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available to United States territories and on the financial assistance guaranteed by Article VII of the Covenant. In recent years, the Commonwealth, particularly Saipan, has become heavily dependent upon the tourist industry.

III. SOURCES OF LAW

Because the Commonwealth is both "self-governing" and "in political union with and under the sovereignty of the United States," its legal system is a mixture of the laws of the United States and local legislation. The Covenant, specified provisions of the United States Constitution, and treaties and laws of the United States applicable to the Commonwealth are the supreme law of the land.

In addition to these supreme sources of law, the Constitution of the Commonwealth, pre-Commonwealth laws, legislation enacted by the Commonwealth legislature, custom, decisions of Commonwealth courts, and the common law as applied in the United States are sources of law in the Commonwealth.

A. Covenant

The Covenant governs relations between the Commonwealth and the United States and cannot be changed without mutual consent. It provides for citizenship and nationality, judicial authority, laws of the United States applicable to the Commonwealth, revenue and taxation, United States financial assistance, title to real property, and a resident representative to the United States.

B. U.S. Constitution

Section 501 of the Covenant makes the following provisions of the United States Constitution applicable to the Commonwealth:

1. Article I, 9, Clauses 2, 3, and 8, restricting the situations in which the writ of habeas corpus may be suspended and prohibiting bills of attainder, ex post facto laws, and titles of nobility;
2. Article I, 10, Clauses 1 and 3, prohibiting the Commonwealth from, among other things, entering into treaties or alliances, coining money, impairing the obligation of contracts, keeping troops, or engaging in war;
3. Article IV, 1 and 2, Clauses 1 and 2, requiring the Commonwealth to give full faith and credit to the acts, records, and judicial proceedings of the states and stating that citizens of the Commonwealth are entitled to all the privileges and immunities of citizens of the states);
4. Amendments I-IX, freedom of religion, speech, the press, and assembly; the right to keep and bear arms; a prohibition on quartering soldiers in private homes during peacetime; protection against unreasonable search and seizure; the privilege against self-incrimination; the right to a jury trial; and a prohibition of excessive bail and cruel and unusual punishment;
5. Amendment XIII, prohibiting slavery;
6. Amendment XIV, 1, prohibiting the Commonwealth from abridging the privileges and

immunities of citizens of the United States or denying them due process and equal protection of the law;

7. Amendment XV, the right to vote;
8. Amendment XIX, prohibiting a denial of the right to vote based upon sex; and
9. Amendment XXVI, establishing the right to vote at age eighteen.

However, trial by jury and indictment by grand jury are not required in civil actions or criminal prosecutions based upon local law unless required by local law.

C. Treaties and Laws of the United States

The Covenant specifies a number of U.S. laws applicable to the Commonwealth and provides, in addition, that the United States may enact legislation applicable to the Commonwealth. However, the authority of the United States to legislate for the Commonwealth is limited by the right of self-government granted by Section 105 of the Covenant.

D. Constitution of the Northern Mariana Islands

As required by the Covenant, the Commonwealth adopted a Constitution in 1978. The Constitution specifies the personal rights of individuals; governs the legislative, executive, and judicial branches of government; provides for representation in the United States, local governments, the eligibility to vote, elections, taxation and public finance, public lands, eminent domain, and education; and restricts alienation of land. (In this chapter, references to the "Constitution" refer to the Northern Marianas Constitution.)

Article XVIII of the Constitution sets out three methods by which the Constitution may be amended. First, an initiative petition may submit to the voters the question of a constitutional convention to propose amendments to the Constitution. The petition must be signed by at least 25 percent of the persons qualified to vote in the Commonwealth or by at least 75 percent of the persons qualified to vote in a senatorial district. An initiative petition must be filed with the Attorney General for certification. If certified, the initiative petition must be submitted to the voters at the next general election. If two-thirds of the votes cast in that election are affirmative, the legislature must convene a constitutional convention promptly. The delegates to the convention must be equal to the number of members of the legislature.

Second, the legislature may propose amendments to the Constitution by the affirmative vote of three-fourths of the members of each house.

