The FSM civil rights law is intended to provide an effective remedy to FSM citizens when their constitutional rights are violated. A fundamental role of government, be it state or national, is to safeguard those rights. Louis v. Kutta, 8 FSM R. 312, 317 (Chk. 1998).

In any civil rights action the court may award costs and reasonable attorney's fees to the prevailing party. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

Because of the similarity between the U.S. civil rights statute and 11 F.S.M.C. 701, FSM courts should consider the decisions of the United States in arriving at a decision, without being bound by them. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

Civil rights are guaranteed to all FSM citizens under the Declaration of Rights, which is Article IV of the FSM Constitution. Congress conferred a cause of action for violation of civil rights by enacting 11 F.S.M.C. 701 *et seq.*, pursuant to subsection (3). Davis v. Kutta, 9 FSM R. 565, 568 (Chk. 2000).

A deprivation of rights under the FSM Civil Rights statute requires a finding of willfulness. Damarlane v. Pohnpei Supreme Court Appellate Division, 9 FSM R. 601, 603 (Pon. 2000).

Because the FSM statute is based upon the United States model, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. § 1983 and § 1988 for assistance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Estate of Mori v. Chuuk, 10 FSM R. 6, 13 (Chk. 2001).

Because the FSM statute is based upon the United States model, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. § 1983 and § 1988 for assistance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Estate of Mori v. Chuuk, 10 FSM R. 123, 124 (Chk. 2001).

The FSM Supreme Court exercised pendent jurisdiction over a wrongful death claim, a state law cause of action when the plaintiffs' claim for civil rights violation under 11 F.S.M.C. 701(3) arose from the same nucleus of operative fact so as to create the reasonable expectation that the claims would be tried in the same proceeding. Estate of Mori v. Chuuk, 11 FSM R. 535, 537 (Chk. 2003).

In any case brought under 11 F.S.M.C. 701 *et seq.*, a plaintiff must prove each element of his case by the preponderance of the evidence. In the case of a stipulated judgment under a settlement agreement, an equally basic jurisprudential principle dictates that a stipulated judgment will be entered only if it is well grounded both in law and in fact. Estate of Mori v. Chuuk, 12 FSM R. 24, 26 (Chk. 2003).

The FSM Supreme Court may exercise pendent jurisdiction over a state law wrongful death action when it arises from the same nucleus of operative fact and is such that it would be expected to be tried in the same judicial proceeding as the plaintiff's national civil rights claims. Herman v. Municipality of Patta, 12 FSM R. 130, 136 (Chk. 2003).

A state law cannot extinguish rights granted by an FSM statute, 11 F.S.M.C. 701 (civil rights cause of action), pursuant to rights guaranteed in the FSM Constitution, which is the supreme law of the land. Herman v. Municipality of Patta, 12 FSM R. 130, 136 (Chk. 2003).

A false imprisonment claim is separate and distinct from a civil rights claim. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 154, 156 (Pon. 2005).

A plaintiff's tort claim will not be dismissed as duplicative of his civil rights claim without the benefit of trial because it would be premature to dismiss either claim since the plaintiff has yet to prove the necessary elements of one or both of his two distinct claims and because at this juncture the contention that the tort and civil rights claims are duplicative is without merit. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 154, 156 (Pon. 2005).

As required by the FSM Constitution, in rendering a decision, a court must consult and apply sources of the Federated States of Micronesia, but where appropriate, the FSM Supreme Court can and should consider decisions and reasoning of United States courts and other jurisdictions in arriving at its own decisions. Because there is very little FSM law governing the enforcement of national civil rights judgments against the states, the court will look to case law of the United States for guidance, as civil rights protections in the United States and FSM are similar. Chuuk v. Davis, 13 FSM R. 178, 185-86 (App. 2005).

By not raising it until five years after relevant events, Pohnpei waived the cholera epidemic as a defense to its failure to insure that the plaintiff was taken before a judicial officer within 24 hours of arrest. But it would not make a difference even if the defense of the cholera epidemic were considered, when Pohnpei presented no showing of a causal link between the cholera epidemic and Warren's being held in jail for 63½ hours. Since jail staff was not reduced as a result of the epidemic, nor did any other epidemic-related factor prevent Warren from being taken before a magistrate within 24 hours of arrest. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 492 (Pon. 2005).

The civil rights statute, 11 F.S.M.C. 701, is a part of the National Criminal Code and became effective July 12, 1981. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 494 (Pon. 2005).

FSM civil rights law is derivative of the body of federal civil rights law in the United States, particularly 42 U.S.C. § 1983 and cases interpreting that statute. Annes v. Primo, 14 FSM R. 196, 206 n.6 (Pon. 2006).

Civil Rule 8(a)'s purpose is to put the opposing party on notice of the nature of the claim against it. Its pleading requirements are interpreted liberally, and a claim that alleges facts sufficient to put the defendant on notice as to the nature and basis of the claim being made sufficiently complies with the rule. Thus, while a decision by policy-making officials causing the alleged violations is a necessary element of the claim, a count claiming due process violations satisfies the pleading requirement when a set of facts could be proven in regard to the vessel's stop and seizure and later detention that would support the due process claim. FSM v. Kana Maru No. 1, 14 FSM R. 368, 372 (Chk. 2006).

While a policy-making official's decision causing the alleged violations is a necessary element of a due process claim, that, at the litigation's start, the claimant might not know which policy-making official decided what does not mean that he has failed to state a claim. It may be that after discovery and trial, he might not be able to prove this element and so his claim will fail, but before the government has answered, all he needs to do is put the government on notice as to the claim's nature. Thus the court cannot say that no set of facts that could be proven would not support this claim and will therefore not dismiss it for failure to state a claim. FSM v. Kana Maru No. 1, 14 FSM R. 368, 373 (Chk. 2006).

