Lands Auth.*, 20 ROP 102

The waiver rule is particularly important in land litigation because in order to bring stability to land titles and finality to disputes, parties to litigation are obligated to make all of their arguments, and to raise all of their objections in one proceeding. *Kumer Clan/Lineage v. Koror State Pub. Lands Auth.*, 20 ROP 102

The Court may decline to deem an issue waived where: (1) addressing the issue would prevent the denial of a fundamental right, especially in criminal cases where the life or liberty of an accused is at stake; or (2) the general welfare of the people is at stake. *Kumer Clan/Lineage v. Koror State Pub. Lands Auth.*, 20 ROP 102

The public welfare exception applies only when the case itself implicates the public welfare—not where the only interest at stake is the right of a civil litigant to recover. *Kumer Clan/Lineage v. Koror State Pub. Lands Auth.*, 20 ROP 102

To invoke the constitutional exception to the waiver rule, a litigant must show something more than the existence of a fundamental right, such as the risk of losing life or liberty. *Kumer Clan/Lineage v. Koror State Pub. Lands Auth.*, 20 ROP 102

Constitutional challenges to statutes of limitations are insufficient to trigger application of the fundamental right exception. *Kumer Clan/Lineage v. Koror State Pub. Lands Auth.*, 20 ROP 102

Pro Se Litigants

Pro se litigants have a duty to inform themselves of the requirements for proceeding with an appeal. *Suzuky v. Gulibert*, 20 ROP 19

Procedure

Republic of Palau Rule of Appellate Procedure 28 governs the form of appellate briefs filed in this Court. Specifically, Rule 28(a) requires, among other things, that a

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brief must be typed and double-spaced, must include a properly formatted Table of Contents and Table of Authorities, must list clearly and concisely each question presented on appeal, and must be accompanied by a copy of the judgment or orders appealed from. *Suzuky v. Gulibert*, 20 ROP 19

As a general matter, the burden of demonstrating error on the part of a lower court is on the appellant. *Suzuky v. Gulibert*, 20 ROP 19

Failure to adhere to the Rules of Appellate Procedure with respect to citation to the factual record is fatal to a party's factual allegations. *Suzuky v. Gulibert*, 20 ROP 19

Republic of Palau Rule of Appellate Procedure 31(c) provides: If an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal, or the Appellate Division may so dismiss on its own motion. *Palau Red Cross v. Chin*, 20 ROP 40

Republic of Palau Rule of Appellate Procedure 31(c) provides: If an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal, or the Appellate Division may so dismiss on its own motion. *Ngirturong v. Rechucher*, 20 ROP 55

Republic of Palau Rule of Appellate Procedure 31(c) provides: If an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal, or the Appellate Division may so dismiss on its own motion. *Kebui v. Ngirirs Clan*, 20 ROP 67

Reconsideration of Appellate Opinions

Petitions for rehearsing should be granted exceedingly sparingly, and only in those cases where this Court's original decision obviously

and demonstrably contains an error of fact or law that draws into question the result of the appeal. *Henry v. Shizushi*, 21 ROP 79

Record Below

Meaningful appellate review requires a lower court to clearly articulate both its findings of fact and its conclusions of law. *Shmull v. Hanpa Indus. Dev. Corp.*, 21 ROP 35

Rehearing

An appellant's failure to properly identify an issue in the briefing does not generally warrant rehearing once an opinion has been issued. *Kebekol v. Koror State Pub. Lands Auth.*, 22 ROP 74

As a general rule, issues that were previously available may not be raised for the first time on a Petition for Rehearing. Particularly prohibited are late-filed motions for recusal. *Toribiong v. Tmetbab Clan*, 22 ROP 116

Neither the reassertion of a more complicated version of the same argument rejected by the opinion of the Court nor arguments that could have, and perhaps should have, been presented during appeal, are appropriate bases for a petition for rehearing. *Toribiong v. Tmetbab Clan*, 22 ROP 116

Remand

A case is remanded when the decision below, in part or in its entirety, must be reversed or vacated and reconsidered either because of an error in the lower court decision or an intervening change of law or circumstances. *Rengulbai v. Klai Clan*, 22 ROP 56

General mandates and remands give a lower court broad discretion in handling a case on remand and do not contain clear and specific instructions limiting what the lower court is authorized to do. On remand, a lower court may generally consider

and decide any matter left open by the appellate court, as long as that decision is not inconsistent with the appellate court's opinion. *Rengulbai v. Klai Clan*, 22 ROP 56

Specific or limited remands explicitly outline the issues to be addressed by the lower court and create a narrow framework in which the lower court must operate. *Rengulbai v. Klai Clan*, 22 ROP 56

For a mandate to be deemed specific, it must convey clearly the intent to limit the scope of the lower court's review. In the absence of an explicit limitation, a remand order is presumptively a general one. *Rengulbai v. Klai Clan*, 22 ROP 56

Retroactive or Prospective Application of Decision

Generally, judicial decisions are applied retroactively to all civil matters that have not reached final judgment. However, rulings may be applied "purely prospectively," meaning that the ruling does not apply to the parties before the court. *Beouch v. Sasao*, 20 ROP 41

A decision of the Appellate Division should be given retroactive effect unless: (1) the decision overruled past precedent or decided an issue of first impression whose resolution was not foreshadowed clearly; and (2) consideration of the purpose and effect of the underlying rule and the inequities of retroactive application weigh in favor of prospective application. The considerations in the second prong are properly viewed as objective inquiries that examine the impact of a newly announced rule on the entire class of persons potentially affected by the new rule, rather than the impact on any specific litigant. *Beouch v. Sasao*, 20 ROP 41

Reviewability

Decisions committed to the sole discretion of the executive are unreviewable as to their merits. *Llecholch v. Republic of Palau*, 21 ROP 70

Even when an action is committed to the discretion of another branch of government, this Court may review whether that entity exceeded its legal authority, acted unconstitutionally, or failed to follow its own regulations. *Llecholch v. Republic of Palau*, 21 ROP 70

Scope of Record on Appeal

In reviewing the denial of a motion under ROP R. Crim. P. 34, the record on appeal is limited to the information, plea, verdict, and sentence. *Yano v. Republic of Palau*, 21 ROP 90

Standard of Review

Appellate Division reviews *de novo* the trial court's conclusion that a claim has been fully resolved such that a final judgment may be entered pursuant to ROP R. Civ. P. 54(b). *Toribiong v. Seid*, 23 ROP 1

Appellate Division reviews the trial court's determination that there exists no just reason to delay the entry of a final judgment under ROP R. Civ. P. 54(b) for abuse of discretion. *Toribiong v. Seid*, 23 ROP 1

For cases filed prior to January 3, 2013, the existence and content of a particular custom is a question of fact. Where there are two permissible views of the evidence, the trial court's choice between them cannot be clearly erroneous. *Fritz v. Materne*, 23 ROP 12

Challenges to the sufficiency of the evidence in Land Court proceedings are extraordinarily unsuccessful. *Airai State Pub. Lands Auth. v. Esuroi Clan*, 22 ROP 4

It is not clear error for the Land Court to credit one proffer of evidence over another so long as one view of the evidence supports the factfinder's decision. *Airai State Pub. Lands Auth. v. Esuroi Clan*, 22 ROP 4

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Given that Rule 11 sanctions are reviewed only for abuse of discretion, it is extremely rare that a meritorious basis for appeal of a Rule 11 decision will exist. *Palau Civil Serv. Pension Plan v. Udui*, 22 ROP 11

A lower court's decision on a motion to intervene "is to be overturned only if it constitutes an abuse of discretion." *Koror State Pub. Lands Auth. v. Palau Pub. Lands Auth.*, 22 ROP 30

Summary judgment is a matter of law reviewed *de novo*. Drawing all inferences from the evidence in favor of the non-moving party, the Appellate Division evaluates whether there were no genuine issues of material fact and whether the moving party was entitled to judgment as a matter of law. *Koror State Pub. Lands Auth. v. Wong*, 21 ROP 5

Questions of statutory interpretation are reviewed *de novo*. *Roll 'Em Prods., Inc. v. Diaz Broad. Co.*, 21 ROP 96

Questions of fact are reviewed for clear error. This Court will reverse the Trial Division only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion. *Uchau v. Napoleon*, 20 ROP 2

Constitutional interpretation is a matter of law which is reviewed *de novo*. *Otobed v. Palau Election Comm'n*, 20 ROP 4

A trial court's ruling on a motion for summary judgment is reviewed *de novo*. *Otobed v. Palau Election Comm'n*, 20 ROP 4

A lower court's conclusions of law are reviewed *de novo*. *Asanuma v. Golden Pac. Ventures, Ltd.*, 20 ROP 29

Whether a given custom has met the traditional law requirements is a mixed question of law and fact. *Beouch v. Sasao*, 20 ROP 41

The definitive statement as to whether a custom is or is not binding law is a pure determination of law. *Beouch v. Sasao*, 20 ROP 41

Motions to enforce judgments are reviewed for abuse of discretion. *Bechab v. Anastacio*, 20 ROP 56

However, issues regarding the scope of the judgment to be enforced are reviewed *de novo*. *Bechab v. Anastacio*, 20 ROP 56

Factual determinations made in connection with a motion to enforce a judgment are reviewed on a clearly erroneous standard. *Bechab v. Anastacio*, 20 ROP 56

Determinations of the admissibility of evidence are in the discretion of the trial judge and will not be reversed by an appellate court unless there is an abuse of discretion. *Bechab v. Anastacio*, 20 ROP 56

The allocation of the burden of proof in a case is a question of law, which we review *de novo*, giving no deference to the decision of the trial court. *Ngeptuch Lineage v. Airai State*, 20 ROP 64

Challenges related to the sufficiency of the evidence are questions of fact, which we review for clear error, only reversing the trial court's decision if its findings are not supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion. *Ngeptuch Lineage v. Airai State*, 20 ROP 64

We review the Land Court's conclusions of law *de novo*. *Badureang Clan v. Koror State Pub. Lands Auth.*, 20 ROP 80

We review the Land Court's factual determinations for clear error and will reverse its findings of fact only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion. We will not substitute our view

of the evidence for the Land Court's, nor are we obligated to reweigh the evidence or reassess the credibility of witnesses. *Badureang Clan v. Koror State Pub. Lands Auth.*, 20 ROP 80

Interpretations of documents are reviewed *de novo*. *Mikel v. Saito*, 20 ROP 95

We review grants of summary judgment *de novo*. *Republic of Palau v. Oilouch*, 20 ROP 109

A lower court's discretionary decisions are reviewed for abuse of discretion. This Court will not find an abuse of discretion unless the trial court's decision was arbitrary, capricious, manifestly unreasonable, or because it stems from an improper motive. *Palau Red Cross v. Chin*, 20 ROP 113

Appellate review of the sufficiency of evidence supporting a conviction is very limited. Under this standard, the Appellate Division will review the record only to determine whether, viewing the evidence in the light most favorable to the prosecution, and giving due deference to the trial court's opportunity to hear the witnesses and observe their demeanor, any reasonable trier of fact could have found the essential elements of the crime were established beyond a reasonable doubt. *Gideon v. Republic of Palau*, 20 ROP 153

The merger of crimes is a determination of law, which is reviewed *de novo*. *Gideon v. Republic of Palau*, 20 ROP 153

Decisions concerning child custody, child support, and property division are reviewed for abuse of discretion. *Yano v. Yano*, 20 ROP 190

Whether a party transferred ownership of land is a question of fact. *Koror State Pub. Lands Auth. v. Ngirngbedangel*, 20 ROP 210

The Appellate Division reviews the Land Court's findings of fact for clear error and its conclusions of law *de novo*. *Kual v. Ngarchelong State Pub. Lands Auth.*, 20 ROP 232

The lower court's factual findings are reviewed using the clearly erroneous standard. *Estate of Ngirailild v. Ngarchelong Pub. Lands Auth.*, 20 ROP 235

The lower court's conclusions of law are reviewed *de novo*. *Estate of Ngirailild v. Ngarchelong Pub. Lands Auth.*, 20 ROP 235

We review the Land Court's factual determinations for clear error and will reverse its findings of fact only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion. *Heirs of Giraked v. Koror State Pub. Lands Auth. v. Tellei*, 20 ROP 241

Legal issues will be reviewed *de novo*. *Heirs of Giraked v. Koror State Pub. Lands Auth. v. Tellei*, 20 ROP 241

We review the Land Court's factual determinations for clear error and will reverse its findings of fact only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion. *Koror State Pub. Lands Auth. v. Giraked*, 20 ROP 248

The Land Court's factual findings are reviewed for clear error. Under this standard, we will not set aside the findings so long as they are supported by evidence such that any reasonable trier of fact could have reached the same conclusion, unless we are left with a definite and firm conviction that an error has been made. *Idid Clan v. Koror State Pub. Lands Auth.*, 20 ROP 270

Challenges related to the sufficiency of the evidence are questions of fact, which we review for clear error, only reversing the trial court's decision if its findings are not supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion. *Kee v. Ngiraingas*, 20 ROP 277

Stipulations

As a general matter, a party may not appeal a judgment to which he consented. *Mesubed v. Urebau Clan*, 20 ROP 166

When a party appeals a stipulation on the grounds of mistake, the validity of the stipulation is determined by reference to contract law. *Mesubed v. Urebau Clan*, 20 ROP 166

Sufficiency of the Analysis Below

The interests of justice can only be served if the parties to an adversarial proceeding can understand from the resulting decision how and why they won or lost—and it is solely within the province of the trial court to set forth this determination in the first instance. *Koror State Pub. Lands Auth. v. Idid Clan*, 22 ROP 21

Due to the Land Court’s failure to separately consider the E&M claimants’ superior title and return of public land claims, we can at best speculate as to the basis for the ultimate determination in their favor. . . . This may also have deprived Koror State Pub. Lands Auth. of the ability to mount an effective appeal. Accordingly, we must reverse the Land Court’s determination in favor of the E&M claimants and remand for further proceedings consistent with this opinion. *Koror State Pub. Lands Auth. v. Idid Clan*, 22 ROP 21

Untimely Filings

Appellant’s reliance on former counsel’s incorrect statement that an opening brief had been filed did not constitute excusable neglect where former counsel’s error was the result of mere inadvertence or negligence. *Koror State Pub. Lands Auth. v. Kebekol*, 22 ROP 122

A party cannot avoid the consequences of failing to timely respond to an order of the Court by simply claiming that, for some undetermined

reason, it never received actual notice of the order. *Koror State Pub. Lands Auth. v. Kebekol*, 22 ROP 122

Writs and Petitions

Petitions must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended. *Henry v. Shizushi*, 21 ROP 79

Although Rule 21 petitions are not appeals, we emphasize that the other Rules of Appellate Procedure, to the extent practicable and appropriate, should be followed with respect to any matter filed with the Appellate Division. For example, the Appellate Division will not grant a stay of Trial Division proceedings absent compliance with Rule 8; we will not hesitate to levy sanctions for frivolous petitions based on Rule 38; and we will enforce any applicable form and content requirements found in Rule 28. Labeling one’s filing a “petition” instead of an “appeal” does not absolve a litigant of compliance with these Rules. *First Com. Bank v. Wong*, 20 ROP 1

A writ of prohibition will be issued only in extraordinary circumstances. A petitioner must clearly establish that a lower court is about to exercise judicial power in an unauthorized manner and that the exercise of such power result in an injury for which there is no other adequate remedy. We will not issue such writs simply to review and correct errors and irregularities of a lower court. *First Com. Bank v. Wong*, 20 ROP 1

Unless a lower court has clearly overstepped its jurisdictional bounds, a writ of prohibition is improper. *First Com. Bank v. Wong*, 20 ROP 1

ATTORNEY’S FEES

Absent a statute or contract to the contrary, each party is responsible for his own attorney fees. *Emesiochl v. Maratita*, 20 ROP 118

CIVIL PROCEDURE

Attorney's Fees

Palau has adopted the general rule, sometimes referred to as "the American rule," that each party is presumed to bear their own attorney's fees unless there is a statutory or contractual provision to the contrary. Roll 'Em Prods. v. Diaz, 22 ROP 229 (Tr. Div.)