Finally, amendments to the Constitution may be proposed by popular initiative signed by at least 50 percent of the qualified voters in the Commonwealth and at least 25 percent of the qualified voters in each senatorial district. A petition must be filed with the Attorney General for certification. If certified, it must be submitted to each house of the legislature. If the proposal is approved by the affirmative vote of a majority of the members of each house, the proposed amendment must be submitted for ratification in the same manner as an amendment proposed by legislative initiative.

E. Pre-Commonwealth Laws

Section 505 of the Covenant provides for the continued enforcement of the laws of the Trust Territory, the Mariana Islands district, and its local municipalities and all other executive and district orders of a local nature applicable to the Commonwealth on the date the Covenant

became effective insofar as these laws and orders are not inconsistent with the Covenant or with those provisions of the U.S. Constitution or treaties or laws of the United States applicable to the Commonwealth.

F. Legislation

Article II of the Commonwealth Constitution extends the power of the Commonwealth legislature "to all rightful subjects of legislation." This phrasing suggests that legislation cannot be inconsistent with treaties and international agreements of the United States, the Covenant, the U.S. Constitution, laws of the United States applicable to the Commonwealth, or the Commonwealth Constitution, but the legislature can alter pre-Commonwealth laws and make new laws.

Article IX of the Constitution also provides for the enactment of legislation by initiative and the rejection of laws by referendum. An initiative petition must contain the full text of the proposed law and must be signed by at least 20 percent of the persons qualified to vote in the Commonwealth. The petition must be filed with the Attorney General for certification. If certified, the initiative must be submitted to the voters at the next general election. Laws enacted by the legislature may be rejected by referendum. The procedure for a referendum vote is the same as for an initiative.

Commonwealth legislation has been gathered into the Commonwealth of the Northern Marianas Code (cited in this chapter as "CMC" or "the Code"), which is divided into titles according to subject matter. Most titles include several related acts.

G. Custom

Although the Constitution makes no mention of traditional law, the Code gives legal recognition to "recognized custom" in a number of areas: adoption, annulment, and divorce; marriage; and the settlement of estates of limited value (see XIV Family Law and XVI Wills and Succession). In order for a custom to be legally recognized, it must be "a law established by long usage and . . . [must be] . . . such usage as by common consent and uniform practice has become the law of the place, or the subject matter, to which it relates."¹ The few reported judicial decisions involving custom have related to the traditional practice of distributing family land before the death of the head of the household² (see XVI Wills and Succession).

H. Common Law

The Code (Title 7, Section 3401) provides that in the absence of written law or customary law, the rules of common law, as expressed in the *Restatements* prepared by the American Law Institute or as generally understood and applied in the United States are the rules of decision in the courts of the Commonwealth.

The function of the Commonwealth Law Reform Commission is to examine customary law; common law, statutes enacted by the legislature, laws in force, and court decisions and recommend draft legislation to establish a cohesive body of law in each area of the Commonwealth (CMC, Title 1).

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waters and 12-mile territorial sea (regardless of their depth or distance from the coast), as well as their airspace, seabed, subsoil, and resources. It also claims sovereignty in a 200-mile exclusive economic zone for the purpose of exploring, exploiting, conserving, and managing the natural resources of the seabed, subsoil, and adjacent waters of the zone. The territorial sea and exclusive economic zone are measured by straight archipelagic baselines joining the outermost islands and drying reefs of the Commonwealth as drawn by the Director of Natural Resources.

The Commonwealth has also sought to protect its natural resources by enacting the Submerged Lands Act, Commonwealth Nuclear and Chemical Free Zone Act, Coastal Resources Management Act of 1983, Commonwealth Environmental Protection Act, and Fish, Game, and Endangered Species Act, all of which are included in Title 2 of the Code.

Article XIV of the Constitution also requires that certain islands be maintained as uninhabited islands for cultural and recreational purposes. Places of cultural, traditional, and historical importance must be protected and preserved. To carry out this constitutional mandate, the legislature has enacted the Historic Preservation Act of 1982 (CMC, Title 2).