Since the FSM civil rights statute is based upon the United States model, the FSM Supreme Court should consider United States jurisprudence under 42 U.S.C. § 1983 and § 1988 for assistance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Robert v. Simina, 14 FSM R. 438, 443 n.1 (Chk. 2006).

The Chuuk State Supreme Court is perfectly competent to adjudicate a civil rights claim against the state made under 11 F.S.M.C. 701(3) (violation of national constitutional rights) and also claims made under Chuuk's own constitutional provision barring deprivation of property. Narruhn v. Chuuk, 16 FSM R. 558, 564 (Chk. 2009).

When a complaint alleges that the plaintiff was denied equal protection of the laws, the suit will be deemed a private cause of action under 11 F.S.M.C. 701 for violation of civil rights guaranteed under the FSM Constitution even though the statute is not expressly cited in the complaint. Berman v. Pohnpei, 16 FSM R. 567, 577 (Pon. 2009).

Since the FSM civil rights statute is based on the U.S. model, the FSM Supreme Court should consider U.S. jurisprudence under 42 U.S.C. § 1983 and § 1988 for assistance in determining the intended meaning

of, and governmental liability under 11 F.S.M.C. 701(3). Sandy v. Mori, 17 FSM R. 92, 96 n.3 (Chk. 2010).

Because the FSM statute is based upon the United States model, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. § 1983 and § 1988 for guidance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 148, 150 n.2 (Pon. 2010).

Chapter 7 of Title 11 of the FSM Code creates a statutory cause of action for individuals whose constitutional rights have been violated. It was enacted to safeguard the rights guaranteed to all FSM citizens under Article IV of the FSM Constitution. Ladore v. Panuel, 17 FSM R. 271, 275 (Pon. 2010).

It would be a gross disservice to the interests of justice not ever to have a hearing on the issue of damages for a successful civil rights claim and when the trial court was silent as to this particular issue, the trial court cannot have foreclosed the claimant's right to a hearing on the actual damages flowing from the civil rights violation, so that the matter will be remanded to the trial court for further determination as to actual damages. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 438 (App. 2011).

When no "common nucleus of facts" exists between the trespass claims and the civil rights claims, the trial court did not err in assigning liability for trespass only to McVey and Do It Best and liability for the civil rights violation only to the Pohnpei Board of Trustees; thus the trial court's conclusions of law apportioning costs were not in error. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 440-41 (App. 2011).

When the parties never briefed the issue of takings in the trial court, that issue is not properly before the appellate court. Stephen v. Chuuk, 17 FSM R. 453, 463 (App. 2011).

Because the FSM civil rights statute is based on the United States model, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. § 1983 and § 1988 for guidance in determining 11 F.S.M.C. 701(3)'s intended meaning and governmental liability thereunder. Kaminanga v. Chuuk, 18 FSM R. 216, 219 n.1 (Chk. 2012).

Since the FSM civil rights statute was patterned after U.S. civil rights statutes, the FSM Supreme Court may consider U.S. jurisprudence under 42 U.S.C. § 1983 and § 1988 to help determine the intended meaning of 11 F.S.M.C. 701(3) and governmental liability thereunder. Poll v. Victor, 18 FSM R. 402, 404 (Pon. 2012).

The limitations period for many types of civil rights lawsuits against Chuuk is two years, but for back pay claims it is six years. Aunu v. Chuuk, 18 FSM R. 467, 469 (Chk. 2012).

In addition to being potentially criminally liable to and subject to punishment by the FSM for the violation of 11 F.S.M.C. 701(1), a defendant could potentially also be civilly liable to the alleged victims in a suit under 11 F.S.M.C. 701(3). Three major differences exist between the criminal case and any potential civil case – in a civil case 1) the alleged victim(s) would be the plaintiff(s); 2) the burden of proof would be lower (preponderance of the evidence as opposed to beyond a reasonable doubt); and 3) the element of willfulness would not be required to establish civil liability. FSM v. Tipingeni, 19 FSM R. 439, 446 (Chk. 2014).

The Chuuk State Supreme Court is perfectly competent to adjudicate a civil rights claim against the state made under 11 F.S.M.C. 701(3) (violation of national constitutional rights) and also claims made under Chuuk's own constitutional provision barring deprivation of property. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648 (Chk. S. Ct. Tr. 2015).

Since the FSM statute, 11 F.S.M.C. 701(3), is based on the United States statute, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. § 1983 for assistance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Eot Municipality v. Elimo, 20 FSM R. 482, 491 (Chk. 2016).

Municipalities cannot make civil rights claims against the state of which they are a part. Eot Municipality v. Elimo, 20 FSM R. 482, 491 (Chk. 2016).

While it is true that a municipal government is a "person" against whom relief can be (and has been) sought under the civil rights statute, a municipal government is not a person that can seek relief under the civil rights statute. Eot Municipality v. Elimo, 20 FSM R. 482, 491 (Chk. 2016).

Since the FSM civil right statute is based on the United States statute, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. § 1983 for assistance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Onanu Municipality v. Elimo, 20 FSM R. 535, 542 (Chk. 2016).

Political subdivisions generally are held to lack constitutional rights against the creating state. Onanu Municipality v. Elimo, 20 FSM R. 535, 542 (Chk. 2016).