Burden of Proof

A plaintiff bears the burden of establishing the elements of his or her case. Ngeptuch Lineage v. Airai State, 20 ROP 64

Presumptions may be rebutted, resulting in a burden shift. This burden-shifting is a natural part of the litigation process, which is triggered once a party has met his or her initial burden to rebut a presumption or establish the elements of his or her case. Key in determining whether a burden was improperly placed is identifying who had the initial burden. Ngrairang v. Tellei, 20 ROP 90

Failure to Respond

Under Republic of Palau Rule of Civil Procedure 8(d), any averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Palau Red Cross v. Chin, 20 ROP 113

Final Judgment Rule

In considering the proper timing of a review of a lower court's decision, we have applied the "final judgment rule," which holds that a party may not appeal a trial court's orders until a final judgment has been rendered. First Com. Bank v. Wong, 20 ROP 132

Injunctions

Were Habeas Corpus inapplicable or unavailable,

the Court, faced with grievous constitutional harm, would have no choice but to proceed in equity. But because the Writ shall issue granting Petitioner's requested relief, no injunction needs to issue at this time. In re Angelino, 22 ROP 183 (Tr. Div.)

In light of Plaintiffs' success in this action, which includes an award of punitive damages for the express purpose of deterrence, injunctive relief is not reasonably necessary to prevent future harm. Furthermore, any future harm can better be addressed through subsequent actions, as opposed to a permanent and relatively far-reaching prior restraint. Roll 'Em Prods. v. Diaz, 22 ROP 229 (Tr. Div.)

Interpretation of the Rules of Civil Procedure

We look to federal law to resolve the application of those rules where Palau has yet to clarify aspects of its rules. First Com. Bank v. Wong, 20 ROP 132

Intervention

A person must be a party to a case to cross-examine a witness, and to become a party to a case that is already ongoing a person must intervene. Rengulbai v. Klai Clan, 22 ROP 56

Jurisdiction

Standing is an element of a Court's subject matter jurisdiction. A court may dismiss, *sua sponte*, a matter over which it lacks subject matter jurisdiction. Rengiil v. Urebau Clan, 21 ROP 11

Motion to Enforce Judgment

Courts grant motions to enforce judgments when a prevailing plaintiff demonstrates that a defendant has not complied with a judgment entered against it, even if the noncompliance was due to misinterpretation of the judgment. Under this formulation, the proponent of a motion to enforce a judgment bears the burden of proof as

to noncompliance. *Bechab v. Anastacio*, 20 ROP 56

Motions to Reconsider

A motion to reconsider is not a vehicle for a party to undo its own procedural failures or present arguments or evidence that could and should have been presented to the trial court prior to judgment. *Republic of Palau v. Diaz*, 21 ROP 115 (Tr. Div.)

Parties

A person must be a party to a case to cross-examine a witness, and to become a party to a case that is already ongoing a person must intervene. *Rengulbai v. Klai Clan*, 22 ROP 56

Pleading

Palau maintains an extremely liberal standard of notice pleading, which requires only that a complaint contain a statement alleging the jurisdiction of the court, a short and plain statement of the claim showing that the pleader is entitled to relief, and a demand for judgment for the relief the pleader seeks. While no technical forms of pleading are required, each averment of a pleading must be simple, concise, and direct. *Minor v. Rechucher*, 22 ROP 102

Averments of fraud or mistake, which must be pleaded with greater specificity, require plaintiffs to state the circumstances constituting the fraud or mistake with particularity. Such a plaintiff must plead the who, what, when, where, and how of the alleged misconduct, and why the statement or omission complained of was false or misleading. *Minor v. Rechucher*, 22 ROP 102

Liberal notice pleading still requires the use of clear and cogent language. While particular words or phrases are rarely required, this does not absolve a claimant who pleads or argues in language that either lacks a judicially recognizable meaning or, more problematically, language that generally means something other

than what the claimant intends. *Minor v. Rechucher*, 22 ROP 102

Preservation

We do not reach that issue because Appellant failed to properly raise such a claim before the Trial Division. *Asanuma v. Golden Pac. Ventures, Ltd.*, 20 ROP 29

Preservation of Issues

Having found no record of Koror State Pub. Lands Auth.'s preservation of this issue, the Court deems it waived. *Heirs of Giraked v. Koror State Pub. Lands Auth. v. Tellei*, 20 ROP 241

Res Judicata

A judgment that has been vacated, reversed, or set aside on appeal is thereby deprived of all conclusive effect, both as res judicata and as collateral estoppel. *Beouch v. Sasao*, 20 ROP 41

Sanctions

A pleading does not violate Rule 11 simply by being unsuccessful; it must be wholly without merit. *Palau Civil Serv. Pension Plan v. Udui*, 22 ROP 11

Securing Judgment

ROP Rule of Civil Procedure 64 gives the trial court broad authority to enact provisional remedies to secure a potential judgment. *First Com. Bank v. Wong*, 20 ROP 132

Thus, the Trial Division has broad discretion, at the commencement of a case and without notice to the non-moving party, to fashion provisional remedies, such as a writ of attachment, seizing "property" to secure satisfaction of a judgment that might ultimately issue. *First Com. Bank v. Wong*, 20 ROP 132

Seizure of Funds

The purpose of attachment statutes is to permit ‘plaintiffs to obtain jurisdiction and secure, for judgment, funds of persons who might otherwise dispose of assets and leave the jurisdiction. In addition, the statutory context of § 2101 makes it clear the legislature contemplated seizure of funds as well as other personal property. *First Com. Bank v. Wong*, 20 ROP 132

Service of Process through an Agent

To establish agency by appointment, “an actual appointment for the specific purpose of receiving process normally is expected.” *Anson v. Ngirachereang*, 21 ROP 58

Summary Judgment

A party cannot be entitled to judgment as a matter of law if a crucial piece of law—the traditional methods of appointing a chief title bearer and resolving a dispute over such title—is missing. *Rengiil v. Ongos*, 22 ROP 48

Waiver

Parties cannot seek review of alleged errors of the trial court when they made no objection to the Court’s actions at the time. *Koror State Pub. Lands Auth. v. Idid Clan*, 22 ROP 21

A party who has properly made and preserved an objection to the trial of issues outside the pleadings does not grant implicit consent to such trial merely by cross-examining witnesses and proceeding despite an adverse or reserved ruling. *Minor v. Rechucher*, 22 ROP 102

CONSTITUTIONAL LAW

Coerced Confessions

A reasonable person, despite his innocence, will often confess to a crime he had no involvement with when offered an opportunity to leave

without prosecution or further consequences. That a guilty person would do the same is not relevant to the voluntariness analysis; if a practice can induce an innocent person to provide a false confession, it is the coercive practice, not the result, which is offensive to justice and the Constitution. This distinction, however, rests entirely on the specifics of the promise made: an offer, for example, of a potentially reduced sentence or of other possible law enforcement benefits is fundamentally distinct from an actual dispositive offer of non-prosecution. *Republic of Palau v. Suzuki*, 22 ROP 208 (Tr. Div.)

Constitutional Avoidance

Judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them. *Koror State Pub. Lands Auth. v. Ngermellong Clan*, 21 ROP 1

Double Jeopardy

The Double Jeopardy Clause of the Constitution protects against multiple punishments for the same offense at a single trial. When multiple concurrent offenses are alleged under a single statutory provision the Court must determine the legislatively intended “unit of prosecution” for purposes of the Double Jeopardy Clause. *Republic of Palau v. Suzuki*, 22 ROP 202 (Tr. Div.)

Due Process

Notice of a claim is a fundamental element of due process, because without its requirement adverse parties effectively are required to shoot at a moving target. *Koror State Pub. Lands Auth. v. Idid Clan*, 22 ROP 66

The deprivation of a party’s constitutional due process right to notice and an opportunity to be heard renders a court’s judgment on that issue void. *Anson v. Ngirachereang*, 21 ROP 58

The hallmark of procedural due process is the

requirement that the government provide notice and an opportunity to be heard before depriving a person of life, liberty, or property. *Bechab v. Anastacio*, 20 ROP 56

Equal Protection

A plaintiff asserting an equal protection violation need not show the existence of a separate constitutional right to the benefit at issue. *Hanpa Inds. Dev. Corp. v. Republic of Palau*, 21 ROP 16

The Constitution allows preferential treatment of Palauan citizens on the basis of their citizenship. *Hanpa Inds. Dev. Corp. v. Republic of Palau*, 21 ROP 16

In negotiating and securing foreign aid, the government acts within the field of foreign affairs. *Hanpa Inds. Dev. Corp. v. Republic of Palau*, 21 ROP 16

Laws in the area foreign affairs that distinguish among individuals based on citizenship are subject to intermediate scrutiny. *Hanpa Inds. Dev. Corp. v. Republic of Palau*, 21 ROP 16

To establish an equal protection violation based on selective enforcement of a statute, the plaintiff must establish that he was treated differently than others who were similarly situated and that the selective treatment was motivated by an intention to discriminate on the basis of an impermissible consideration or by malice. *Llecholch v. Republic of Palau*, 21 ROP 70; *Republic of Palau v. Diaz*, 21 ROP 105 (Tr. Div.)

A party alleging an equal protection violation due to selective enforcement must demonstrate that discriminatory intent was a motivating factor in the enforcement decision. *Republic of Palau v. Diaz*, 21 ROP 115 (Tr. Div.)

Facial Challenge

A facial challenge to a statute requires a showing that the law always operates unconstitutionally.

Llecholch v. Republic of Palau, 21 ROP 70; *Republic of Palau v. Diaz*, 21 ROP 105 (Tr. Div.)

Interpretation

When analyzing a constitution, the Court begins its analysis with the language of the disputed provision itself. *Otobed v. Palau Election Comm'n*, 20 ROP 4

Where a constitution has both English and Palauan versions, a court should not lightly conclude that there is a conflict between the two versions of the Constitution but should rather strive, if possible, to find a single interpretation that gives effect to both. *Otobed v. Palau Election Comm'n*, 20 ROP 4

When constitutional language is clear and unambiguous, courts must apply its plain meaning. *Ngirturong v. Palau Election Comm'n*, 20 ROP 74

We attempt to identify a plain meaning whenever we are tasked with defining a term or word within a statute or constitution. Where there is no ambiguity, we refrain from straying to other canons of interpretation. *Rep. of Palau v. Oilouch*, 20 ROP 109

Pardon Power

The Executive Clemency Act imposes only procedural requirements and does not infringe upon the president's substantive pardon power. *Llecholch v. Republic of Palau*, 21 ROP 70; *Republic of Palau v. Diaz*, 21 ROP 105 (Tr. Div.)

Right Against Self-Incrimination

The right against self-incrimination protects against two separate acts. First, the core protection afforded by the Self-Incrimination Clause is a prohibition on compelling a criminal defendant to testify against himself at trial. Second, the right privileges a person not to answer official questions put to him in any other

proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings. Republic of Palau v. Mesubed, 20 ROP 219 (Tr. Div.)

Search and Seizure

One recognized exception to the normal warrant requirement is the “border search exception.” Such searches are routinely conducted, without probable cause or warrant, in order to regulate the collection of duties and to prevent the introduction of contraband into this country. Thus, a traveler entering the Republic at Airai International Airport can expect to routinely have his or her luggage inspected to ensure that the contents have been properly declared and that the traveler is not carrying contraband, and customs agents may perform such routine searches without any requirement of reasonable suspicion, probable cause, or warrant. Republic of Palau v. Suzuki, 22 ROP 208 (Tr. Div.)

Border searches, however, are not all alike. Some searches go beyond routine customs searches and inspections, such as when a customs agent suspects that a traveler is smuggling contraband within his or her body. In the United States such searches must rest upon reasonable suspicion—that is, a border official must have a particularized and objective basis for suspecting the particular person of criminal activity. Republic of Palau v. Suzuki, 22 ROP 208 (Tr. Div.)

The existence of one potentially sufficient exception to the warrant requirement does not preclude the applicability of another. Republic of Palau v. Suzuki, 22 ROP 208 (Tr. Div.)

Statutes

One cannot challenge a statute’s constitutionality on the ground that it might injure some hypothetical individual. Llecholch v. Republic of Palau, 21 ROP 70; Republic of Palau v. Diaz, 21 ROP 105 (Tr. Div.)

Suppression of Evidence

There are three types of constitutional bars to admission of evidence in a criminal proceeding. First, the Constitution may speak directly to admissibility. Second, under the prudential exclusionary rule, evidence obtained in violation of a constitutional right will be deemed inadmissible in court. Relatedly, where a constitutional right has been violated, evidence must be suppressed when recovery of the evidence has come by exploitation of that illegality. Republic of Palau v. Mesubed, 20 ROP 219 (Tr. Div.)

CONTRACTS

Duration

Generally, a contract for services which does not specify the duration of the contract is terminable at will by either party at any time. Ngotel v. Duty Free Shoppers Palau, Ltd., 20 ROP 9

Enforceability

A tenant can acquire no more right to land held under a quitclaim deed than the landlord itself has to convey. Toribiong v. Tmetbab Clan, 22 ROP 79

Interpretation

The terms of a contract are generally strictly construed against the party drafting the agreement. Republic of Palau v. Terekiu Clan, 21 ROP 21

A settlement agreement is a contract that is interpreted according to general principals of contract law. Republic of Palau v. Terekiu Clan, 21 ROP 21

The term ‘agreement,’ although frequently used as synonymous with the word ‘contract,’ is really an expression of greater breadth of meaning and less technicality. Every contract is an agreement;

but not every agreement is a contract *Shmull v. Hanpa Indus. Dev. Corp.*, 21 ROP 35

Mistake

Where a mistake of one party at the time a contract was made as to a basic assumption on which he made the contract has a material effect on the agreed exchange of performances that is adverse to him, the contract is voidable by him if he does not bear the risk of the mistake, and (a) the effect of the mistake is such that enforcement of the contract would be unconscionable, or (b) the other party had reason to know of the mistake or his fault caused the mistake. *Mesubed v. Urebau Clan*, 20 ROP 166

A party bears the risk of mistake when he is aware, at the time the contract is made, that he has only limited knowledge with respect to the facts to which the mistake relates but treats his limited knowledge as sufficient. *Mesubed v. Urebau Clan*, 20 ROP 166

Offers

An offer is not made when it is posted, but when it is received. *Ngotel v. Duty Free Shoppers Palau, Ltd.*, 20 ROP 9

Reformation

A court “reforms” a document when it employs its equitable powers to construe a legal document “to express or conform to the real intention of the parties when some error or mistake has been committed. *Ngoriakl v. Rechucher*, 20 ROP 291

Severability

Invalid or unenforceable provisions may be severed from an otherwise valid contract for purposes of rescission if circumstances so require to yield a just result. *Ngoriakl v. Rechucher*, 20 ROP 291

The question whether a contract can be properly

considered severable is considered in light of the language employed by the parties and the circumstances existing at the time of the contracting. The primary criterion for determining the question is the intention of the parties as determined by a fair construction of the terms and provisions of the contract itself, by the subject matter to which it has reference and by the circumstances of the particular transaction giving rise to the question. *Ngoriakl v. Rechucher*, 20 ROP 291

COURTS

Authority

Rule 55 provides the trial court with authority to resolve a case without a trial upon a party’s failure to timely respond to a complaint. *Palau Red Cross v. Chin*, 20 ROP 113

Docket Management

The trial judge has wide latitude in setting his own calendar and managing his docket. *Palau Red Cross v. Chin*, 20 ROP 113

Duty to Explain Basis for Decision

The interests of justice can only be served if the parties to an adversarial proceeding can understand from the resulting decision how and why they won or lost—and it is solely within the province of the trial court to set forth this determination in the first instance. *Koror State Pub. Lands Auth. v. Idid Clan*, 22 ROP 21

