

CHAPTER 7
MISCELLANEOUS RIGHTS OF THE PEOPLE

Section

- 7-1 Building materials, water, etc.; landlords' titles
subject to tenants' use
- 7-2 Driftwood
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§7-1 Building materials, water, etc.; landlords' titles subject to tenants' use. Where the landlords have obtained, or may hereafter obtain, allodial titles to their lands, the people on each of their lands shall not be deprived of the right to take firewood, house-timber, aho cord, thatch, or ki leaf, from the land on which they live, for their own private use, but they shall not have a right to take such articles to sell for profit. The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple; provided that this shall not be applicable to wells and watercourses, which individuals have made for their own use. [CC 1859, §1477; RL 1925, §576; RL 1935, §1694; RL 1945, §12901; RL 1955, §14-1; HRS §7-1]

Law Journals and Reviews

Beach Access: A Public Right? 23 HBJ 65.

Native Hawaiian Cultural Practices Under Threat. I HBJ No. 13, at pg. 1.

Pele Defense Fund v. Paty: Exacerbating the Inherent Conflict Between Hawaiian Native Tenant Access and Gathering Rights and Western Property Rights. 16 UH L. Rev. 207.

Public Access Shoreline Hawaii v. Hawaii County Planning Commission: The Affirmative Duty to Consider the Effect of Development on Native Hawaiian Gathering Rights. 16 UH L. Rev. 303.

The Reassertion of Native Hawaiian Gathering Rights Within The Context of Hawai'i's Western System of Land Tenure. 17 UH L. Rev. 165.

Cultures in Conflict in Hawai'i: The Law and Politics of Native Hawaiian Water Rights. 18 UH L. Rev. 71.

Customary Revolutions: The Law of Custom and the Conflict of Traditions in Hawai'i. 20 UH L. Rev. 99.

The Backlash Against PASH: Legislative Attempts To Restrict Native Hawaiian Rights. 20 UH L. Rev. 321.

Loko i'a: A Legal Guide to the Restoration of Native Hawaiian Fishponds Within the Western Paradigm. 24 UH L. Rev. 657.

Wiping Out the Ban on Surfboards at Point Panic. 27 UH L. Rev. 303.

Biopiracy in Paradise?: Fulfilling the Legal Duty to Regulate Bioprospecting in Hawai'i. 28 UH L. Rev. 387.

Public Beach Access: A Right for All? Opening the Gate to Iroquois Point Beach. 30 UH L. Rev. 495.

Propagating Cultural Kīpuka: The Obstacles and Opportunities of Establishing a Community-Based Subsistence Fishing Area. 31 UH L. Rev. 193.

Case Notes

Appellants' contention that native Hawaiian rights were exclusive and possessory was unsupported in the law. 76 F.3d 280.

Once title to land passes into private hands and becomes vested under U.S. law, then, upon statehood, that property is subject to state legislation and federal common law regarding water rights is not applicable. 441 F. Supp. 559.

Plaintiff's claims of reserved rights of native tenants under Hawaii law did not extend to the right of perpetual and exclusive occupancy upon the land of another; plaintiff's ancestors' failure to claim kuleana title to subject land, which rendered them tenants at sufferance, foreclosed plaintiff's attempt to claim possessory rights to the land under Hawaii law. 875 F. Supp. 680.

Rights afforded by this section did not inure to plaintiffs, nonresidents of the State; because ordinance instituting a \$3 fee for nonresidents seeking entry to bay designated a marine life conservation district and nature preserve imposed a fee on nonresidents only, the ordinance did not contravene this section. 215 F. Supp. 2d 1098.

Rights of people before allodial titles granted. 2 H. 87; 49 H. 456, 468, 421 P.2d 550.

Right to water for domestic use under this statute. 24 H. 47, 67, overruled on another point 31 H. 376.

Applied in upholding ancient right of way. 50 H. 298, 440 P.2d 95.

Provision reserving to property owners the "right to drinking water and running water" deemed a codification of doctrine of riparian rights. 54 H. 174, 504 P.2d 1330.

Interpretation in 54 H. 174 continues to be appropriate and

proper. 65 H. 531, 656 P.2d 57.

Riparian water rights created by section were not intended to be, and cannot be, severed from the land in any fashion. 65 H. 531, 656 P.2d 57.

Gathering rights of section interpreted to assure that lawful occupants of an ahupua'a may, for the purposes of practicing native Hawaiian customs and traditions, enter underdeveloped lands within ahupua'a to gather items enumerated in the statute. Gathering rights did not accrue to person who did not reside within ahupua'a. 66 H. 1, 656 P.2d 745; 73 H. 578, 837 P.2d 1247.

If property is deemed "fully developed", i.e., lands zoned and used for residential purposes with existing dwellings, improvements, and infrastructure, it is always "inconsistent" to permit the practice of traditional and customary native Hawaiian rights on such property. 89 H. 177, 970 P.2d 485.

To establish the existence of a traditional or customary native Hawaiian practice, there must be an adequate foundation in the record connecting the claimed right to a firmly rooted traditional or customary native Hawaiian practice. 89 H. 177, 970 P.2d 485.

Where defendant failed to adduce sufficient evidence to support claim of the exercise of a constitutionally protected native Hawaiian right and knowingly entered landowner's property which was fenced in a manner to exclude others, trial court properly concluded that defendant was unlawfully on property in violation of §708-814(1). 89 H. 177, 970 P.2d 485.

Trial court erred in granting defendant's motion for summary judgment where there existed a genuine issue of material fact as to the ancient or historic use of the subject trail. 104 H. 43, 85 P.3d 150.

Right of way easement was limited to ingress and egress and did not include right to park. 1 H. App. 263, 618 P.2d 312.

No showing of right-of-way of necessity. 2 H. App. 663, 639 P.2d 420.

Standards for granting an easement by necessity. 3 H. App. 136, 642 P.2d 549.

Referred to: 6 H. 334, 336; 20 H. 658, 667.

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§7-2 Driftwood. All wood of any description which may drift on to the beach of any part of the State shall be the property of the finder, and anyone finding such driftwood may take the same for the finder's own private use, without paying a share to the State; provided that this section shall not be construed to apply to any vessel wrecked or stranded on any part of the shores of the State. [CC 1859, §1478; RL 1925, §577; RL 1935, §1695; RL 1945, §12902; RL 1955, §14-2; HRS §7-2; gen ch 1985]

Case Notes

Finder is one who exercises some act of ownership over it. 6 H. 167.

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§ 7-3 **REPEALED.** L 1988, c 375, §3.

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