While it is true that a municipal government is a "person" against whom relief can be (and has been) sought under the civil rights statute, a municipal government is not a person that can seek relief under the civil rights statute. Onanu Municipality v. Elimo, 20 FSM R. 535, 543 (Chk. 2016).

The civil rights statute's purpose is to create a federal remedy for private parties, not government bodies. Onanu Municipality v. Elimo, 20 FSM R. 535, 543 (Chk. 2016).

Since the FSM civil rights statute was patterned after U.S. civil rights statutes, the FSM Supreme Court may consider U.S. jurisprudence under 42 U.S.C. § 1983 and § 1988 to help determine the intended meaning of 11 F.S.M.C. 701(3) and governmental liability thereunder. Jacob v. Johnny, 20 FSM R. 612, 617 n.3 (Pon. 2016).

– Acts Violating

Actions of a police officer in stripping a prisoner to punish and humiliate him, then beating him and damaging his pickup truck, constituted violation of the prisoner's constitutional rights to be free from cruel and unusual punishment and his due process rights. Tolenoa v. Alokoa, 2 FSM R. 247, 250 (Kos. 1986).

A person's constitutional right to due process of law, and his right to be free from cruel and unusual punishment is violated when an officer instead of protecting the person from attack, threw him to the ground, and beat the person in the jail. Meitou v. Uwera, 5 FSM R. 139, 144 (Chk. S. Ct. Tr. 1991).

The use of force by police officers is not privileged or justified when the arrestee was so drunk and unstable to resist or defend himself and when the police officer used force because he was enraged at being insulted by the arrestee. Meitou v. Uwera, 5 FSM R. 139, 144 (Chk. S. Ct. Tr. 1991).

Where a prisoner is physically abused by an official with final policy-making authority, these acts are governmental and a statement of state policy concerning the prisoner. Plais v. Panuelo, 5 FSM R. 179, 207 (Pon. 1991).

Refusing to permit the public defender or the prisoner's mother to see him are violations of civil rights guaranteed under 12 F.S.M.C. 218(1) and (2) and constitute official actions for which a state must be held responsible under 11 F.S.M.C. 701(3). Plais v. Panuelo, 5 FSM R. 179, 207 (Pon. 1991).

Confining a prisoner in dangerously unsanitary conditions, which represent a broader government-wide policy of deliberate indifference to the dignity and well-being of prisoners, is a failure to provide civilized treatment or punishment, in violation of prisoners' protection against cruel and unusual punishment, and renders the state liable under 11 F.S.M.C. 701(3). Plais v. Panuelo, 5 FSM R. 179, 208 (Pon. 1991).

The national government is liable for violations of 6 F.S.M.C. 702(2) when it has abdicated its

responsibility toward national prisoners. Plais v. Panuelo, 5 FSM R. 179, 210-11 (Pon. 1991).

An official state practice of allowing untrained and unqualified police officers to use deadly force may be shown from the chief of police's testimony that convicted felons were hired although regulations prohibited it and that requalification on firearms had been waived for at least three years although regulations required requalification when it is within his power to allow variation from written regulation, and from the lack of any internal discipline as the result of improper use of deadly force. If, as a result of this policy a person suffers serious bodily injury, it is a violation of her right to due process of law. Davis v. Kutta, 7 FSM R. 536, 548 (Chk. 1996).

Liability for failure to inform a person of the charge for which he is being arrested will not be imposed when he knew was dealing with police who could arrest him, that he was likely to be arrested and why. Conrad v. Kolonia Town, 8 FSM R. 183, 193 (Pon. 1997).

Wilful and malicious deprivation of a person's due process rights to notice and an opportunity to be heard, are a violation of that person's civil rights. Bank of Guam v. O'Sonis, 8 FSM R. 301, 304 (Chk. 1998).

It is a crime, under 11 F.S.M.C. 701(1), to willfully, whether or not acting under color of law, deprive another of, or injure, oppress, threaten, or to intimidate another in his free exercise or enjoyment of any right, privilege, or immunity secured to him by the FSM's Constitution or laws. A person who deprives another of any right or privilege protected under 11 F.S.M.C. 701 is civilly liable to the party injured. The element of willfulness is not required for the civil liability. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 411 (App. 2000).

A detainee may be deprived of his civil rights in violation of 11 F.S.M.C. 701(3) by the arbitrary and purposeless denial of medical care. Estate of Mori v. Chuuk, 10 FSM R. 6, 13 (Chk. 2001).

Deliberate indifference to a detainee's medical needs is policy when there is no training which would prepare a shift supervisor or other officers to evaluate an illness's or injury's severity and the decision to refer to the hospital resides in the shift supervisor's unlimited discretion. Estate of Mori v. Chuuk, 10 FSM R. 6, 13 (Chk. 2001).

When the failure to refer a detainee for medical treatment is arbitrary and purposeless, it constitutes punishment of someone who has not been convicted of any crime. This punishment is a denial of the right to due process. Estate of Mori v. Chuuk, 10 FSM R. 6, 13 (Chk. 2001).

A detainee has a civil right to be free of excessive force while detained in the custody. Use of excessive force may constitute a battery. Atesom v. Kukkun, 10 FSM R. 19, 22 (Chk. 2001).

The state violates a detainee's civil rights to appropriate care while detained through its use of untrained and inexperienced trainees as jailers, failure to supervise those trainees, and failure to refer an injured detainee for medical care. Atesom v. Kukkun, 10 FSM R. 19, 22 (Chk. 2001).

A detainee's civil right to appropriate care while detained is violated by a jailer's false report of the extent of the detainee's injury which prevented a possible medical referral. Atesom v. Kukkun, 10 FSM R. 19, 22 (Chk. 2001).