Due to the Land Court’s failure to separately consider the E&M claimants’ superior title and return of public land claims, we can at best speculate as to the basis for the ultimate determination in their favor. . . . This may also have deprived Koror State Pub. Lands Auth. of the ability to mount an effective appeal. Accordingly, we must reverse the Land Court’s determination in favor of the E&M claimants and remand for further proceedings consistent with

this opinion. *Koror State Pub. Lands Auth. v. Idid Clan*, 22 ROP 21

Duty to Pro Se Litigants

There is a long standing, and oftentimes unspoken, tradition in the United States and here in Palau of courts employing a heightened duty to its pro se litigants. *Ikluk v. Koror State Pub. Lands Auth.*, 20 ROP 128

Inherent Powers

Every court that has the jurisdiction to render a particular judgment has the inherent power to enforce it. Such authority inheres in the judicial power. *Bechab v. Anastacio*, 20 ROP 56

A court's inherent authority is limited to those powers necessary to carrying out its functions as a court. *Klai Clan v. Airai State Pub. Lands Auth.*, 20 ROP 253

The power to amend a pleading by trying an issue by consent is unnecessary for the Land Court to carry out its function. *Klai Clan v. Airai State Pub. Lands Auth.*, 20 ROP 253

Judges

When temporarily assigned to the Supreme Court pursuant to Palau Const. Art X § 12, a lower court "judge" temporarily becomes a Supreme Court "justice. *Toribiong v. Tmetbab Clan*, 22 ROP 116

The temporary assignment power granted by Palau Const. Art. X § 12 may be used to temporarily assign judges of lower courts to the Supreme Court. *Toribiong v. Tmetbab Clan*, 22 ROP 116

Judgments

As a general rule, judgments are to be construed like other written instruments, and the legal effect of a judgment must be declared in light of the literal meaning of the language used. The

unambiguous terms of a judgment, like the terms in a written contract, are to be given their usual and ordinary meaning. The determinative factor in interpreting a judgment is the intention of the court, as gathered, not from an isolated part thereof but from all parts of the judgment itself. *Mikel v. Saito*, 20 ROP 95

In construing a judgment, it may be presumed that the court intended to render a valid, and not a void, judgment. Hence, if a judgment is susceptible of two interpretations, one of which would render it legal and the other illegal, the court will adopt the interpretation which will render the judgment legal. *Mikel v. Saito*, 20 ROP 95

Jurisdiction

Claims against a receiver seeking review of his decisions in that capacity present nonjusticiable political questions. *Palau Civil Serv. Pension Plan v. Udui*, 22 ROP 11

A question is political, and therefore nonjusticiable, where there is (1) a textually demonstrable constitutional commitment of the issue to a coordinate political department; or (2) a lack of judicially discoverable and manageable standards for resolving it. *Palau Civil Serv. Pension Plan v. Udui*, 22 ROP 11

Political questions are not entirely immune to judicial review; they are insulated from a judicial substitution of our judgment for that of the political branches of government. *Palau Civil Serv. Pension Plan v. Udui*, 22 ROP 11

The political question doctrine does not provide blanket immunity to suit if a political branch is acting contrary to law. Determining whether a question is nonjusticiably political requires analysis of the precise facts and posture of the particular case, and precludes resolution by any semantic cataloguing. *Rengiil v. Ongos*, 22 ROP 48

A court, uniquely and universally, has the power and duty to examine and determine whether it has jurisdiction of a matter presented before it. That power includes the authority to resolve factual and legal disputes that bear on the question of jurisdiction. *Toribiong v. Tmetbab Clan*, 22 ROP 116

Determining competing claims to ownership versus determining who is or is not a member of a family, lineage, or clan for purposes of transferring ownership previously registered are two separate and distinct issues. The former issue is clearly within the purview of the Land Court while the latter is not. *In re Kltalngas*, 22 ROP 280 (Land Ct.)

Land Court

Although the Land Court's own rules and regulations do not contain any provision allowing it to reconsider its determinations of ownership, we have held that, in certain circumstances, the Land Court has the inherent authority to correct its own decision. *Children of Ngiratiou v. Descendants of Ngiratiou*, 20 ROP 264

Recusal

Under Canon 2.5, a judge facing a motion for disqualification must address his actual and apparent ability to decide the case impartially. First, the judge must decide whether he is able to decide the matter impartially. If he is unable to do so, he must recuse himself unless one of the emergency exceptions is implicated. If the judge concludes he is able to decide the matter impartially, the question becomes whether his impartiality would be questioned by a reasonable observer. If his impartiality would be questioned, then disqualification is required unless an emergency exception is present. If his impartiality would not be questioned, then the motion for disqualification must be denied. *Yano v. Yano*, 20 ROP 24

Prejudice growing out of business, political, or

social relations generally is insufficient to disqualify a judge. *Yano v. Yano*, 20 ROP 24

The general rule against business or social relationships serving as a basis for disqualification carries particular weight when a judicial district lies in rural or sparsely populated area where a judge is likely to interact frequently with attorneys and potential litigants. *Yano v. Yano*, 20 ROP 24

A party seeking to disqualify a judge based on a familial relationship not enumerated in Canon 2.5.5 must show additional circumstances that would lead a reasonable observer to question the judge's impartiality. *Yano v. Yano*, 20 ROP 24

Palau, like the less populous judicial districts in the United States, has a limited supply of businesses and professionals. To hold that a judge could be disqualified automatically based on any business (or personal) relationship with a party, particularly one which ended years ago, would be to severely limit a judge's ability to function in the community, to function as a judge, or both. A previous business relationship with one of the few medical doctors on the island is a sufficiently common occurrence so as to deprive such relationship of any appearance of partiality. *Yano v. Yano*, 20 ROP 24

Stipulations

Parties may not stipulate to legal conclusions. *Gideon v. Republic of Palau*, 20 ROP 153

Private agreements between litigants cannot relieve the Court of performance of its judicial function. *Yano v. Yano*, 20 ROP 190

While parties may enter into stipulations of fact that are binding upon them, parties may not stipulate to the legal conclusions to be reached by the court. *Yano v. Yano*, 20 ROP 190

CRIMINAL LAW

Advice of Rights

Pursuant to 18 PNC § 218, a person under arrest must be advised of his right to an attorney and his right to remain silent. Additionally, it is unlawful for those having custody of one arrested, before questioning him about his participation in any crime, to fail to inform him of his rights and their obligations under subsections (a)(1) - (3) of 18 PNC § 218. *Republic of Palau v. Mesubed*, 20 ROP 219 (Tr. Div.)

Aiding and Abetting

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. *Gideon v. Republic of Palau*, 20 ROP 153

The government need not prove the actual identity of the principal, provided the proof shows that the underlying crime was committed by someone. Rather, in order to obtain a conviction, the prosecution need only prove that the substantive offense had been committed by someone and that the defendant aided and abetted him. *Gideon v. Republic of Palau*, 20 ROP 153

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. *Gideon v. Republic of Palau*, 20 ROP 153

Conspiracy and aiding and abetting are distinct crimes. *Gideon v. Republic of Palau*, 20 ROP 153

Appellate Review

Appellate review of the sufficiency of evidence supporting a conviction is very limited. Under

this standard, the Appellate Division will review the record only to determine whether, viewing the evidence in the light most favorable to the prosecution, and giving due deference to the trial court's opportunity to hear the witnesses and observe their demeanor, any reasonable trier of fact could have found the essential elements of the crime were established beyond a reasonable doubt. *Gideon v. Republic of Palau*, 20 ROP 153

The existence of bias does not preclude a positive credibility determination. *Gideon v. Republic of Palau*, 20 ROP 153

When weighing the sufficiency of a conviction, the evidence must be viewed in conjunction, not in isolation. *Gideon v. Republic of Palau*, 20 ROP 153

Status and membership in a lineage are questions of fact, as is the existence of a purported customary law, and the Appellate Division reviews these findings of fact for clear error. The Court will reverse only if no reasonable trier of fact could have reached the same conclusion based on the evidence in the record. *Sungino v. Benhart*, 20 ROP 215

Arrest

"Arrest," is defined under the statute as any form of legal detention by legal authority. 18 PNC § 101(a). Within the context of advice of rights, "arrest" includes detentions "for examination" based on probable cause that a crime has been committed. *Republic of Palau v. Mesubed*, 20 ROP 219 (Tr. Div.)

When considering the existence of arrest or custody several factors guide the inquiry: the location of the interview; the length and manner of questioning; whether the individual possessed unrestrained freedom of movement during the interview; and whether the individual was told she need not answer the questions. *Republic of Palau v. Mesubed*, 20 ROP 219 (Tr. Div.)

Attempted Murder

Attempted felony murder does not exist in Palau. *Yano v. Republic of Palau*, 21 ROP 90

Conspiracy

A criminal conspiracy is an agreement between two or more persons to accomplish together a criminal or on unlawful act accompanied by an overt act in furtherance of the agreement. *Gideon v. Republic of Palau*, 20 ROP 153

As with aiding and abetting, the Government is not required to identify a coconspirator. *Gideon v. Republic of Palau*, 20 ROP 153

Conspiracy and aiding and abetting are distinct crimes. *Gideon v. Republic of Palau*, 20 ROP 153

In considering whether a conspiracy has been formed, a formal agreement is not necessary; rather, the agreement may be inferred from the defendants' acts pursuant to the scheme, or other circumstantial evidence. *Gideon v. Republic of Palau*, 20 ROP 153

Double Jeopardy

Where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact that the other does not. *Rengiil v. Republic of Palau*, 20 ROP 141

Because Palau's double jeopardy clause is similar to the double jeopardy clause in the United States Constitution, courts in Palau look to United States case law as an aid in interpreting the scope of double jeopardy protection. *Gideon v. Republic of Palau*, 20 ROP 153

In order to protect against the imposition of multiple punishments for the same offense, Palauan courts will "merge" same offenses into a

single conviction. Offenses are the "same" where the same act or transaction gives rise to a violation of two distinct statutory provisions, unless each statutory provision requires proof of a fact which the other does not. *Gideon v. Republic of Palau*, 20 ROP 153

A double jeopardy challenge to multiple convictions invokes two inquiries: (1) whether the crimes charged involved distinct elements of proof; and (2) whether, as charged, the crimes arose from a single act or transaction. *Gideon v. Republic of Palau*, 20 ROP 153

Robbery and grand larceny are separate offenses because an essential element of robbery—force or intimidation—is not an element of grand larceny from the person, while an essential element of grand larceny—proof of value—is not an element of robbery. *Gideon v. Republic of Palau*, 20 ROP 153

Malicious mischief requires an element that robbery does not (destruction of property) and robbery requires an element that malicious mischief does not (unlawful taking). Accordingly, the two are separate offenses and do not run afoul of double jeopardy. *Gideon v. Republic of Palau*, 20 ROP 153

False arrest requires the detention of another by force and against his or her will without authority to so detain. Robbery and false arrest are thus separate defenses insofar as robbery requires unlawful taking (which false arrest does not) and false arrest requires wrongful detention (which robbery does not). *Gideon v. Republic of Palau*, 20 ROP 153

Where a statute contains elements in the alternative, a court considering a double jeopardy challenge must construct from the alternative elements within the statute the particular formation that applies to the case at hand. If, as charged, proof of one crime requires conviction of the other, then the two statutes do not contain distinct elements. *Gideon v. Republic of Palau*,

20 ROP 153

Due Process

According to the *Brady* rule, the suppression of exculpatory evidence by the prosecution in the face of a defendant's request violates the due process clause of the Constitution where that evidence is 'material' to guilt or punishment. Further, 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. *Rengiil v. Republic of Palau*, 20 ROP 141

Grounds for Conviction

A guilty verdict must be set aside where the verdict is supportable on one ground, but the other ground is constitutionally or legally inadequate, and it is impossible to tell which ground the jury selected. *Yano v. Republic of Palau*, 21 ROP 90

Money Laundering

Giving away and spending money following a robbery is insufficient activity to justify a conviction for money laundering. *Gideon v. Republic of Palau*, 20 ROP 153

Right Against Self-Incrimination

The right against self-incrimination protects against two separate acts. First, the core protection afforded by the Self-Incrimination Clause is a prohibition on compelling a criminal defendant to testify against himself at trial. Second, the right privileges a person not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings. *Republic of Palau v. Mesubed*, 20 ROP 219 (Tr. Div.)

Right to Counsel

Pursuant to section 218, the Government may not deny an arrestee the right to see at reasonable intervals, and for a reasonable time at the place of his detention, counsel, or members of his family, or his employer, or a representative of his employer. *Republic of Palau v. Mesubed*, 20 ROP 219 (Tr. Div.)

Like the right against self-incrimination, the right to counsel attaches at the time a defendant has been implicated in a crime. *Republic of Palau v. Mesubed*, 20 ROP 219 (Tr. Div.)

The right to counsel renders inadmissible in the prosecution's case in chief statements deliberately elicited from a defendant without an express waiver of the right to counsel. *Republic of Palau v. Mesubed*, 20 ROP 219 (Tr. Div.)

Rights of Defendant

Civil rights of a criminal defendant in Palau come from three sources: statute, the Constitution and the Miranda prophylactic rule. *Republic of Palau v. Mesubed*, 20 ROP 219 (Tr. Div.)

Sufficiency of the Evidence

Courts review the sufficiency of the evidence only to determine whether, viewing the evidence in the light most favorable to the prosecution, and giving due deference to the trial court's opportunity to hear the witnesses and observe their demeanor, any reasonable trier of fact could have found the essential elements of the crime were established beyond a reasonable doubt. *Rengiil v. Republic of Palau*, 20 ROP 141

Suppression of Evidence

Where the government violates one of the statutorily enumerated rights, no evidence obtained as a result of such violation shall be admissible against the accused. *Republic of Palau v. Mesubed*, 20 ROP 219 (Tr. Div.)

In order to suppress evidence obtained in

violation of 18 PNC § 218, defendant must at the very least assert a causal link between the failure of investigators [and the discovery of the evidence]. Consequence will not be presumed where it is not alleged. *Republic of Palau v. Mesubed*, 20 ROP 219 (Tr. Div.)

There are three types of constitutional bars to admission of evidence in a criminal proceeding. First, the Constitution may speak directly to admissibility. Second, under the prudential exclusionary rule, evidence obtained in violation of a constitutional right will be deemed inadmissible in court. Relatedly, where a constitutional right has been violated, evidence must be suppressed when recovery of the evidence has come by exploitation of that illegality. *Republic of Palau v. Mesubed*, 20 ROP 219 (Tr. Div.)

Voluntary Statements

The right against self-incrimination protects against two separate acts. First, the core protection afforded by the Self-Incrimination Clause is a prohibition on compelling a criminal defendant to testify against himself at trial. Second, the right privileges a person not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings. *Republic of Palau v. Mesubed*, 20 ROP 219 (Tr. Div.)

CRIMINAL PROCEDURE

Bill of Particulars

For an information to be sufficient it must contain all of the essential elements of the offense charged and fairly inform the accused of the charges against him that he must defend. This is not a particularly high threshold, because an information is designed to put the Defendant on notice of the charges—not make the Republic's entire case. *Republic of Palau v. Suzuki*, 22 ROP 202 (Tr. Div.)

The information is not considered in a vacuum; the supporting affidavit and any discovery provided by the Republic are also considered for purposes of ensuring that the Defendant is fairly apprised of what he is accused of. *Republic of Palau v. Suzuki*, 22 ROP 202 (Tr. Div.)

Confessions

A reasonable person, despite his innocence, will often confess to a crime he had no involvement with when offered an opportunity to leave without prosecution or further consequences. That a guilty person would do the same is not relevant to the voluntariness analysis; if a practice can induce an innocent person to provide a false confession, it is the coercive practice, not the result, which is offensive to justice and the Constitution. This distinction, however, rests entirely on the specifics of the promise made: an offer, for example, of a potentially reduced sentence or of other possible law enforcement benefits is fundamentally distinct from an actual dispositive offer of non-prosecution. *Republic of Palau v. Suzuki*, 22 ROP 208 (Tr. Div.)