XIII. PERSONS AND ENTITIES

The definition of a "person" in Title 4 of the Code includes natural persons, corporations, trusts, partnerships, and incorporated and unincorporated associations.

The legal age for all persons residing in the Commonwealth is age eighteen. This is the legal age for marriage and for entering into a contract (CMC, Title 8; U.S. *Restatement (Second) of Contracts*). In addition, Article VII of the Constitution provides that a citizen or national of the United States who is at least eighteen years old, who is not insane or serving a sentence for a felony, and who is domiciled and resident in the Commonwealth is eligible to vote. A person may not be denied the right to vote because of an inability to read or write. While neither the Code nor the *Restatement* mention a minimum age for liability for an intentional tort, Section 213A of the *Restatement (Second) of Torts* provides that the standard of care required for negligence is that of "a reasonable person of like age, intelligence, and experience under like circumstances."

XIV. FAMILY LAW

Family law is governed by Title 8 of the Code.

A. Marriage

A marriage between two citizens of the Commonwealth may be performed by a minister, a judge, the Governor, or anyone authorized by law to perform marriages and must be witnessed by at least two persons. A marriage between two citizens of the Commonwealth will be valid if it conforms either to "recognized custom" or to the rules for marriages of noncitizens. Notice of a customary marriage must be registered with the clerk of Courts.

In order for two noncitizens (or a noncitizen and a citizen) to marry, the male must be at least eighteen years old and the female at least sixteen years old. However, because the age of majority in the Commonwealth is eighteen, the female must have the consent of at least one of her parents or her guardian if she is less than eighteen years old. The marriage ceremony may

adopted according to the Code inherits from the adopting parents as if the child were the natural child of the adopting parents and may also inherit from the natural parents as if no adoption had taken place.

XV. PERSONAL PROPERTY

The Commonwealth has no legislation dealing with personal property. The Commonwealth Trial Court (now the Superior Court) has also held that there is no customary law governing the distribution of personal property at death.⁴ Thus, the law concerning title to personal property, gifts of chattels, bailments, liens, and fixtures is governed by the common law as applied by courts in the United States and the Commonwealth.

XVI. WILLS AND SUCCESSION

The law of wills and intestate succession is found at Title 8 of the Code. Any person who is of sound mind and at least eighteen years old may make a will under Title 8. The will may dispose of property that, at the time of death, the testator had a right to dispose of without the consent of any other person. A will may also be made in accordance with customary law.

A will made according to Title 8 of the Code must be signed by the testator and witnessed by two persons. If the will gives a witness a personal or beneficial interest in property, the interested witness forfeits the will's provisions made for him or her that exceed in value at the time of the testator's death what the witness would have taken had the testator died intestate, unless the will is also witnessed by two disinterested persons.

Under the Code a holographic (handwritten) will does not require a witness. However, the signature and provisions of such a will must be in the handwriting of the testator and proved by two witnesses.

A nuncupative (oral) will is valid under the Code only if a person is in imminent peril of death and dies as a result of the peril. It may not revoke or change an existing written will. A nuncupative will may dispose only of personal property with an aggregate value under US\$1,000.

A will made outside the Commonwealth that is valid according to the laws of the Commonwealth, the place of its execution, or the law of the testator's domicile at the time of execution is valid in the Commonwealth.

A source of litigation in the Commonwealth is the Chamorro custom of *partida*.⁵ According to this custom, a father should, at some time before his death, call his family together and designate a division of all family lands and ancestral lands, including those brought in by the wife, among his children. In dividing the land, the father is expected to act fairly and according to Chamorro customs and standards. He may turn over formal ownership and control of the lands at once or retain ownership and control until some later date or until he dies. Recently, efforts have been made to encourage the elderly to make formal wills instead of oral dispositions of their property.

Probate in the Commonwealth is governed by the Northern Marianas Probate Law (CMC, Title 8) and the Rules of Probate Procedure promulgated by the Commonwealth Superior Court. These rules cover the procedures for the probate of wills and intestate estates, summary administration, and guardianship.