A civil rights claim against a municipal government will be dismissed when it fails to allege that the officials were acting pursuant to governmental policy or custom when the allegedly unconstitutional actions occurred or when it fails to allege that the violations were caused by the officials who were responsible for final policy making, and when those officials made a deliberate choice to follow a course of action chosen from various alternatives. Talley v. Lelu Town Council, 10 FSM R. 226, 238 (Kos. S. Ct. Tr. 2001).

Violating a person's civil right to be free from excessive force while detained by the municipal police, is

a violation of 11 F.S.M.C. 701(3). Herman v. Municipality of Patta, 12 FSM R. 130, 135 (Chk. 2003).

A detainee has a civil right to be free of excessive force while detained in the custody. The use of excessive force results from the arrest by a person having the authority to do so but accomplished by the use of unreasonable force. Herman v. Municipality of Patta, 12 FSM R. 130, 136 (Chk. 2003).

A person commits an offense if he willfully, whether or not acting under color of law, deprives another of, or injures, oppresses, threatens, or intimidates another in the free exercise or enjoyment of, or because of his having so exercised any right, privilege, or immunity secured to him by the FSM Constitution or laws. Section 701(3) provides for civil liability, including attorney's fees, against any person engaging in the proscribed conduct. "Person" includes state governments. Wortel v. Bickett, 12 FSM R. 223, 225 (Kos. 2003).

The unilateral cancellation of a foreign investment permit in derogation of the procedures provided for under Kos. S.C. § 15.308(10) is arbitrary and grossly incorrect, and as such constitutes a violation of the national civil rights statute. Wortel v. Bickett, 12 FSM R. 223, 226 (Kos. 2003).

The actions of corrections officers in refusing to permit the plaintiff to use the phone to call an attorney or to contact one at his request; in refusing to allow the plaintiff to telephone his family or to contact them at his request and in refusing to permit his wife to speak to him when she called the jail; and in failing to insure that the plaintiff was brought before a judicial officer within 24 hours of his arrest constituted violations of 12 F.S.M.C. 218. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 491 (Pon. 2005).

That the plaintiff was not informed at or before the time of his arrest why he was being arrested constituted a violation. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 491 (Pon. 2005).

Corrections officers' failure to permit the use of restroom facilities while he was in jail and to provide him with food and water while he was in their custody was an inhumane condition of confinement constituting cruel and unusual punishment. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 491 (Pon. 2005).

When it was the Pohnpei Department of Public Safety's stated policy not to deny an arrested person the right to see family members or counsel at reasonable times; not to unreasonably refuse to an arrested person the right to use the telephone to call family members or counsel; and to insure that within 24 hours of arrest the arrested person was either released or charged and taken before a qualified magistrate, but when the actual policy was that arrestees could not see family members; that arrestees could make phone calls to or meet with a lawyer, but could not receive phone calls from or make phone calls to family members, except in emergency situations such as funerals, the restrictions on contact with family members violated both the department regulations and 12 F.S.M.C. 213(2) and (3). The corrections officers' actions in denying the plaintiff the opportunity to contact family members; in refusing him permission to call a lawyer (except on the last day of his confinement); in failing to permit him to use the restroom; and in failing to provide him with food were products of decisions and action of persons with the final policy-making power concerning prisoners in that time and place. This constituted the actual policy at relevant times irrespective of stated policy and the failure to undertake any investigation of the plaintiff's complaints resulted in the ratification by the chief policy-maker of the challenged actions. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 491-92 (Pon. 2005).

When no investigation of the plaintiff's complaints were ever undertaken, nor were any officers disciplined; when none of the officers who participated in the violation of an individual's civil rights were either disciplined or had criminal charges brought against them, and where all of the officers who participated were back on duty the next day, the police officers' conduct was ratified as official policy of the Pohnpei Department of Public Safety. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 494 (Pon. 2005).

To be civilly liable for civil rights damages the element of willfulness is not required. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 494 (Pon. 2005).

An illegal arrest is actionable under 11 F.S.M.C. 701(3). Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 496 (Pon. 2005).

Even if the 24-hour deadline to bring a defendant before a court or release him were interpreted to mean within a reasonable time, holding a person in jail for 63½ hours without an appearance before a judicial officer will subject the state and its department of public safety to civil liability. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 498 (Pon. 2005).

When the only food provided the plaintiff during the approximately 63½ hours in jail was three donuts and a jar of water given to him by a prisoner and he was permitted to use the restroom only once during that time, and was obliged to urinate through the window, and to defecate into the pages of a magazine which he then discarded through the window, these inhumane conditions of confinement constitute cruel and unusual punishment, in derogation of the Declaration of Rights of the FSM Constitution. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 499 (Pon. 2005).

Since an allegation of police brutality implicates both the national and state constitutions and a plaintiff asserting a right arising under national law has a right to be heard in the FSM Supreme Court even if state courts may also assert jurisdiction, the fact that the Pohnpei Supreme Court may be equally equipped to decide the case will not divest the plaintiff of his day in the FSM Supreme Court. Annes v. Primo, 14 FSM R. 196, 201 (Pon. 2006).

In the FSM, claims of police brutality or excessive force generally implicate due process, rather than equal protection. Annes v. Primo, 14 FSM R. 196, 202 (Pon. 2006).

The express language of 11 F.S.M.C. 701(3) prohibits persons from depriving others of their civil rights. It does not apply only to states. Annes v. Primo, 14 FSM R. 196, 203 (Pon. 2006).