Double Jeopardy

The Double Jeopardy Clause of the Constitution protects against multiple punishments for the same offense at a single trial. When multiple concurrent offenses are alleged under a single statutory provision the Court must determine the legislatively intended “unit of prosecution” for purposes of the Double Jeopardy Clause. *Republic of Palau v. Suzuki*, 22 ROP 202 (Tr. Div.)

The “unit of prosecution” for violations of 17 PNC § 3306(a) is the singular act of import and/or possession. *Republic of Palau v. Suzuki*, 22 ROP 202 (Tr. Div.)

Exclusionary Rule

The Court cannot see how application of the

exclusionary rule in this case would be appropriate, given that the actions Defendant claims influenced his statement were not undertaken by representatives of the Republic—that is, neither the Acting Attorney General, nor Director Aguon, nor any other law enforcement officer led him to believe that he specifically would not be charged if he confessed. There is no law-enforcement misconduct to deter, and as such suppression is inappropriate. *Republic of Palau v. Suzuki*, 22 ROP 208 (Tr. Div.)

Habeas Corpus

There are multiple ways imprisonment or restraint can be unlawful. One is the most classic case: a defendant’s very conviction may, itself, have been contrary to law, and in such cases the writ serves to order his release from imprisonment. But the situation or conditions of a defendant’s confinement can also be the subject of a habeas petition, as no government entity—be it law enforcement, the courts, the prisons, or any other state agent—may lawfully detain a defendant in a fashion or in a place that is legally forbidden. A petitioner whose conviction and sentence is lawful, but who is detained in an unlawful fashion—such as in cruel, inhumane, or degrading conditions—is entitled to relief, but only from the unlawful nature of the detainment—not from the conviction itself. In *re Angelino*, 22 ROP 183 (Tr. Div.)

If the conditions of imprisonment are what make it unlawful, then this Court is within its authority to inquire into the cause of—and, if necessary, the remedy for—the unlawful element of the restraint. In *re Angelino*, 22 ROP 183 (Tr. Div.)

Joinder and Severance

Generally, there is a preference for the joint trial of defendants who are charged together. *Republic of Palau v. Baconga*, 21 ROP 119 (Tr. Div.)

Severance of the trials of codefendants is appropriate if the risk of prejudice to the

government or the defendants outweighs the public interest in joint trial. *Republic of Palau v. Baconga*, 21 ROP 119 (Tr. Div.)

The primary consideration in determining prejudice in cases involving multiple defendants is whether or not a jury would be able to distinguish each individual defendant and the charges against him from that of the group. *Republic of Palau v. Baconga*, 21 ROP 119 (Tr. Div.)

Warrantless Arrests

One recognized exception to the normal warrant requirement is the “border search exception.” Such searches are routinely conducted, without probable cause or warrant, in order to regulate the collection of duties and to prevent the introduction of contraband into this country. Thus, a traveler entering the Republic at Airai International Airport can expect to routinely have his or her luggage inspected to ensure that the contents have been properly declared and that the traveler is not carrying contraband, and customs agents may perform such routine searches without any requirement of reasonable suspicion, probable cause, or warrant. *Republic of Palau v. Suzuki*, 22 ROP 208 (Tr. Div.)

Border searches, however, are not all alike. Some searches go beyond routine customs searches and inspections, such as when a customs agent suspects that a traveler is smuggling contraband within his or her body. In the United States such searches must rest upon reasonable suspicion—that is, a border official must have a particularized and objective basis for suspecting the particular person of criminal activity. *Republic of Palau v. Suzuki*, 22 ROP 208 (Tr. Div.)

The existence of one potentially sufficient exception to the warrant requirement does not preclude the applicability of another. *Republic of Palau v. Suzuki*, 22 ROP 208 (Tr. Div.)

CUSTOM**Appellate Review**

The Appellate Division cannot review the grant of summary judgment on a traditional issue without findings as to the traditional law governing how a dispute over the question is traditionally resolved. *Rengiil v. Ongos*, 22 ROP 48

Burden of Proof

A party cannot be entitled to judgment as a matter of law if a crucial piece of law—the traditional methods of appointing a chief title bearer and resolving a dispute over such title—is missing. *Rengiil v. Ongos*, 22 ROP 48

There are four requirements for a custom to be considered traditional law under Article V, § 2: (1) the custom is engaged voluntarily; (2) the custom is practiced uniformly; (3) the custom is followed as law; and (4) the custom has been practiced for a sufficient period of time to be deemed binding. *Beouch v. Sasao*, 20 ROP 41

If the traditional law question is not resolvable purely through judicial notice, then the court must determine whether the judicially noticeable facts and the record as a whole satisfy the court that the traditional law requirements have been met. *Beouch v. Sasao*, 20 ROP 41

Courts determining whether a traditional law exists must be mindful of their duty to find and apply the correct law. Where an issue of traditional law is unresolvable on the record, a trial judge must develop the record in order to allow for resolution. Of course, this duty does not relieve the parties of their respective burdens to introduce facts justifying relief under the applicable traditional laws. *Beouch v. Sasao*, 20 ROP 41

A party claiming to be a strong senior member of a clan has the burden of proving such status by a

preponderance of the evidence. Where a party seeks to prove not that she is a strong member, but that instead another individual is a weak member, the burden of proof is placed on the party that would lose if no evidence were presented. *Beouch v. Sasao*, 20 ROP 41

A party claiming to be a strong senior member of a clan has the burden of proving such status by a preponderance of the evidence. *Sungino v. Benhart*, 20 ROP 215

Clan Membership

A person's status within a clan is a matter of custom. *Beouch v. Sasao*, 20 ROP 41

It is well-established in Palau that clan members have the following ranks, in declining order of strength: (1) ochell members; (2) ulechell members; (3) rrodel members; (4) mlotechakl members; and (5) terruaol. *Beouch v. Sasao*, 20 ROP 41

Where a clan member traces his connection to a clan to a male progenitor, the clan member will be ulechell of that clan, not ochell. *Beouch v. Sasao*, 20 ROP 41

An ulechell female may become an ourrot member of a clan based on contributions to the Clan. *Beouch v. Sasao*, 20 ROP 41

Expert Testimony

A trial court need not accept the testimony of an expert witness on custom. *Beouch v. Sasao*, 20 ROP 41

Judicial Notice

When confronted with a question of a custom, a court should first ask whether the traditional law requirements (voluntary practice, uniform practice, recognition as law and long and general usage) are so firmly established and widely known as to justify taking judicial notice of the

custom. *Beouch v. Sasao*, 20 ROP 41

Past judicial recognition of a traditional law as binding will be controlling as a matter of law, absent evidence that the custom has changed. *Beouch v. Sasao*, 20 ROP 41

In the event a court utilizes judicial notice to find existence of a traditional law, a party may challenge the court's decision to do so. *Beouch v. Sasao*, 20 ROP 41

Judicial Review

When confronted with a question of a custom, a court should first ask whether the traditional law requirements (voluntary practice, uniform practice, recognition as law and long and general usage) are so firmly established and widely known as to justify taking judicial notice of the custom, 20 ROP 41

Whether a given custom has met the traditional law requirements is a mixed question of law and fact. *Beouch v. Sasao*, 20 ROP 41

The definitive statement as to whether a custom is or is not binding law is a pure determination of law. *Beouch v. Sasao*, 20 ROP 41

Status and membership in a lineage are questions of fact, as is the existence of a purported customary law, and the Appellate Division reviews these findings of fact for clear error. *Oseked v. Ngiraked*, 20 ROP 181

Justiciability

For Sole Judgment authority regarding a traditional leader to be valid under the Palau Constitution, it must actually be exercised, because indefinite silence when a genuine dispute exists serves to "revoke the role or function of a traditional leader" and "prevent a traditional leader from being recognized, honored, or given formal or functional roles at any level of government." *Rengiil v. Ongos*, 22 ROP 48

Previous Standard

For cases filed prior to January 3, 2013, the existence and content of a particular custom is a question of fact. *Fritz v. Materne*, 23 ROP 12

Proof of Custom

Dating back to the Trust Territory days, the Appellate Division has recognized that custom in the legal sense is defined as such a usage as by common consent and uniform practice which has become the law of the place, or of the subject matter, to which it relates and which has been established by long usage. *Mikel v. Saito*, 20 ROP 95

Expert testimony that a custom has "evolved" over the past forty years is insufficient to prove customary law by clear and convincing evidence. *Mikel v. Saito*, 20 ROP 95

DAMAGES

Attorney's Fees

Palau has adopted the general rule, sometimes referred to as "the American rule," that each party is presumed to bear their own attorney's fees unless there is a statutory or contractual provision to the contrary. *Roll 'Em Prods. v. Diaz*, 22 ROP 229 (Tr. Div.)

Compensatory Damages

As a general matter, in order to recover damages, the plaintiff in a tort suit must prove the existence or nature of its damages with reasonable certainty. This includes proof that the particular damages claimed were legally caused by the tortious conduct of the defendant. While often spoken of in terms of "reasonable certainty," this rule means only that the fact that there are damages must be more than merely speculative and only requires that the plaintiff meet the usual preponderance burden of proof in a negligence

case to prove the existence of damages. Palau Pub. Lands Auth. v. Emesiochel, 22 ROP 126

A plaintiff can recover damages for a particular harm only by proving that the harm occurred as the result of the tortious conduct of the defendant, a fact that must be proven with the same degree of certainty as that required in proving the existence of the cause of action. Palau Pub. Lands Auth. v. Emesiochel, 22 ROP 126

Once the existence of damages is established, however, mere uncertainty as to the precise amount of those damages will not prohibit recovery. Rather, the plaintiff need only prove the extent of the harm and the amount of money representing adequate compensation with as much certainty as the nature of the tort and the circumstances permit. Put differently, the evidence need only be sufficient to provide a reasonable basis for computing an approximate amount of damages. Palau Pub. Lands Auth. v. Emesiochel, 22 ROP 126

Relatively greater uncertainty is permitted with respect to the amount of damages as opposed to their existence because, while it is desirable that the amount of damage be as definitely proven as is reasonably possible, it is even more desirable that an injured person not be deprived of substantial compensation merely because he or she cannot prove with complete certainty the extent of the harm suffered. Palau Pub. Lands Auth. v. Emesiochel, 22 ROP 126

Consequential Damages

Implementing security measures reflect a reasonable, foreseeable, and even likely response to the type of threats made by the defendant, especially considering his apparent power to follow through on these threats. It is further evidenced in the record that these security measures were implemented entirely as a result of the defendant's misconduct. Accordingly, awarding consequential damages for the reasonable cost of these measures is warranted.

Roll 'Em Prods. v. Diaz, 22 ROP 229 (Tr. Div.)

A plaintiff entitled to general damages for reputational harm may also seek damages, to the extent that they can be shown, for any special harm or emotional distress caused by the defamation. Roll 'Em Prods. v. Diaz, 22 ROP 229 (Tr. Div.)

Double Recovery

The tortious conduct here decreased the plaintiffs' overall profitability in a number of ways, including limiting the space available to Appellees, disrupting their operations, and killing their fish. Compensating the plaintiffs for their lost profits is designed to put them in the position they would have been in had NCL never entered the premises or killed their fish. There is thus no need to award additional separate damages for the killed fish unless the plaintiffs can demonstrate some reason why a lost profits award does not suffice to make them whole. Palau Pub. Lands Auth. v. Emesiochel, 22 ROP 126

Duty to Mitigate

The Court declines to adopt a rule that a business has an obligation to accept the offers of a known trespasser, or else forfeit all or some of its right to recover damages in the event that the trespasser destroys its property. Palau Pub. Lands Auth. v. Emesiochel, 22 ROP 126

Under the doctrine of mitigation of damages, one injured by the tort of another is not entitled to recover damages for any harm that he could have avoided by the use of reasonable effort or expenditure after the commission of the tort. This doctrine does not apply when the proposed means of mitigation existed before, but not after, the commission of the tortious act. Palau Pub. Lands Auth. v. Emesiochel, 22 ROP 126

Only an unreasonable refusal or failure to prevent additional losses will justify a reduction in the amount of damages awarded. In other words, the

injured party is required to exercise no more than reasonable judgment or fortitude; and, if different courses of action are open to him he is not required, as a condition to obtaining full damages, to choose the course that events later show to have been the best. Palau Pub. Lands Auth. v. Emesiochel, 22 ROP 126

Even where an injured party negligently failed to take action to mitigate its losses, damages will be reduced if, and only if, the failure to act constitutes a legally contributing cause of the resulting harm, meaning it must have had such an effect in producing the harm as to lead reasonable men to regard it as a cause, using that word in the popular sense. Palau Pub. Lands Auth. v. Emesiochel, 22 ROP 126

Interest

Unless otherwise agreed, interest is always recoverable for the non-payment of money once payment has become due and there has been a breach. Shmull v. Hanpa Indus. Dev. Corp., 21 ROP 35

Liquidated Damages

Liquidated damages are customarily unenforceable as penalties when they are in excess of actual damage caused by a contractual breach. Shmull v. Hanpa Indus. Dev. Corp., 21 ROP 35

Lost Profits

The same basic rules that govern other compensatory damages claims also apply to claims for lost profits. Palau Pub. Lands Auth. v. Emesiochel, 22 ROP 126

In calculating a lost profits award, the court should attempt to ascertain the net profit that the business would have earned during the relevant years had the tortious conduct not occurred and compensate it accordingly. Palau Pub. Lands Auth. v. Emesiochel, 22 ROP 126

Standard of Proof

As a general matter, in order to recover damages, the plaintiff in a tort suit must prove the existence or nature of its damages with reasonable certainty. This includes proof that the particular damages claimed were legally caused by the tortious conduct of the defendant. While often spoken of in terms of “reasonable certainty,” this rule means only that the fact that there are damages must be more than merely speculative and only requires that the plaintiff meet the usual preponderance burden of proof in a negligence case to prove the existence of damages. Palau Pub. Lands Auth. v. Emesiochel, 22 ROP 126

A plaintiff can recover damages for a particular harm only by proving that the harm occurred as the result of the tortious conduct of the defendant, a fact that must be proven with the same degree of certainty as that required in proving the existence of the cause of action. Palau Pub. Lands Auth. v. Emesiochel, 22 ROP 126

Once the existence of damages is established, however, mere uncertainty as to the precise amount of those damages will not prohibit recovery. Rather, the plaintiff need only prove the extent of the harm and the amount of money representing adequate compensation with as much certainty as the nature of the tort and the circumstances permit. Put differently, the evidence need only be sufficient to provide a reasonable basis for computing an approximate amount of damages. Palau Pub. Lands Auth. v. Emesiochel, 22 ROP 126

Relatively greater uncertainty is permitted with respect to the amount of damages as opposed to their existence because, while it is desirable that the amount of damage be as definitely proven as is reasonably possible, it is even more desirable that an injured person not be deprived of substantial compensation merely because he or she cannot prove with complete certainty the extent of the harm suffered. Palau Pub. Lands

Auth. v. Emesiochel, 22 ROP 126

Without question, it is important that there be some concrete basis for any damage award, but absolute, beyond-all-reasonable-doubt certainty is neither necessary nor justifiable. Roll 'Em Prods. v. Diaz, 22 ROP 229 (Tr. Div.)

DEEDS

Presumption of Validity

Presumptions of validity exist when a court examines recorded deeds. Ngiraingas v. Tellei, 20 ROP 90

DESCENT AND DISTRIBUTION

Applicable Law

The un-subdivided portion of 25 PNC § 301 does not apply in the case of an intestate decedent. Fritz v. Materne, 23 ROP 12

25 PNC § 301(a) addresses only lands acquired through a bona fide purchase for value. Fritz v. Materne, 23 ROP 12

21 PNC § 409 does not require that a decedent's adopted children and natural children be treated as equals for purposes of inheritance unless no recognized custom as to rights of inheritance of adopted children applies. Fritz v. Materne, 23 ROP 12

In determining who shall inherit a decedent's property, the Court applies the statutes in effect at the time of the decedent's death. Ngermengiau Lineage v. Estate of Isaol, 20 ROP 68

Where ownership rights to a decedent's property are to be adjudicated amongst heirs, a court must consider the applicable statutory and customary laws relevant to inheritance. Mikel v. Saito, 20 ROP 95

Inheritance rights are governed by statutes and, in

the absence of applicable statutes, by customary law. Mikel v. Saito, 20 ROP 95

Determination of Heirs

While the trial court is not duty-bound to list the names of specific beneficiaries in an intestate proceeding, it does have some duty to issue a determination concerning who the heirs of the relevant property are. The administrator or administratrix must then distribute the property according to this determination. Kee v. Ngiraingas, 20 ROP 277

Statutes

Eligibility for inheritance under Section 801 was not dependent upon the filing of a claim for the land. Rather, the statute provided that, in the absence of eligible male heirs, fee simples in an intestate estate would pass to the oldest living female issue (either natural or adopted) of sound mind. Ngermengiau Lineage v. Estate of Isaol, 20 ROP 68

DIVORCE AND SEPARATION

Adultery

Adultery is the act of entering into a personal, intimate sexual relationship with any other person, irrespective of the specific sexual acts performed, or the gender of the third party. Yano v. Yano, 20 ROP 190

Where circumstantial evidence is used to prove adultery, the evidence must be sufficiently strong to lead the guarded discretion of a reasonable and just mind to the conclusion of adultery as a necessary inference. Yano v. Yano, 20 ROP 190

Child Support

Subsections (a) and (b) of 21 PNC § 335 operate to create two types of child support obligations: (1) an obligation of a party to a marriage who causes a marriage to terminate either on his own

initiative or for any enumerated reason to provide support for children of the marriage; (2) an obligation of a person to provide support for all biological children who have not been adopted pursuant to law or custom. *Yano v. Yano*, 20 ROP 190

Within the meaning of 21 PNC § 335, a person causes a marriage to terminate on his own initiative when he knowingly and voluntarily causes the marriage to terminate. *Yano v. Yano*, 20 ROP 190

The ultimate objective in setting awards for child support is to secure support commensurate with the needs of the children and the ability of the obligor to meet those needs. *Yano v. Yano*, 20 ROP 190

At common law, with regard to a parent's ability to pay support, the net income after reasonable and justifiable business expenses should be the primary consideration. *Yano v. Yano*, 20 ROP 190

Child support awards often create a benefit for the custodial parent. *Yano v. Yano*, 20 ROP 190

Equitable Distribution

The doctrine of equitable distribution is based on the general rule that in a divorce proceeding the division of property must be equitable, but not necessarily equal. *Yano v. Yano*, 20 ROP 190

21 PNC § 302's reference to justice and the "best interests of all concerned" requires that property be distributed equitably. *Yano v. Yano*, 20 ROP 190

Equitable distribution during a divorce involves three steps: first, identifying the property as marital or separate; second, valuing the property; and third, allocating it between spouses according to equitable factors. *Yano v. Yano*, 20 ROP 190

Generally, all property acquired during the

marriage is marital property while property owned by the parties prior to marriage, or acquired during the marriage by gift or inheritance, is separate property and thus not subject to division, as is property acquired in exchange for any separate property. *Yano v. Yano*, 20 ROP 190

To effect an equitable distribution of marital property, a court must place a value on all non-nominal marital assets. An item is considered nominal when its value is insignificant compared to the total value of the marital estate. *Yano v. Yano*, 20 ROP 190

Under the equitable distribution system, the marriage is viewed as a partnership with both spouses contributing to the marital estate in the manner which they have chosen. *Yano v. Yano*, 20 ROP 190

Pursuant to 21 PNC § 203, a court should consider the following factors when seeking to create an equitable distribution of property: (1) substantial contribution to the accumulation of the property; (2) the degree to which each spouse has expended, withdrawn or otherwise disposed of marital assets and any prior distribution of such assets by agreement, decree or otherwise; (3) The market value and the emotional value of the assets subject to distribution; (4) the value of assets not ordinarily, absent equitable factors to the contrary, subject to such distribution, such as property brought to the marriage by the parties and property acquired by inheritance or inter vivos gift by or to an individual spouse; (5) tax and other economic consequences, and contractual or legal consequences to third parties, of the proposed distribution; (6) the extent to which property division may, with equity to both parties, be utilized to eliminate periodic payments and other potential sources of future friction between the parties; (7) the needs of the parties for financial security with due regard to the combination of assets, income and earning capacity; and (8) any other factor which in equity should be considered. *Yano v. Yano*, 20 ROP 190

A party's infidelity is relevant to the distribution insofar as it relates to the contribution to the stability of the marriage and (in some cases) to the dissipation of assets. *Yano v. Yano*, 20 ROP 190

Grounds for Divorce

While divorce may be granted to both parties in a divorce proceeding, it is axiomatic that statutory grounds must exist entitling each party to such relief. Thus, in identifying the appropriate statutory grounds, if any, for divorce, a court must make findings of fact to support its conclusion that such grounds exist. *Yano v. Yano*, 20 ROP 190

ELECTIONS

Residency and Domicile

The term "resident" under Article IX, Section 6 of the Constitution can be interpreted to mean domicile. The terms "resident" and "domicile" are used interchangeably, such that the term "resident" includes "domicile." *Ngirturong v. Palau Election Comm'n*, 20 ROP 74

Key in reviewing the residency requirements of Article IX, § 6, is the contacts that the person has with the relevant area. The existence of a permanent family home may be one helpful factor in establishing these contacts, but they may also be proven a number of other ways, including through the person's involvement in the jurisdiction, the family ties that person has, the amount of time that person has spent in the area, the level of participation in community and civic activities, and so on. *Ngirturong v. Palau Election Comm'n*, 20 ROP 74

EMPLOYMENT LAW

Breach of Contract

A breach of contract action arises out of a

discharge from employment when an employee is terminated in a manner inconsistent with the terms of the employment contract. *Ngotel v. Duty Free Shoppers Palau, Ltd.*, 20 ROP 9

A former employee may sustain a breach-of-contract claim against their former employer by establishing a breach of an implied-in-fact contract. In such an action, the burden of proving the terms and existence of the contract must lie with the employee. *Ngotel v. Duty Free Shoppers Palau, Ltd.*, 20 ROP 9

Employment at Will

Contracts for employment that do not specify grounds for termination are terminable at will by either party at any time. *Ngotel v. Duty Free Shoppers Palau, Ltd.*, 20 ROP 9

Where a termination is based on alleged wrongful conduct on the part of an employee, absent evidence of bad faith, where it is undisputed the employer has conducted an investigation and determined the issue against the employee, there is no breach of the implied covenant of good faith and fair dealing, even if the employee could subsequently prove that the factual finding of misconduct was a mistake. *Ngotel v. Duty Free Shoppers Palau, Ltd.*, 20 ROP 9

Good Faith and Fair Dealing

Within in the context of an employment contract, a breach of the covenant of good faith and fair dealing is solely contractual. *Ngotel v. Duty Free Shoppers Palau, Ltd.*, 20 ROP 9

Where a termination is based on alleged wrongful conduct on the part of an employee, absent evidence of bad faith, where it is undisputed the employer has conducted an investigation and determined the issue against the employee, there is no breach of the implied covenant of good faith and fair dealing, even if the employee could subsequently prove that the factual finding of misconduct was a mistake. *Ngotel v. Duty Free*

Shoppers Palau, Ltd., 20 ROP 9

Implied-in-Fact Contracts

To the extent that an employee seeks to establish an implied-in-fact contract predicated upon specific conduct, that employee must, at the very least, show knowledge of such conduct. *Ngotel v. Duty Free Shoppers Palau, Ltd.*, 20 ROP 9

A former employee establishes a breach of an implied-in-fact contract claim against her former employer by showing: (1) conduct by the employer constituting an offer of employment in abrogation of the at-will rule; (2) the employee accepted the offer by continuing her employment after learning of the offer-creating conduct; and (3) breach of the terms of the offer. *Ngotel v. Duty Free Shoppers Palau, Ltd.*, 20 ROP 9

Generally, a clear and unambiguous at-will provision in a written employment contract, signed by the employee, cannot be overcome by evidence of a prior or contemporaneous implied-in-fact contract requiring good cause for termination. *Ngotel v. Duty Free Shoppers Palau, Ltd.*, 20 ROP 9

Judicial Review of Termination

Whether the employees were fired based solely on their political beliefs is a question of fact. We review such questions for clear error. *Uchau v. Napoleon*, 20 ROP 2

Progressive Discipline

The promulgation of “progressive discipline” policies by an employer may bind an employer to those policies. Under such circumstances, a termination in contravention of the progressive discipline will be considered a breach of contract. *Ngotel v. Duty Free Shoppers Palau, Ltd.*, 20 ROP 9

Termination

‘Good cause’ in the context of implied employment contracts is defined ‘as fair and honest reasons, regulated by good faith on the part of the employer, that are not trivial, arbitrary or capricious, unrelated to business needs or goals, or pretextual. A reasoned conclusion, in short, supported by substantial evidence gathered through an adequate investigation that includes notice of the claimed misconduct and a chance for the employee to respond. *Ngotel v. Duty Free Shoppers Palau, Ltd.*, 20 ROP 9

EQUITY

Restitution

The general rule is that one who improves the property of another does so at his own peril, and only under certain exceptional circumstances will a mistaken improver be entitled to restitution for the value of improvements. *Asanuma v. Golden Pac. Ventures, Ltd.*, 20 ROP 29

A person who has been unjustly enriched at the expense of another is required to make restitution to the other. Restitution is awarded based on the value added by the improver, which may be measured by the lesser of the cost of the labor and materials or the resulting increase in market value. *Asanuma v. Golden Pac. Ventures, Ltd.*, 20 ROP 29

The person entitled to restitution is the one who went to the expense to improve the land. *Asanuma v. Golden Pac. Ventures, Ltd.*, 20 ROP 29

EVIDENCE

Admissibility

Relevant evidence obtained in violation of the Constitution will be deemed admissible in civil proceedings. *Bechab v. Anastacio*, 20 ROP 56

A reasonable person, despite his innocence, will often confess to a crime he had no involvement

with when offered an opportunity to leave without prosecution or further consequences. That a guilty person would do the same is not relevant to the voluntariness analysis; if a practice can induce an innocent person to provide a false confession, it is the coercive practice, not the result, which is offensive to justice and the Constitution. This distinction, however, rests entirely on the specifics of the promise made: an offer, for example, of a potentially reduced sentence or of other possible law enforcement benefits is fundamentally distinct from an actual dispositive offer of non-prosecution. *Republic of Palau v. Suzuki*, 22 ROP 208 (Tr. Div.)

The Court cannot see how application of the exclusionary rule in this case would be appropriate, given that the actions Defendant claims influenced his statement were not undertaken by representatives of the Republic—that is, neither the Acting Attorney General, nor Director Aguon, nor any other law enforcement officer led him to believe that he specifically would not be charged if he confessed. There is no law-enforcement misconduct to deter, and as such suppression is inappropriate. *Republic of Palau v. Suzuki*, 22 ROP 208 (Tr. Div.)

Credibility

The weighing and evaluating of testimony is precisely the job of the trial judge, who is best situated to make such credibility determinations. Accordingly, a party seeking to set aside a credibility determination must establish extraordinary circumstances for doing so. *Gideon v. Republic of Palau*, 20 ROP 153

The existence of bias does not preclude a positive credibility determination. *Gideon v. Republic of Palau*, 20 ROP 153

Judicial Notice

Failure to allow parties an opportunity to request a hearing on the propriety of judicial notice, as required by the Land Court Rules of Procedure,

was error. *Children of Ingais v. Etumai Lineage*, 20 ROP 149

Preponderance of the Evidence

The preponderance of the evidence is defined as the greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. *Oseked v. Ngiraked*, 20 ROP 181

Presumptions

The Tochi Daicho presumption only extends to what the Tochi Daicho listing itself shows; any elements of a claim that are not addressed by the listing need only be demonstrated by the usual standard of proof. *Kebekol v. Koror State Pub. Lands Auth.*, 22 ROP 38

The Tochi Daicho presumption of accuracy does not apply in a return of public lands claim, because such a claim requires conceding/contending that the land is public. *Kebekol v. Koror State Pub. Lands Auth.*, 22 ROP 38

While not presumed correct, a Tochi Daicho listing still may be relevant evidence in a return of public lands claim if it assists in deciding the claim or clarifies an element of the claim. *Kebekol v. Koror State Pub. Lands Auth.*, 22 ROP 38

It is the established policy of this Court to presume that the LCHO followed its procedural requirements, unless otherwise proven. In *Estate of Tellames*, 22 ROP 218 (Tr. Div.)

Relevance

It is not error to consider the absence of evidence

supporting alternative theories in evaluating the probative value of the evidence proffered by a claimant. *Koror State Pub. Lands Auth. v. Idid Clan*, 22 ROP 21

A land authority necessarily increases the chances of an adverse judgment, and risks subjecting itself to the consequent high bar on appeal, by failing to present evidence that controverts the evidence proffered by the claimant. *Koror State Pub. Lands Auth. v. Idid Clan*, 22 ROP 21

Evidence that does not tend to prove or disprove a fact of consequence to the pleaded claim is irrelevant, and as such is properly excluded under ROP. R. Evid. 401–02. *Minor v. Rechucher*, 22 ROP 102

Site Visits

A trial court may permit a viewing of a location if it is of the opinion that a viewing would be helpful to the trier of the fact in determining some material factual issue in the case. The determination is within the sound discretion of the trial court. In deciding a motion to view the scene the court should consider whether viewing the scene is necessary or important so that the trier of fact may clearly understand the issues and properly apply the evidence. *Urebau Clan v. Ucheliou Clan*, 20 ROP 178

Generally, a visit to a site is not necessary or important because photographs or other audio-visual aids could be used, instead of a view of the premises, without any undue inconvenience. *Urebau Clan v. Ucheliou Clan*, 20 ROP 178

Testimony of Witnesses

A trial court is not required to accept uncontradicted testimony as true. *Yangilmau v. Carlos*, 21 ROP 30

Weight of Evidence

It is not the duty of the appellate court to test the credibility of the witnesses, but rather to defer to a lower court's credibility determination. *Rengiil v. Republic of Palau*, 20 ROP 141

FAMILY LAW

Custody

Under common law, the lodestar for the court in any child custody proceeding is the best interest of the child. *Emesiochl v. Maratita*, 20 ROP 118

Looking to common law, the court developed a non-exhaustive framework to weigh the best interest of a child in determining which of the two parents to award custody of the child. Specifically, the court considered an array of factors, including: the wishes of the parents; the wishes of the child; interaction and interrelationship of the child with his parents, siblings, and other persons who may significantly affect the child's best interests; adjustment to home, school, community; and the mental and physical health of all individuals involved. *Emesiochl v. Maratita*, 20 ROP 118

A parent does not relinquish parental rights by voluntarily placing a child under the care of a third party. *Emesiochl v. Maratita*, 20 ROP 118

Ideally, in a situation where both parents are fit and proper, an award of joint custody, which will allow both parties to share physical custody and have an equal say over the rearing of their child, is appropriate. *Emesiochl v. Maratita*, 20 ROP 118

Under 21 PNC § 302, the primary consideration for custody orders should be the best interests of the children. *Yano v. Yano*, 20 ROP 190

Normally the best-interest inquiry is based on statutorily prescribed factors. In the absence of such direction, there are policies designed not to bind the courts, but to guide them in determining the best interests of the child. In this regard,

primary among the circumstances to be considered is the quality of the home environment and the parental guidance the custodial parent provides for the child in particular the financial status and the ability of each parent to provide for the child and the ability of each parent to provide for the child's emotional and intellectual development. Because the ultimate determination is based on the totality of the circumstances, the existence or absence of any one factor cannot be determinative on appellate review. *Yano v. Yano*, 20 ROP 190

Adultery (and other marital fault) is relevant to awards of custody only so far as the adultery can be shown to impact the best interests of the children. *Yano v. Yano*, 20 ROP 190

It is in the best interest of the children that they have a meaningful relationship with both parents. *Yano v. Yano*, 20 ROP 190

The best interests of the child are paramount in making custody and support decisions. *Yano v. Yano*, 20 ROP 190

Standard of Review

Decisions concerning child custody, child support, and property division are reviewed for abuse of discretion. *Yano v. Yano*, 20 ROP 190

INJUNCTIONS

Adequacy of Remedy at Law

Were Habeas Corpus inapplicable or unavailable, the Court, faced with grievous constitutional harm, would have no choice but to proceed in equity. But because the Writ shall issue granting Petitioner's requested relief, no injunction needs to issue at this time. *In re Angelino*, 22 ROP 183 (Tr. Div.)