When a plaintiff alleges that he was arrested without cause, not that the officer failed to inform him of the grounds for the arrest, the difference in the two allegations is more than semantic, because a plaintiff may claim that an arrest was without just cause even when the arresting officer recites the grounds for the arrest. Whether there was cause for the arrest presents a factual matter that cannot be resolved at the Rule 12(b)(6) motion stage of the proceedings. Annes v. Primo, 14 FSM R. 196, 203-04 (Pon. 2006).

A claim of failure to inform an arrestee of his rights and denying him legal counsel and access to the courts is a statutory claim, not a constitutional one. An arrested person's rights are codified at 12 F.S.M.C. 218, which provides that, at the time of arrest, a police officer must inform the arrestee of her rights, including the right to counsel, prior to any questioning and that the officer must either release the arrestee or bring her before a judicial officer within twenty-four hours of the arrest. Annes v. Primo, 14 FSM R. 196, 204 (Pon. 2006).

A plaintiff's failure to specify the appropriate level of care and to prove that the level of care provided by the state was deficient does not warrant dismissal of his claim when the plaintiff has alleged injury by a state police officer and failure to train by the state because the plaintiff must be given the opportunity to put forth evidence in support of his claim and a motion to dismiss may be granted only if it appears to a certainty that no relief could be granted under any facts which could be proven in support of the complaint. Annes v. Primo, 14 FSM R. 196, 205 (Pon. 2006).

A battery or wrongful death, by itself, does not constitute a civil rights violation. Harper v. William, 14 FSM R. 279, 282 (Chk. 2006).

Although the plaintiffs contend that they were not drunk but merely had hangovers and that they could not be arrested for being hungover, the police, based on what they personally could see, hear, and smell, had probable cause to believe that the plaintiffs were under the influence of alcohol in public and had probable cause to arrest the plaintiffs. Whether the plaintiffs were actually intoxicated or just hungover is

irrelevant since the police had probable cause to believe they were intoxicated. Thus, the plaintiffs' arrest and transportation to the state jail on Weno did not violate their civil rights. Walter v. Chuuk, 14 FSM R. 336, 339-40 (Chk. 2006).

Confining a person in dangerously unsanitary conditions, which represents a broader government-wide policy of deliberate indifference to the person's dignity and well-being, is a failure to provide civilized treatment, in violation of detainees' due process protections, and renders the state liable under 11 F.S.M.C. 701(3). Walter v. Chuuk, 14 FSM R. 336, 340 (Chk. 2006).

The state has a duty to protect the persons it has confined from themselves and each other and violating a person's civil right to be free from excessive force while detained in a jail, is a violation of 11 F.S.M.C. 701(3). The state can violate that duty by failing to intervene and stop the prisoners' attacks on the arrestees. Walter v. Chuuk, 14 FSM R. 336, 340 (Chk. 2006).

When the decedent's civil right to be free from excessive force while a prisoner in Weno municipal jail was violated, this violation and the defendants' failure to monitor the plaintiff prisoner was the proximate cause of his wrongful death. The defendants' failure to monitor may also show a deliberate indifference to the prisoner's medical needs, which is also a violation of the FSM Civil Rights statute. Lippwe v. Weno Municipality, 14 FSM R. 347, 352 (Chk. 2006).

A prisoner has a civil right to be free of excessive force while in custody. Lippwe v. Weno Municipality, 14 FSM R. 347, 352 (Chk. 2006).

When a complaint alleges that the plaintiff was denied equal protection of the laws, the suit will be deemed a private cause of action under 11 F.S.M.C. 701 for violation of civil rights guaranteed under the FSM Constitution even though the statute is not expressly cited in the complaint. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 78 (Pon. 2007).

Plaintiffs' due process civil rights were violated when police officers beat them without reason or justification. Further due process violations occurred when one of them was detained and arrested without being told the reason, and when he was held in police custody for six hours. Hauk v. Emilio, 15 FSM R. 476, 479 (Chk. 2008).

A person commits an offense if he willfully, whether or not acting under color of law, deprives another of, or injures, oppresses, threatens, or intimidates another in the free exercise or enjoyment of any right, privilege, or immunity secured to him by the FSM Constitution or laws and a private cause of action is provided for any such violation. Due process is a right secured by the FSM Constitution. Hauk v. Emilio, 15 FSM R. 476, 479 (Chk. 2008).

When a person is unlawfully detained against his will, a civil wrong is committed for which he may seek redress. Such a claim is separate and distinct from a civil rights claim, but, at the same time, such a claim may serve as a basis for deprivation of liberty under the FSM civil rights statute. The relevant concern in this regard is that damages should not be awarded for both claims, since to do so would be to permit a double recovery. FSM v. Koshin 31, 16 FSM R. 350, 355 (Pon. 2009).

"Color of law" means the appearance or semblance without the substance of legal right. Misuse of power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state is action taken under "color of state law." FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 483 n.3 (Pon. 2009).

To establish the FSM's liability under 11 F.S.M.C. 701, a party must allege and prove that it: 1) had a protected right; 2) FSM officials or employees acted to deprive that party of the right; and 3) the FSM officials or employees acted pursuant to governmental policy or custom, or were responsible for final policy-making. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 483 (Pon. 2009).

When a civil rights counterclaim neither alleges that the actions were pursuant to governmental policy

or custom, nor that the actions were taken by officials responsible for final policy-making, it fails to state a claim upon which relief may be granted and will be dismissed. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 484 (Pon. 2009).