In light of Plaintiffs' success in this action, which includes an award of punitive damages for the express purpose of deterrence, injunctive relief is

not reasonably necessary to prevent future harm. Furthermore, any future harm can better be addressed through subsequent actions, as opposed to a permanent and relatively far-reaching prior restraint. *Roll 'Em Prods. v. Diaz*, 22 ROP 229 (Tr. Div.)

Permanent

In light of Plaintiffs' success in this action, which includes an award of punitive damages for the express purpose of deterrence, injunctive relief is not reasonably necessary to prevent future harm. Furthermore, any future harm can better be addressed through subsequent actions, as opposed to a permanent and relatively far-reaching prior restraint. *Roll 'Em Prods. v. Diaz*, 22 ROP 229 (Tr. Div.)

JUDGMENTS

Collateral Attacks

A certificate of title is conclusive upon all persons, so long as notice was given as provided in 35 PNC § 1309, and constitutes prima facie evidence of ownership. Once such prima facie evidence of ownership is in place, any party seeking to collaterally attack the determination of ownership and the subsequently issued certificate of title may do so only in one of two ways: (1) on the grounds that statutory or constitutional procedural requirements were not complied with by the LCHO or other notice-giving body, or (2) on the grounds that the certificate was issued due to another's fraud. *In re Estate of Tellames*, 22 ROP 218 (Tr. Div.)

Conclusiveness

A certificate of title is conclusive upon all persons, so long as notice was given as provided in 35 PNC § 1309, and constitutes prima facie evidence of ownership. Once such prima facie evidence of ownership is in place, any party seeking to collaterally attack the determination of ownership and the subsequently issued certificate

of title may do so only in one of two ways: (1) on the grounds that statutory or constitutional procedural requirements were not complied with by the LCHO or other notice-giving body, or (2) on the grounds that the certificate was issued due to another's fraud. In re Estate of Tellames, 22 ROP 218 (Tr. Div.)

Interpretation

The determinative factor in interpreting a judgment is the intention of the court, as gathered, not from an isolated part thereof but from all parts of the judgment itself. If a judgment is issued "pursuant" to something else, it follows any ambiguity as to the meaning of the judgment must be resolved by reference to the underlying factor that motivated its issuance. Children of Ngiratiou v. Descendants of Ngiratiou, 20 ROP 264

Issue Preclusion

In the present case, the doctrine of issue preclusion was applied *against KSPLA*. to preclude it from re-litigating issues that were finally resolved in the First Case. It is thus immaterial whether Idid Clan or the E&M claimants were parties to the First Case. It is sufficient that KSPLA., the party against whom issue preclusion was asserted, was a party to the First Case, as it indisputably was. Koror State Pub. Lands Auth. v. Idid Clan, 22 ROP 21

Void Judgments

The Land Court has the authority to cancel or set aside void determinations of ownership and certificates of title. Children of Ngiratiou v. Descendants of Ngiratiou, 20 ROP 264

JURISDICTION

Subject Matter

Unlike the United States Constitution, which empowers Congress to determine a lower federal court's subject-matter jurisdiction, our

Constitution contains no such limitation. Henry v. Shizushi, 21 ROP 52

JUSTICIABILITY

Custom

For Sole Judgment authority regarding a traditional leader to be valid under the Palau Constitution, it must actually be exercised, because indefinite silence when a genuine dispute exists serves to "revoke the role or function of a traditional leader" and "prevent a traditional leader from being recognized, honored, or given formal or functional roles at any level of government." Rengiil v. Ongos, 22 ROP 48

Justiciability Generally

A court's jurisdiction to hear a case is a fundamentally different question than the question whether the claim is justiciable—that is, whether or not the subject matter is appropriate for judicial consideration. Palau Civil Serv. Pension Plan v. Udui, 22 ROP 11

Justiciability is not just about whether a plaintiff can state a claim; it is about whether the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be judicially molded. Palau Civil Serv. Pension Plan v. Udui, 22 ROP 11

Political Questions

Claims against a receiver seeking review of his decisions in that capacity present nonjusticiable political questions. Palau Civil Serv. Pension Plan v. Udui, 22 ROP 11

A question is political, and therefore nonjusticiable, where there is (1) a textually demonstrable constitutional commitment of the issue to a coordinate political department; or (2) a lack of judicially discoverable and manageable standards for resolving it. Palau Civil Serv. Pension Plan v. Udui, 22 ROP 11

Political questions are not entirely immune to judicial review; they are insulated from a judicial substitution of our judgment for that of the political branches of government. *Palau Civil Serv. Pension Plan v. Udui*, 22 ROP 11

The political question doctrine does not provide blanket immunity to suit if a political branch is acting contrary to law. Determining whether a question is nonjusticiably political requires analysis of the precise facts and posture of the particular case, and precludes resolution by any semantic cataloguing. *Rengiil v. Ongos*, 22 ROP 48

LAND COMMISSION/LCHO/LAND COURT

Appeals

Empirically, appeals challenging the factual determinations of the Land Court . . . are extraordinarily unsuccessful. Given the standard of review, an appeal that merely restates the facts in the light most favorable to the appellant and contends that the Land Court weighed the evidence incorrectly borders on frivolous. *Badureang Clan v. Koror State Pub. Lands Auth.*, 20 ROP 80

Burden of Proof

To prevail on return-of-public-lands claim under section 1304(b), a claimant must prove: (1) he or she is a citizen who has filed a timely claim; (2) he or she is either the original owner of the land, or one of the original owner's 'proper heirs;' and (3) the claimed property is public land which attained that status by a government taking that involved force or fraud, or was not supported by either just compensation or adequate consideration. *Heirs of Giraked v. Koror State Pub. Lands Auth. v. Tellei*, 20 ROP 241

In return-of-public-lands claims, it is well established that: (1) the burden is at all times on

the claimant to prove each of the elements of their claim, including that the claimed land became public land; and (2) government ownership of the claimed land is conceded in return-of-public-lands claims. *Heirs of Giraked v. Koror State Pub. Lands Auth. v. Tellei*, 20 ROP 241

A mere statement that a person is unaware of how the claimed land was acquired by the government and that she had not been told that the land was purchased may be insufficient to support a contention that the claimed lands were wrongfully taken. *Heirs of Giraked v. Koror State Pub. Lands Auth. v. Tellei*, 20 ROP 241

Although ordinarily both the government and the private claimant stand on equal footing, if there is an adverse Tochi Daicho listing for the land, the claimant has the "added burden of establishing by clear and convincing evidence that [it is] incorrect." *Ikluk v. Koror State Pub. Lands Auth.*, 20 ROP 286 (Land Ct.)

Certificates of Title

A certificate of title issued pursuant to a Land Court Determination of Ownership is conclusive as to all persons who had notice of the proceedings. 35 PNC § 1314(b). This preclusive rule applies to successors in interest of persons who had notice of such proceedings. Succession in interest is defined as succession by purchase (including a mortgage), gift, devise, and involuntary transfer. *Mikel v. Saito*, 20 ROP 95

Because a certificate of title arising from a determination must be issued "pursuant" to such determination, it follows any ambiguity as to the meaning of a certificate must be resolved by reference to the underlying determination. *Mikel v. Saito*, 20 ROP 95

Claims

Where land is claimed by a governmental entity, a person desiring to claim such land may assert two types of claims. First, under the authority of

Article XIII of the Constitution and 35 PNC § 1304(b), its implementing provision, a litigant may assert a claim for return of public of lands. In a return of public lands case pursuant to Article XIII and § 1304, the claimant acknowledges that an occupying power acquired the land but attempts to prove that the acquisition was wrongful. Alternatively, the claimant may bring a quiet title claim asserting that he has superior title to the piece of property than the governmental entity claiming ownership of it. *Ikluk v. Koror State Pub. Lands Auth.*, 20 ROP 128

Superior title and return of public lands claims may be asserted individually or together. Where distinct claims are asserted for the same parcel, the Land Court must consider such claims separately. *Ikluk v. Koror State Pub. Lands Auth.*, 20 ROP 128

If the Land Court fails to consider an argument before it, the case must be remanded to allow the Land Court an opportunity to address the issue. . *Ikluk v. Koror State Pub. Lands Auth.*, 20 ROP 128

When interpreting what type of claim a pro se litigant has raised, a court should read “the pleadings to raise the strongest claims that they suggest. *Ikluk v. Koror State Pub. Lands Auth.*, 20 ROP 128

As a general rule, litigants in a Land Court proceeding may advance two types of claims: (1) a superior ownership claim under which the litigant pursues ownership based on the strength of his title; and (2) a return of public lands claim under which a private party admits that title to the land is held by a public entity, but seeks its return. *Ngirametuker v. Oikull Village*, 20 ROP 169

Where parties assert competing claims of superior ownership, the Land Court must award ownership to the claimant advancing the strongest claim. *Ngirametuker v. Oikull Village*, 20 ROP 169

Litigants in a Land Court proceeding may advance two types of claims: (1) a superior ownership claim under which the litigant pursues ownership based on the strength of his title; and (2) a return of public lands claim under which a private party “admits that title to the land is held by a public entity, but seeks its return. *Kual v. Ngarchelong State Pub. Lands Auth.*, 20 ROP 232

A Land Court claimant may raise one of two types of claims: (1) a superior title claim, in which the claimant asserts he holds the strongest title to the land claimed; and (2) a return of public lands claim, in which the claimant concedes that a public entity holds superior title to the land, but argues that the title was acquired wrongly from the claimant or his predecessors. *Klai Clan v. Airai State Pub. Lands Auth.*, 20 ROP 253

Although return and superior title claims may be raised in the alternative, a claimant desiring to pursue both types of claims must present and preserve the separate claims individually. *Klai Clan v. Airai State Pub. Lands Auth.*, 20 ROP 253

If a claim has not been preserved properly, it may not be considered. *Klai Clan v. Airai State Pub. Lands Auth.*, 20 ROP 253

Return of public lands and superior title claims are fundamentally different, with different burdens of proof and different defenses applicable to each. Unlike a return of public lands case, a claimant asserting superior title claims the land on the theory that it never became public land in the first place. Such a claimant stands on equal footing with the governmental entity claiming the land, but the claimant must confront the availability of affirmative defenses not available to the government in Article XIII claims. *Idid Clan v. Koror State Pub. Lands Auth.*, 20 ROP 270

The Land Court must limit its review to only claims actually before it. *Idid Clan v. Koror State Pub. Lands Auth.*, 20 ROP 270

The Land Court does not have the authority to amend a claim by trying the claim with consent of the parties. *Idid Clan v. Koror State Pub. Lands Auth.*, 20 ROP 270

A claimant may claim the same land, in the alternative, under both a superior title and a return of public lands theory. *Koror State Pub. Lands Auth. v. Ngermellong Clan*, 21 ROP 1

Separate and distinct procedural rules apply to superior title and return of public land claims. *Koror State Pub. Lands Auth. v. Wong*, 21 ROP 5

A claimant's historical failure to claim land may be circumstantial evidence that the claimant does not own the land. *Children of Llecholch v. Etumai Lineage*, 21 ROP 27

Clan's consistent claims of ownership over many years may be considered circumstantial evidence of actual ownership. *Urebau Clan v. Bukl Clan*, 21 ROP 47

Collateral Attacks

A party attempting to collaterally attack a land determination must show by clear and convincing evidence that statutory or constitutional procedural requirements were not complied with" during the land claims process. *Koror State Pub. Lands Auth., v. Wong*, 21 ROP 5

Provided a party was given the opportunity to be heard in the manner anticipated by statute, the Court will not void the Land Court's determination of ownership. *Koror State Pub. Lands Auth., v. Wong*, 21 ROP 5

A due process challenge should be brought as a collateral attack on the underlying judgment through a quiet title action against the party named in the allegedly void determination of ownership, rather than through a non-party appeal. A party may only collaterally attack a

prior determination of ownership if it can carry the burden of proving non-compliance with statutory or constitutional requirements by clear and convincing evidence. *Rengiil v. Urebau Clan*, 21 ROP 11

Determinations of Ownership

The phrase "Ongalk ra," when used in a determination, may create individual ownership interests in the various members of the class or may designate a form of communal ownership similar to clan or lineage ownership. *Mikel v. Saito*, 20 ROP 95

It is a practice in the Land Court to grant ownership of lands to a clan or lineage, but to name a person as a trustee of the land. *Mikel v. Saito*, 20 ROP 95

Taken together, the identification of a trustee and the lack of any discussion of inheritance law suggest a determination intended to create a form of communal ownership similar to that of clan or lineage ownership. *Mikel v. Saito*, 20 ROP 95

A Determination of Ownership issued by the Land Court must be based on findings of fact. While this rule requires specific findings, if, from the facts found, other facts may be inferred that will support the judgment, the court of appeals will deem such inferences to have been drawn by the trial court. *Koror State Pub. Lands Auth. v. Ngirngedangel*, 20 ROP 210

An uninterrupted chain of title is unnecessary to prove ownership of property, so long as the ownership is supported by other adequate evidence. *Koror State Pub. Lands Auth. v. Ngirngedangel*, 20 ROP 210

A claimant's historical ownership of land surrounding the disputed lot may serve as circumstantial evidence of ownership of the disputed lot. *Children of Llecholch v. Etumai Lineage*, 21 ROP 27

Failure to take actions consistent with ownership may be circumstantial evidence of lack of ownership. *Tucherur v. Rudimch*, 21 ROP 84

Evidence

Challenges to the sufficiency of the evidence in Land Court proceedings are extra-ordinarily unsuccessful. The appellant must show that no reasonable finder of fact could have reached the same conclusion. In situations where there are two permissible views of the evidence, the court's choice between them cannot be clearly erroneous. *Elsau Clan v. Peleliu State Pub. Lands Auth.*, 20 ROP 87

The presumption of accuracy for the listed identity of a lot owner does not extend to the listed sizes of the Tochi Daicho lot. However, the court may use the listed sizes to aide its determinations. *Children of Ingais v. Etumai Lineage*, 20 ROP 149

Lot Size

The Land Court may, in the absence of better evidence, make rough estimations of lot size and use those estimates in determining whether a piece of land is part of a particular Tochi Daicho lot. *Children of Llecholch v. Etumai Lineage*, 21 ROP 27

Monumentation

Failure to attend monumentation is a violation of 35 PNC § 1307(d), which holds that a claimant who fails to personally attend or send a representative to a scheduled monumentation may not contest the boundary determinations and monumentation resulting from the session. *Rengiil v. Urebau Clan*, 21 ROP 11

Procedural Errors

Procedural errors by the Land Court and Bureau of Lands and Surveys may be the basis for successful appeals and even collateral attack.

However, there must be some showing that the error actually affected the rights of the appealing or attacking party. Otherwise, the error is harmless and we will not reverse the Land Court's determination. *Ucheliou Clan v. Oirei Clan*, 20 ROP 37

Return of Public Lands

There are three requirements under 35 PNC § 1304(b) that a claimant must meet in order to prevail on his or her claim. To successfully prove a claim for the return of public lands, claimant must show that (1) the claimant is a citizen who filed a timely claim, on or before January 1, 1989; (2) the claimant is either the original owner of the claimed property or a proper heir of the original owner; and (3) the claimed property became public land as a result of a wrongful taking (through force, coercion, fraud, or without just compensation or adequate consideration) by a foreign government. *Elsau Clan v. Peleliu State Pub. Lands Auth.*, 20 ROP 87

Rules and Regulations

The Rules of Civil Procedure do not govern proceedings in the Land Court. *Klai Clan v. Airai State Pub. Lands Auth.*, 20 ROP 253

The Land Court's authority flows from the Land Claims Reorganization Act, the Rules and Regulations promulgated pursuant to the LCRA, and from the Land Court's inherent powers. *Klai Clan v. Airai State Pub. Lands Auth.*, 20 ROP 253

The power to amend a pleading by trying an issue by consent is unnecessary for the Land Court to carry out its function. *Klai Clan v. Airai State Pub. Lands Auth.*, 20 ROP 253

Service of Process

The relevant portion of the Land Claims Reorganization Act of 1996 requires that the Land Court serve notice upon all persons known to claim an interest in the land in question by

service in the same manner as a civil summons. *Anson v. Ngirachereang*, 21 ROP 58

Standing to Appeal

Generally, in order to be a “party aggrieved,” a person must have been a party to the action from which the appeal is taken. *Rengiil v. Urebau Clan*, 21 ROP 11

A non-party may even in the absence of privity possess a sufficient interest to be allowed to take an appeal. A non-party has standing to appeal a judgment if he or she has a direct, immediate, and substantial interest which has been prejudiced by the judgment or which would be benefitted by its reversal. *Rengiil v. Urebau Clan*, 21 ROP 11

Superior Title

Generally, in order to be a “party aggrieved,” a person must have been a party to the action from which the appeal is taken. *Ikluk v. Koror State Pub. Lands Auth.*, 20 ROP 286 (Land Ct.)

LAND COURT

Claims

A claimant may file and pursue both a return of public lands claim and a superior title claim, in the alternative, in regards to the same land. *Koror State Pub. Lands Auth. v. Idid Clan*, 22 ROP 66

A party that files only a return of public lands claim may not prevail upon a superior title theory at the Land Court hearing if it has not actually filed a superior title claim. *Koror State Pub. Lands Auth. v. Idid Clan*, 22 ROP 66

The Land Court may not inquire into a claim not before it and or reform a superior title or return of public lands claim into the other. *Koror State Pub. Lands Auth. v. Idid Clan*, 22 ROP 66

Notice of a claim is a fundamental element of due process, because without its requirement adverse

parties effectively are required to shoot at a moving target. *Koror State Pub. Lands Auth. v. Idid Clan*, 22 ROP 66

For a state public lands authority to invoke and prevail through the definition at 35 PNC § 101, the national government must have been a previous owner and then subsequently transferred its interest to the state public lands authority. In *re Ownership of Ngerchelngael Island*, 22 ROP 266 (Land Ct.)

In a return-of-public-lands analysis, the issue and the focus should not be the extent and duration of a state government’s claimed ownership and maintenance of a particular land as that does not make the land public land under 35 PNC § 101. That query is relevant only in a superior title analysis where a state public lands authority and individual claimants are jockeying over who has exercised greater dominion over the land over a greater duration. In *re Ownership of Ngerchelngael Island*, 22 ROP 266 (Land Ct.)

Because Ngerchelngael was no longer public land per the determination by the District Land Office in 1958—if it ever was public land in the first place—any subsequent transfers of interests in public lands by the Trust Territory Government to the Palau Public Lands Authority and eventually to Koror State Pub. Lands Auth. could not have transferred ownership of Ngerchelngael to Koror State Pub. Lands Auth.. There is no chain of title linking Koror State Pub. Lands Auth. back to the Trust Territory Government. In *re Ownership of Ngerchelngael Island*, 22 ROP 266 (Land Ct.)

Evidence

It is not clear error for the Land Court to consider a party’s past failure to assert ownership of lands as evidence. *ASPLA v. Esuroi Clan*, 22 ROP 4

While not presumed correct, a Tochi Daicho listing still may be relevant evidence in a return of public lands claim if it assists in deciding the

claim or clarifies an element of the claim. *Kebekol v. Koror State Pub. Lands Auth.*, 22 ROP 38

Jurisdiction

Determining competing claims to ownership versus determining who is or is not a member of a family, lineage, or clan for purposes of transferring ownership previously registered are two separate and distinct issues. The former issue is clearly within the purview of the Land Court while the latter is not. *In re Kltalngas*, 22 ROP 280 (Land Ct.)

Public Lands Authorities

The statutory filing requirements cited by *Koror State Pub. Lands Auth.*, however, apply specifically to citizen claimants. See 35 PNC § 1304(b) (“All claims for public land by citizens of the Republic must have been filed on or before January 1, 1989.” (emphasis added)). *Koror State Pub. Lands Auth. v. Palau Pub. Lands Auth.*, 22 ROP 30

A land authority is not required to participate in Land Court proceedings, satisfy any burden, or otherwise affirmatively assert its claim to a piece of public land in order to retain control over such land. *Koror State Pub. Lands Auth. v. Palau Pub. Lands Auth.*, 22 ROP 30

35 PNC § 101 does not address state governments or their agencies, much less their ownership or maintenance of lands. *In re Ownership of Ngerchelngael Island*, 22 ROP 266 (Land Ct.)

For a state public lands authority to invoke and prevail through the definition at 35 PNC § 101, the national government must have been a previous owner and then subsequently transferred its interest to the state public lands authority. *In re Ownership of Ngerchelngael Island*, 22 ROP 266 (Land Ct.)

Because *Ngerchelngael* was no longer public land

per the determination by the District Land Office in 1958—if it ever was public land in the first place—any subsequent transfers of interests in public lands by the Trust Territory Government to the Palau Public Lands Authority and eventually to *Koror State Pub. Lands Auth.* could not have transferred ownership of *Ngerchelngael* to *Koror State Pub. Lands Auth.* There is no chain of title linking *Koror State Pub. Lands Auth.* back to the Trust Territory Government. *In re Ownership of Ngerchelngael Island*, 22 ROP 266 (Land Ct.)

Relationship to LCHO

While the Trial Division does not have appellate authority over the Land Court, a mandate from the Trial Division to the LCHO binds the Land Court within the same case because the Land Court is the statutory successor of the LCHO for all remanded cases. *Rengulbai v. Klai Clan*, 22 ROP 56

Tochi Daicho

The Tochi Daicho presumption only extends to what the Tochi Daicho listing itself shows; any elements of a claim that are not addressed by the listing need only be demonstrated by the usual standard of proof. *Kebekol v. Koror State Pub. Lands Auth.*, 22 ROP 38

The Tochi Daicho presumption of accuracy does not apply in a return of public lands claim, because such a claim requires conceding/contending that the land is public. *Kebekol v. Koror State Pub. Lands Auth.*, 22 ROP 38

While not presumed correct, a Tochi Daicho listing still may be relevant evidence in a return of public lands claim if it assists in deciding the claim or clarifies an element of the claim. *Kebekol v. Koror State Pub. Lands Auth.*, 22 ROP 38

PROFESSIONAL RESPONSIBILITY

Burden of Proof

Allegations of ethical violations must be proven by clear and convincing evidence. Clear and convincing evidence requires the Tribunal be convinced that the allegations are highly probable or reasonably certain, but falls short of proof beyond a reasonable doubt. In re Shadel, 22 ROP 154 (Disc. Trib.)

It is exceedingly rare for a swearing contest to rise to the standard of clear and convincing evidence. In re Shadel, 22 ROP 154 (Disc. Trib.)

Nondelegable Duties

A lawyer cannot pass his ethical obligations on to his partner or his staff and then feign ignorance if he fails to monitor his firm. In re Shadel, 22 ROP 154 (Disc. Trib.)

Sanctions

The ultimate responsibility of a Disciplinary Tribunal is to select the appropriate discipline in light of all the circumstances of the particular case. In re Shadel, 22 ROP 172 (Disc. Trib.)

Unrepresented Parties

While it is certainly good practice to advise all adverse parties of their right to counsel both orally and in writing, the ethical rules require the unrepresented person to be so advised “[w]hen the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer’s role in the matter.” In re Shadel, 22 ROP 154 (Disc. Trib.)

PROPERTY

Acquisition Limited to Palauans

The Constitution’s prohibition on land acquisition by non-citizens does not prohibit the

continued ownership of land by non-citizens who have lawfully and continuously owned the land since before the Constitution’s enactment. Shiro v. Estate of Reyes, 21 ROP 100

Adverse Possession

To acquire title by adverse possession, the claimant must show that the possession is actual, continuous, open, visible, notorious, hostile or adverse, and under a claim of title or right for twenty years. Shiro v. Estate of Reyes, 21 ROP 100

A party occupying or using land with the permission of the true land owner is not “hostile or adverse” to the land owner for purposes of adverse possession. Shiro v. Estate of Reyes, 21 ROP 100

To acquire title by adverse possession, the claimant must show that the possession is actual, continuous, open, visible, notorious, hostile or adverse, and under a claim of title or right for twenty years. Possession also must be exclusive. Koror State Pub. Lands Auth. v. Ngirngbedangel, 20 ROP 210

The burden of proof as to each element rests on the party asserting adverse possession. Koror State Pub. Lands Auth. v. Ngirngbedangel, 20 ROP 210

Unless an adverse possessor enters under color of title, his actual possession is determinative of the boundaries of the land acquired. Suzuky v. Petrus, 20 ROP 259

There is no fixed rule by which the actual possession of real property by an adverse claimant may be determined in all cases, because the determination of what constitutes possession of property for purposes of adverse possession depends on the facts in each case, and to a large extent on the character of the premises. Generally, the standard to be applied to any particular tract of land is whether the possession

comports with the ordinary management of similar lands by their owners. However, something more than mere occasional use of the land is needed to establish adverse possession, even if the disputed land is wild. *Suzuky v. Petrus*, 20 ROP 259

There cannot be a concurrent possession of land under conflicting claims of right. If two or more persons are in possession of real estate, ordinarily none has the exclusive possession necessary to establish adverse possession. *Suzuky v. Petrus*, 20 ROP 259

Assignment of Interest

One cannot convey or assign a greater interest in property than one holds in the first place. In re *Siob*, 21 ROP 123

Attachment

A writ of attachment does not become a lien until it is served on legal authorities. *First Com. Bank v. Wong*, 20 ROP 1

Certificates of Title

A certificate of title is conclusive upon all persons, so long as notice was given as provided in 35 PNC § 1309, and constitutes prima facie evidence of ownership. Once such prima facie evidence of ownership is in place, any party seeking to collaterally attack the determination of ownership and the subsequently issued certificate of title may do so only in one of two ways: (1) on the grounds that statutory or constitutional procedural requirements were not complied with by the LCHO or other notice-giving body, or (2) on the grounds that the certificate was issued due to another's fraud. In re *Estate of Tellames*, 22 ROP 218 (Tr. Div.)

Conveyance

A tenant can acquire no more right to land held under a quitclaim deed than the landlord itself has

to convey. *Toribiong v. Tmetbab Clan*, 22 ROP 79

Deeds

Deeds typically will be enforced, notwithstanding the existence of unenforceable provisions. *Ngoriakl v. Rechucher*, 20 ROP 291

Ejectment

In an ejectment action, the plaintiff need not establish the superiority of her interest in the property as against the whole world. Accordingly, an action for ejectment may be maintained by a party with a superior right to possess the subject property, for example a tenant seeking to oust a stranger who has wrongfully taken actual possession of even a portion of the property. *Palau Pub. Lands Auth. v. Emesiochel*, 22 ROP 126

Eminent Domain

When the Republic takes property for public use, it is required to provide just compensation. Just compensation includes the payment of interest for the time period between the time of the taking and the time of payment. *Republic of Palau v. Terekiu Clan*, 21 ROP 21

Just compensation entitles the property owner to receive interest from the date of the taking to the date of payment unless modified by contract. *Republic of Palau v. Terekiu Clan*, 21 ROP 21

Homesteads

The previously-controlling Trust Territory Homestead Act sets out the following process to perfect a homestead claim and earn title to the government land: (1) the claimant must complete and file an application with the District Land Office; (2) the District Land Office would review the application and submit a recommendation to the District Land Administrator; (3) the District Land Administrator would file the determination

with the Clerk of Courts and, if approved, issue an “entry permit” to the claimant to enter the land and to begin improving it based on the conditions set out in the permit; (4) after three years, the District Land Office would inspect the land to determine whether the conditions of the permit had been satisfied and, if so, issue a certification of compliance; and (5) the homestead claimant would be entitled to a deed of conveyance within two years conveying all of the Trust Territory government’s interests in the land. *Estate of Ngirailid v. Ngarchelong Pub. Lands Auth.*, 20 ROP 235 (2013)

Inheritance

25 PNC § 301(b) applies only when the decedent dies without children, without a will, and the land owned was not purchased for value. Where decedent clearly died with children, § 301(b) is inapplicable. In *re Estate of Tellames*, 22 ROP 218 (Tr. Div.)

If neither 25 PNC § 301(a) nor (b) applies—for example, if a decedent died with children and was not a bona fide purchaser for value, as is the case here—then a court should award property based on custom. In *re Estate of Tellames*, 22 ROP 218 (Tr. Div.)

Islands

As a rule of law, the title to islands is ordinarily vested in the owner of the bed of the waters out of which they arise provided there has been no separation of such ownership by grant, reservation, or otherwise. *Kual v. Ngarchelong State Pub. Lands Auth.*, 20 ROP 232

Leases

Returned public lands are transferred to successful claimants subject to any leases or use rights of less than one year.. *Toribiong v. Tmetbab Clan*, 22 ROP 79

A successful return of public lands claimant is not

bound by a lease of one year or more that he was not a party to and did not consent to honor. *Toribiong v. Tmetbab Clan*, 22 ROP 79

A tenant can acquire no more right to land held under a quitclaim deed than the landlord itself has to convey. *Toribiong v. Tmetbab Clan*, 22 ROP 79

Proof of Ownership

Finally, ownership can be inferred from long, uninterrupted use of land that is consistent with ownership and without objection from adverse claimants. *Ikluk v. Koror State Pub. Lands Auth.*, 20 ROP 286

Reasonably Exclusive Possession

With respect to *Echang* land, in a case where one party has clear legal title, both parties have use rights, and neither party can show continuous use of the land in question, the party who holds legal title is entitled to reasonably exclusive possession of the land. *Yangilmau v. Carlos*, 21 ROP 30

Reversionary Interest

A reversionary interest is what remains in a transferor who owns a vested interest and has made a transfer that does not exhaust the transferor’s interest in the property transferred, so that an interest in the transferred property may return to the transferor at some future date. *Koror State Pub. Lands Auth. v. Palau Pub. Lands Auth.*, 22 ROP 30

Superior Title

For a state public lands authority to invoke and prevail through the definition at 35 PNC § 101, the national government must have been a previous owner and then subsequently transferred its interest to the state public lands authority. In *re Ownership of Ngerchelngael Island*, 22 ROP 266 (Land Ct.)

In a return-of-public-lands analysis, the issue and the focus should not be the extent and duration of a state government's claimed ownership and maintenance of a particular land as that does not make the land public land under 35 PNC § 101. That query is relevant only in a superior title analysis where a state public lands authority and individual claimants are jockeying over who has exercised greater dominion over the land over a greater duration. In *re Ownership of Ngerchelngael Island*, 22 ROP 266 (Land Ct.)

Because Ngerchelngael was no longer public land per the determination by the District Land Office in 1958—if it ever was public land in the first place—any subsequent transfers of interests in public lands by the Trust Territory Government to the Palau Public Lands Authority and eventually to Koror State Pub. Lands Auth. could not have transferred ownership of Ngerchelngael to Koror State Pub. Lands Auth.. There is no chain of title linking Koror State Pub. Lands Auth. back to the Trust Territory Government. In *re Ownership of Ngerchelngael Island*, 22 ROP 266 (Land Ct.)