Although an arrestee, who was not informed of her rights to access to counsel when she was handcuffed, was told her full rights at the police station, this does not excuse the police's failure to advise her of rights regarding to access to counsel on the scene when she was first placed in handcuffs. Since the arrestee was not harmed by the failure to advise her, when she was first placed in handcuffs, of rights regarding to access to counsel, the state is liable to her for nominal damages in the amount of one dollar. Berman v. Pohnpei, 16 FSM R. 567, 576 (Pon. 2009).

When a plaintiff has alleged violation of her due process rights, but it is proven otherwise, the plaintiff cannot recover under the civil rights statute. When, at trial, the plaintiff did not present evidence that she was treated differently than any other person in the same class and did not present evidence that she was denied notice and an opportunity to be heard, the state is not liable to her on the claims of denial of equal protection of the laws, violation of due process, and violation of her civil rights. Berman v. Pohnpei, 16 FSM R. 567, 577 (Pon. 2009).

Defendants did not violate the plaintiff's civil rights when neither defendant was a government agency or was claiming to act under color of law or injured, oppressed, threatened, or intimidated the plaintiff's exercise or enjoyment of its civil rights and when neither was responsible for giving the plaintiff notice and an opportunity to be heard; neither prevented the plaintiff from being given notice; and neither injured, oppressed, threatened, or intimidated the plaintiff to prevent it from having an opportunity to be heard. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 110 (Pon. 2010).

When a defendant is not a governmental entity, is not someone alleged to have acted under color of law, and is not a private person (not acting under color of law) who injures, oppresses, threatens, or intimidates another in exercising or enjoying or having exercised or enjoyed one's civil rights, the claim against that defendant is not a civil rights claim. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 110 (Pon. 2010).

There are at least three kinds of civil rights violations: 1) cases involving physical injury or deprivation of liberty; 2) cases involving deprivation of preexisting property; and cases involving deprivation of statutorily vested property rights, such as entitlements and government employment. Stephen v. Chuuk, 17 FSM R. 453, 462 (App. 2011).

When the possible fourth type of civil rights violations – whether a court judgment (state or national) constitutes a property right under the FSM Constitution – was never addressed on the merits by the trial court and was not considered by the court on appeal; when the Barrett appellate decision does not stand for the proposition that a judgment is a property right which affords judgment-creditors due process rights under the national Constitution; and when the trial court appealed from did not state that the plaintiff had a property right in the state court judgment, the question is not properly before the appellate court. Stephen v. Chuuk, 17 FSM R. 453, 463 (App. 2011).

As a general proposition, a governmental entity's breach of a contract, without more, does not constitute a civil rights or due process violation. Stephen v. Chuuk, 18 FSM R. 22, 25 (Chk. 2011).

The police, as state officers, have no constitutional duty to rescue persons because due process considerations are not implicated when the state fails to help someone already in danger. Ruben v. Chuuk, 18 FSM R. 425, 429 (Chk. 2012).

A police officer's threat of arrest does not constitute a violation of constitutional rights, and merely investigating a suspicious occurrence or merely patrolling the area where someone fled is not a violation of any clearly established constitutional right. Ruben v. Chuuk, 18 FSM R. 425, 429 (Chk. 2012).

The FSM civil rights statute, 11 F.S.M.C. 701(3), creates a private cause of action for damages against any person, including a state government, who deprives another of his civil rights guaranteed by the FSM Constitution. Chuuk therefore liable to a prisoner for depriving him of his civil right to be free from cruel and unusual punishment and to due process of law when it kept him in jail for 161 days after his sentence ended. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

A former employee's allegation that his termination violated public policy under the FSM Constitution and the right to be free of religious discrimination does not state a cause of action. To the extent that any defendant could be held civilly liable for the violation of public policy, it would be under 11 F.S.M.C. 701(3), and the public policy as expressed in the civil rights statute. George v. Palsis, 19 FSM R. 558, 569 (Kos. 2014).

When a plaintiff does not cite any particular constitution or specific statute, but does generally assert that when she was terminated her due process rights were violated, the court may hear, consider, and rule on her claim that her termination as Director of Education was unlawful since she was not afforded due process. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648 (Chk. S. Ct. Tr. 2015).

When the plaintiff's claims for false imprisonment, for destruction of standing in community, and for wrongful invasion of privacy – false light were all predicated on his mistaken supposition that he was entitled to retain another person's pigs until compensated and that therefore his arrest was unlawful, the defendants are entitled to summary judgment on these claims as well as summary judgment on his civil rights violations claims insofar as those claims are predicated on his arrest being unlawful. Palasko v. Pohnpei, 20 FSM R. 90, 96 (Pon. 2015).

A customer of a government-owned utility does have a due process right to proper notice before the utility is disconnected. Wainit v. Chuuk Public Utility Corp., 20 FSM R. 135, 137 (Chk. 2015).

A complaint alleging that a public utility tortiously breached its duty to him and violated his due process civil rights when its linemen disconnected his electrical power without notice, causing food spoilage and personal hardship and inconvenience, and that when its linemen, without warning, eventually reconnected his electrical power, it tortiously caused a sudden power surge resulting in damaged equipment, does not state a claim for an equal protection civil rights cause of action. Wainit v. Chuuk Public Utility Corp., 20 FSM R. 135, 137 (Chk. 2015).

The civil rights statute's purpose is to create a federal remedy for private parties, not government bodies. Eot Municipality v. Elimo, 20 FSM R. 482, 491 (Chk. 2016).

A municipality, as a matter of law, cannot maintain a civil rights claim against the state of which it is a political subdivision. Onanu Municipality v. Elimo, 20 FSM R. 535, 544 (Chk. 2016).

When the government has willingly deprived the plaintiffs of wages that they are entitled to without due process of law, it is civilly liable under 11 F.S.M.C. 701(3) for violating the plaintiffs' civil rights. Linter v. FSM, 20 FSM R. 553, 559 (Pon. 2016).

– Persons Liable

A municipality which employs untrained persons as police officers, then fails to train them and authorizes their use of excessive force and summary punishment, will be held responsible for their unlawful acts, including abuse of a prisoner arrested without being advised of the charges or given an opportunity for bail, whose handcuffs were repeatedly tightened during his 14 hour detention in such a way that he was injured and unable to work for one month. Moses v. Municipality of Polle, 2 FSM R. 270, 271 (Truk 1986).

A municipality which employs untrained persons as police officers, fails to train them and authorizes their use of excessive force and summary punishment, will be held responsible for their actions in stripping a prisoner, handcuffing his leg to a table and his arms behind his back, then kicking and abusing him.

Alaphen v. Municipality of Moen, 2 FSM R. 279, 280 (Truk 1986).

In providing for civil liability under 11 F.S.M.C. 701(3), Congress intended that the word person would include governmental bodies. Plais v. Panuelo, 5 FSM R. 179, 204-05 (Pon. 1991).

The doctrine of respondeat superior is not to be used to determine whether a governmental entity is liable under 11 F.S.M.C. 701(3) for civil rights violations inflicted by government employees. The government entity may be held liable under 11 F.S.M.C. 701(3) when violations are caused by officials who are responsible for final policy making with respect to the of action chosen from various alternatives. Plais v. Panuelo, 5 FSM R. 179, 205-06 (Pon. 1991).

When a state government is acting on behalf of the national government by virtue of the joint administration of law enforcement act, the state's officers and employees are agents of the national government and are acting "under color of authority" within the meaning of 6 F.S.M.C. 702(5). Plais v. Panuelo, 5 FSM R. 179, 209-10 (Pon. 1991).

The national government is liable for violations of 6 F.S.M.C. 702(2) when it has abdicated its responsibility toward national prisoners. Plais v. Panuelo, 5 FSM R. 179, 210-11 (Pon. 1991).

The national government is a person within the meaning of 6 F.S.M.C. 702(2) and will be held liable under that section when civil rights violations are in substantial part due to a governmental policy of deliberate indifference to the constitutional rights of national prisoners and failure to attempt to assure civilized treatment to prisoners. Plais v. Panuelo, 5 FSM R. 179, 211 (Pon. 1991).

The FSM Supreme Court is immune from an award of damages, pursuant to 11 F.S.M.C. 701(3), arising from the performance by the Chief Justice of his constitutionally granted rule-making powers. Berman v. FSM Supreme Court (II), 5 FSM R. 371, 374 (Pon. 1992).

Government entities are included in the definition of the word "person" as used in the statute governing civil liability of persons for the violation of another's civil rights. Davis v. Kutta, 7 FSM R. 536, 548 (Chk. 1996).

Persons liable for civil rights violations include government entities. Conrad v. Kolonia Town, 8 FSM R. 183, 195 (Pon. 1997).

Statute law confers a private cause of action for damages against any person who deprives another of his civil rights. The word "person" embraces governmental organizations, including state governments. Louis v. Kutta, 8 FSM R. 208, 211 (Chk. 1997).

A civil rights claim against a municipal government will be dismissed when it fails to allege that the officials were acting pursuant to governmental policy or custom when the allegedly unconstitutional actions occurred or when it fails to allege that the violations were caused by the officials who were responsible for final policy making, and when those officials made a deliberate choice to follow a course of action chosen from various alternatives. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 296 (Pon. 1998).

Chapter 7 of Title 11 of the FSM Code creates a statutory cause of action for individuals whose constitutional rights have been violated, and imposes civil liability, including costs and attorney fees, on a person who deprives another of any right or privilege protected under that Section. The national government is a "person" to whom such civil liability may attach under this statute. Isaac v. Weilbacher, 8 FSM R. 326, 335 (Pon. 1998).

When none of the defendants is a governmental entity, or someone alleged to have acted under color of law, or a private person, not acting under color of law, but who injures, oppresses, threatens, or intimidates another in exercising or enjoying or having exercised or enjoyed one's civil rights, it is not a civil rights case. Pau v. Kansou, 8 FSM R. 524, 526 (Chk. 1998).

Judicial immunity does not apply against the imposition of prospective injunctive relief. The right to attorney's fees applies when prospective relief is granted against a judge pursuant to the civil rights statute. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

A Public Safety Director, as the policy maker for the department, may, by failing to investigate the issue of accountability for a detainee's death, ratify the shift supervisor's and the jailer's actions. Estate of Mori v. Chuuk, 10 FSM R. 6, 14 (Chk. 2001).

A jailer is not liable for the arbitrary and purposeless failure to refer a detainee for medical treatment when he referred the matter to the shift supervisor who had the authority to authorize the referral because he could not have done anything more. Estate of Mori v. Chuuk, 10 FSM R. 6, 14 (Chk. 2001).

Persons liable for civil rights violations include government entities. Talley v. Lelu Town Council, 10 FSM R. 226, 236 (Kos. S. Ct. Tr. 2001).

A government entity may be held liable under 11 F.S.M.C. 701(3) when violations are caused by officials who are responsible for final policy making with respect to the action chosen from various alternatives. Herman v. Municipality of Patta, 12 FSM R. 130, 136 (Chk. 2003).