Tochi Daicho

Where there is an adverse Tochi Daicho listing the land as public land, the claimant must produce clear and convincing evidence to the contrary to succeed on his claim. *Ikluuk v. Koror State Pub. Lands Auth.*, 21 ROP 66

PUBLIC LAND AUTHORITY

Superior Title

One of the elements to a superior title claim is evidence that the land never became public land. *Ikluuk v. Koror State Pub. Lands Auth.*, 21 ROP 66

RETURN OF PUBLIC LANDS

Affirmative Defenses

35 PNC § 1304(b)(2) does not entitle the claimant to raise an affirmative defense to bar the claim of a public lands authority. In *re Ownership of Ngerchelngael Island*, 22 ROP 266 (Land Ct.)

Burden of Proof

The claimant, not the governmental land authority, at all times bears the burden of proving, by a preponderance of the evidence, that each element is satisfied. *Koror State Pub. Lands Auth. v. Idid Clan*, 22 ROP 21

A land authority necessarily increases the chances of an adverse judgment, and risks subjecting itself to the consequent high bar on appeal, by failing to present evidence that controverts the evidence proffered by the claimant. *Koror State Pub. Lands Auth. v. Idid Clan*, 22 ROP 21

Unlike a superior title claimant, a return of public lands claimant bears the burden, at all times, of proving each element of their claim by the preponderance of the evidence. Such a claimant does not succeed, as a superior title claimant would, simply by having the strongest claim presented, even if that claimant successfully shows that the land was wrongfully taken. *Eklbai Clan v. Koror State Pub. Lands Auth.*, 22 ROP 139

Claimants

When a person presents a claim as the representative for a clan or lineage, the clan is the party, not its representative. *Kumer Clan/Lineage v. Koror State Pub. Lands Auth.*, 20 ROP 102

A person may claim land for a clan and for himself so long as the alternative claims are presented and preserved as if they were presented by different persons. *Kumer Clan/Lineage v. Koror State Pub. Lands Auth.*, 20 ROP 102

Definition of Public Lands

35 PNC § 101 does not address state governments or their agencies, much less their ownership or maintenance of lands. In *re* Ownership of Ngerchelngael Island, 22 ROP 266 (Land Ct.)

Elements of Claim

The statutory filing requirements cited by Koror State Pub. Lands Auth., however, apply specifically to citizen claimants. See 35 PNC § 1304(b) (“All claims for public land by citizens of the Republic must have been filed on or before January 1, 1989.” (emphasis added)). *Koror State Pub. Lands Auth. v. Palau Pub. Lands Auth.*, 22 ROP 30

In a return-of-public-lands analysis, the issue and the focus should not be the extent and duration of a state government’s claimed ownership and maintenance of a particular land as that does not make the land public land under 35 PNC § 101. That query is relevant only in a superior title analysis where a state public lands authority and individual claimants are jockeying over who has exercised greater dominion over the land over a greater duration. In *re* Ownership of Ngerchelngael Island, 22 ROP 266 (Land Ct.)

Elements of Proof

Although we have referred to 1304(b) as having three elements (previous ownership, wrongful taking, and timely filing), the text of the statute requires a claimant make only the first two showings to establish a right of ownership to public lands. Under the plain reading of the statute, a litigant who meets these two requirements has a potential claim of ownership to the land in question. However, the provision requires that all claims for public land by citizens of the Republic must have been filed on or before January 1, 1989. *Kumer Clan/Lineage v. Koror State Pub. Lands Auth.*, 20 ROP 102

1304(b)’s time limitation provision encompasses only claims created by the Constitution. The corollary of this holding is that a claim filed

before the ratification of the Constitution is not a claim for public land within the meaning of 1304(b)’s limiting sentence. *Kumer Clan/Lineage v. Koror State Pub. Lands Auth.*, 20 ROP 102

Interest Acquired

Returned public lands are transferred to successful claimants subject to any leases or use rights of less than one year. *Toribiong v. Tmetbab Clan*, 22 ROP 79

A successful return of public lands claimant is not bound by a lease of one year or more that he was not a party to and did not consent to honor. *Toribiong v. Tmetbab Clan*, 22 ROP 79

Nature of Claim

A return of public lands claimant concedes that the land in question became public, so evidence suggesting otherwise is irrelevant. *Koror State Pub. Lands Auth. v. Idid Clan*, 22 ROP 66

In a return-of-public-lands analysis, the issue and the focus should not be the extent and duration of a state government’s claimed ownership and maintenance of a particular land as that does not make the land public land under 35 PNC § 101. That query is relevant only in a superior title analysis where a state public lands authority and individual claimants are jockeying over who has exercised greater dominion over the land over a greater duration. In *re* Ownership of Ngerchelngael Island, 22 ROP 266 (Land Ct.)

REVIEW AND ERROR

Reconsideration of Appellate Opinions

Petitions for rehearing should be granted exceedingly sparingly, and only in those cases where this Court’s original decision obviously and demonstrably contains an error of fact or law that draws into question the result of the appeal. *Rengiil v. Republic of Palau*, 20 ROP 257

STANDARD OF REVIEW

Clear Error

It is not clear error for the Land Court to credit one proffer of evidence over another so long as one view of the evidence supports the fact-finder's decision. *ASPLA v. Esuroi Clan*, 22 ROP 4

Credibility Determinations

Weighing and evaluating testimony is precisely the job of the trial judge, who is best situated to make such credibility determinations. A party seeking to set aside a credibility determination on appeal must establish extraordinary circumstances for doing so. *Eklbai Clan v. Koror State Pub. Lands Auth.*, 22 ROP 139

Evaluating the credibility of testimony is distinctly the province of a fact finder. *Midar v. NSPLA*, 22 ROP 151

Discretionary Matters

A lower court's decision on a motion to intervene "is to be overturned only if it constitutes an abuse of discretion." *Koror State Pub. Lands Auth. v. Palau Pub. Lands Auth.*, 22 ROP 30

Where such an uneven total distribution was, due to the parties' positions, unavoidable, we see no basis for finding that the Trial Division abused its discretion in awarding the bulk of the property to the party that was found not to be at fault. *Sugiyama v. Yano*, 22 ROP 93

At most, Appellant's arguments suggest that the evidence of record, depending on the weight it was given or how it was interpreted, might have supported conflicting but equally reasonable results. Put differently, even viewed in the light most favorable to Appellant, these claims only show that reasonable minds could have reached differing conclusions based on the same factual

record. *Sugiyama v. Yano*, 22 ROP 93

Given that Rule 11 sanctions are reviewed only for abuse of discretion, it is extremely rare that a meritorious basis for appeal of a Rule 11 decision will exist. *Palau Civil Serv. Pension Plan v. Udui*, 22 ROP 11

Intervention

A lower court's decision on a motion to intervene "is to be overturned only if it constitutes an abuse of discretion." *Koror State Pub. Lands Auth. v. Palau Pub. Lands Auth.*, 22 ROP 30

Invited Error

A party who induces or invites an error at the trial level cannot contest that error on appeal. *Eklbai Clan v. Koror State Pub. Lands Auth.*, 22 ROP 139

Sanctions

Given that Rule 11 sanctions are reviewed only for abuse of discretion, it is extremely rare that a meritorious basis for appeal of a Rule 11 decision will exist. *Palau Civil Serv. Pension Plan v. Udui*, 22 ROP 11

Sufficiency of the Evidence

Challenges to the sufficiency of the evidence in Land Court proceedings are extraordinarily unsuccessful. *Airai State Pub. Lands Auth. v. Esuroi Clan*, 22 ROP 4

STATE GOVERNMENT

Land

Palau Pub. Lands Auth. may not transfer property to a trustee without the permission of the relevant state government. *Palau Pub. Lands Auth. v. Ngatpang State Pub. Lands Auth.*, 20 ROP 174

STATUTES**Land Claims Reorganization**

The Land Claims Reorganization Act does not provide the authority for the Land court to transform an untimely land claim into a timely one simply by trying it with the parties' consent. *Klai Clan v. Airai State Pub. Lands Auth.*, 20 ROP 253

STATUTORY INTERPRETATION**Ambiguity**

If the statutory language is clear and unambiguous, the courts should not look beyond the plain language of the statute and should enforce the statute as written. *Diaz v. Republic of Palau*, 21 ROP 62

Statutory terms are to be interpreted according to the common and approved usage of the English language. *Diaz v. Republic of Palau*, 21 ROP 62

A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant. *Diaz v. Republic of Palau*, 21 ROP 62

Constitutional Provisions

A conflict between constitutional amendments exists if one provision authorizes what the other forbids or forbids what the other authorizes. *Seid v. Republic of Palau*, 23 ROP 21 (Tr. Div.)

For almost every rule of constitutional or statutory interpretation, there is a corresponding rule to the contrary. *Seid v. Republic of Palau*, 23 ROP 21 (Tr. Div.)

The guiding principle of constitutional construction is that the intent of the framers must be given effect. *Seid v. Republic of Palau*, 23 ROP 21 (Tr. Div.)

When the language of the constitutional text is clear, the Court must apply its plain meaning and end the inquiry as to what the constitutional language means. *Seid v. Republic of Palau*, 23 ROP 21 (Tr. Div.)

A well-known rule of constitutional construction requires the Court to avoid a construction of one provision that would nullify another provision or render it superfluous. *Seid v. Republic of Palau*, 23 ROP 21 (Tr. Div.)

Enumerated Exceptions

Where the legislature explicitly enumerates an exception or exceptions, additional exceptions will not be implied absent compelling evidence of contrary legislative intent. *Toribiong v. Tmetbab Clan*, 22 ROP 79

Mandatory Language

In the context of attorneys' fees, the phrase "shall be liable to" mandates an award of fees. *Roll 'Em Prods. Inc. v. Diaz Broad. Co.*, 21 ROP 96

Plain Meaning

When the meaning of a statute is plain, that meaning governs and no further analysis is necessary. *Roll 'Em Prods. Inc. v. Diaz Broad. Co.*, 21 ROP 96

Rule of Lenity

The rule of lenity is clearly established in Palauan jurisprudence. *Republic of Palau v. Suzuky*, 22 ROP 202 (Tr. Div.)

TRIAL**Standard of Proof**

The application of an incorrect standard of proof is a structural error that requires remand unless the outcome of the case clearly shows that the error was harmless, such as when a heightened

burden of proof is imposed on a party who prevails nonetheless. *Kebekol v. Koror State Pub. Lands Auth.*, 22 ROP 38

The Tochi Daicho presumption only extends to what the Tochi Daicho listing itself shows; any elements of a claim that are not addressed by the listing need only be demonstrated by the usual standard of proof. *Kebekol v. Koror State Pub. Lands Auth.*, 22 ROP 38

Trial by Consent

A party who has properly made and preserved an objection to the trial of issues outside the pleadings does not grant implicit consent to such trial merely by cross-examining witnesses and proceeding despite an adverse or reserved ruling. *Minor v. Rechucher*, 22 ROP 102

TORTS

Assault

As a general matter, words do not make an actor liable for assault unless together with other acts or circumstances they put the other in reasonable apprehension of an imminent harmful or offensive contact with his person. Consequently, it is commonly said that mere words do not constitute an assault, or that some overt act is required, and this remains true even if the mental discomfort caused by a threat of serious future harm on the part of one who has the apparent intention and ability to carry out his threat may be far more emotionally disturbing than many of the attempts to inflict minor bodily contacts which are actionable as assaults. *Roll 'Em Prods. v. Diaz*, 22 ROP 229 (Tr. Div.)

The defendant's threats only provoked fear of harm at an indeterminate time in the future, as opposed to the type of apprehension of "imminent contact" required to sustain an action for civil assault. *Roll 'Em Prods. v. Diaz*, 22 ROP 229 (Tr. Div.)

That the defendant could be criminally convicted of assaulting the plaintiff but not be civilly liable based on the same misconduct is an entirely feasible consequence of the differences between the elements of civil assault, as set forth in the Restatement, and the elements of criminal assault, as set forth in the Palau National Code. *Roll 'Em Prods. v. Diaz*, 22 ROP 229 (Tr. Div.)

Damages

Under the doctrine of mitigation of damages, one injured by the tort of another is not entitled to recover damages for any harm that he could have avoided by the use of reasonable effort or expenditure after the commission of the tort. This doctrine does not apply when the proposed means of mitigation existed before, but not after, the commission of the tortious act. *Palau Pub. Lands Auth. v. Emesiochel*, 22 ROP 126

Implementing security measures reflect a reasonable, foreseeable, and even likely response to the type of threats made by the defendant, especially considering his apparent power to follow through on these threats. It is further evidenced in the record that these security measures were implemented entirely as a result of the defendant's misconduct. Accordingly, awarding consequential damages for the reasonable cost of these measures is warranted. *Roll 'Em Prods. v. Diaz*, 22 ROP 229 (Tr. Div.)

Defamation

To create liability for defamation there must be: (a) a false and defamatory statement concerning another; (b) an unprivileged publication to a third party; (c) fault amounting to at least negligence on the part of the publisher; and (d) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. *Henry v. Davidson*, 23 ROP 28 (Tr. Div.)

When the subject of a defamatory statement is not a private person but a public official or a public

figure, the requisite culpability is raised beyond the level of mere negligence. In such cases, liability will only be imposed if the publisher (a) knows that the statement is false and that it defames the other person, or (b) acts in reckless disregard of these matters. *Henry v. Davidson*, 23 ROP 28 (Tr. Div.)

Infliction of Emotional Harm, Intentional

Extreme and outrageous conduct is that which goes beyond the bounds of human decency such that it would be regarded as intolerable in a civilized community. This determination depends on the facts of each case, including the relationship of the parties, whether the actor abused a position of authority over the other person, whether the other person was especially vulnerable and the actor knew of the vulnerability, the motivation of the actor, and whether the conduct was repeated or prolonged. *Roll 'Em Prods. v. Diaz*, 22 ROP 229 (Tr. Div.)

Severe emotional harm is considered that which is so severe that no reasonable person could be expected to endure it. *Roll 'Em Prods. v. Diaz*, 22 ROP 229 (Tr. Div.)

The degree of harm suffered may also be inextricably tied to the nature of the misconduct, as in many cases the extreme and outrageous character of the defendant's conduct is itself important evidence bearing on whether the requisite degree of harm resulted. *Roll 'Em Prods. v. Diaz*, 22 ROP 229 (Tr. Div.)

Interference with Contract

To succeed on a claim for intentional interference with contract, a plaintiff must plead and prove the following seven elements: (1) that it had a valid, enforceable contract with a third party; (2) that the defendant had knowledge of that contract or knowledge of facts that should lead it to ask about the contract; (3) that the third party actually breached its contract with the plaintiff; (4) that the defendant's actions were the proximate cause

of that breach; (5) that the defendant intended to induce the third party to breach its contract with the plaintiff; (6) that the defendant's actions were improper; and (7) that the plaintiff suffered pecuniary loss as a result of the breach. *Roll 'Em Prods. v. Diaz*, 22 ROP 229 (Tr. Div.)

Relief Available

In light of Plaintiffs' success in this action, which includes an award of punitive damages for the express purpose of deterrence, injunctive relief is not reasonably necessary to prevent future harm. Furthermore, any future harm can better be addressed through subsequent actions, as opposed to a permanent and relatively far-reaching prior restraint. *Roll 'Em Prods. v. Diaz*, 22 ROP 229 (Tr. Div.)

Trespassing

The Court declines to adopt a rule that a business has an obligation to accept the offers of a known trespasser, or else forfeit all or some of its right to recover damages in the event that the trespasser destroys its property. *Palau Pub. Lands Auth. v. Emesiochel*, 22 ROP 126

Unlawful Business Practices

The unfair-or-deceptive-business-practices provision of 11 PNC § 203(h), which makes it unlawful to "disparag[e] the goods, services, or business of another by false or misleading representation of fact," only creates a private cause of action for consumers that have been harmed by a violation of § 203. *Roll 'Em Prods. v. Diaz*, 22 ROP 229 (Tr. Div.)

UNITED STATES

Precedential Value of United States Law

Because there is scant decisional law in the Republic defining agency by appointment for purposes of service of process, the Court looks to the law of other jurisdictions. *Anson v.*

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