A person commits an offense if he willfully, whether or not acting under color of law, deprives another of, or injures, oppresses, threatens, or intimidates another in the free exercise or enjoyment of, or because of his having so exercised any right, privilege, or immunity secured to him by the FSM Constitution or laws. Section 701(3) provides for civil liability, including attorney's fees, against any person engaging in the proscribed conduct. "Person" includes state governments. Wortel v. Bickett, 12 FSM R. 223, 225 (Kos. 2003).

When a canceled foreign investment permit was ultimately reinstated, it renders moot the cancellation itself and leaves no administrative remedy for the permit holder to pursue. What then remains as a live court issue is the arbitrary and grossly incorrect manner in which the permit was originally canceled. This conduct constitutes a violation of 11 F.S.M.C. 701 *et seq.*, and entitles the plaintiff to a summary judgment. Wortel v. Bickett, 12 FSM R. 223, 226 (Kos. 2003).

The Kosrae Office of the Attorney General enforces state penal laws, delegating enforcement to a department in its discretion. Thus the Kosrae attorney general is an individual with responsibility for determining final policy with regard to the matters committed to that office, and as such is liable on a personal basis if he violates a person's constitutional rights through making a deliberate choice to follow a course of action from among various alternatives. Wortel v. Bickett, 12 FSM R. 223, 226-27 (Kos. 2003).

Governmental entities, such as the State of Pohnpei and the Pohnpei Department of Public Safety, are "persons" within the meaning of 11 F.S.M.C. 701 *et seq*. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 491 (Pon. 2005).

A person who deprives another of any right or privilege protected by the FSM Constitution or laws will be civilly liable to the party injured in an action at law. The statute confers a private cause of action and it is plain that governmental entities such as the State of Pohnpei and the Pohnpei Department of Public Safety are "persons" within the statute's meaning. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 493 (Pon. 2005).

The state and its department of public safety are subject to civil liability for denying an arrestee the opportunity to contact either family members or an attorney. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 498 (Pon. 2005).

A state may be held liable if, through subsequent conduct, it ratifies the tort of an individual defendant. Annes v. Primo, 14 FSM R. 196, 204 n.4 (Pon. 2006).

A state may be held liable for alleged civil rights violations when policymakers are involved in the challenged action and have made a deliberate choice to follow a particular course of action. This type of liability is not vicarious; it is direct, but when a plaintiff has not alleged that an individual with policymaking authority was involved in his injury, there is no basis upon which to impose liability on the state for a police officer's alleged civil rights violations. Annes v. Primo, 14 FSM R. 196, 205 (Pon. 2006).

Although a state may not be held vicariously liable for the due process violations of its agents, it may be held liable in both tort and civil rights for failure to train. Annes v. Primo, 14 FSM R. 196, 205 (Pon. 2006).

Although a private person, not acting under color of law, may, under 11 F.S.M.C. 701, be held liable for civil rights violations if he injures, oppresses, threatens, or intimidates another in exercising or enjoying or having exercised or enjoyed one's civil rights, when the plaintiffs' complaint alleges no such actions and does not allege that the defendants were acting under color of law or were acting as agents of a government when committing the battery, the complaint does not allege a civil rights claim. Harper v. William, 14 FSM R. 279, 282 (Chk. 2006).

A government entity may be held liable under 11 F.S.M.C. 701(3) when violations are caused by officials who are responsible for final policy making with respect to the action chosen from various alternatives. Lippwe v. Weno Municipality, 14 FSM R. 347, 352 (Chk. 2006).

The Weno Chief of Police was the policy maker for the Weno municipal police and by his failing to investigate the issue of accountability for prisoner's death in jail, he ratified the jailer's actions or inactions. Lippwe v. Weno Municipality, 14 FSM R. 347, 352 (Chk. 2006).

A person who deprives another of any right or privilege protected under 11 F.S.M.C. 701 shall be civilly liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, without regard to whether a criminal case has been brought or conviction obtained. In an action brought 11 F.S.M.C. 701, the court may award costs and reasonable attorney's fees to the prevailing party. Wainit v. FSM, 15 FSM R. 43, 46 n.1 (App. 2007).

A person who, whether under the color of law or not, violates another's equal protection rights as guaranteed by sections 3 or 4 of Article 4 of the FSM Constitution would be civilly liable to the injured party. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 80 (Pon. 2007).

Since the College of Micronesia was created by national statute which gave it its nature and functions, and is a national government agency, and since the national government is a person for the purposes of the civil rights statute, the College is a person under the civil rights statute and would be civilly liable to a plaintiff if it violated that plaintiff's equal protection rights guaranteed by the FSM Constitution. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 80 (Pon. 2007).

A governmental entity is liable for battery by its police officers when the entity ratified the battery by failing to charge the officers and by the lack of any internal discipline whatsoever and a governmental entity that employs untrained police officers and permits their use of excessive force will be held responsible for the officers' unlawful acts for violation of the plaintiffs' civil rights. Hauk v. Emilio, 15 FSM R. 476, 479 (Chk. 2008).

Where the plaintiffs were set upon and beaten by police officers and one plaintiff was arrested and no reason was provided to that plaintiff when the officers detained and arrested him, nor was any reason subsequently given although 12 F.S.M.C. 214(1) provides that any person making an arrest must, at or before the time of arrest, make every reasonable effort to advise the person arrested as to the cause and authority of the arrest, the plaintiff's detention for six hours was without any justification, precisely the sort of conduct that 11 F.S.M.C. 701 was meant to protect against. The assaulting police officers were acting under color of law and as agents of the defendant Chuuk Department of Public Safety, which is an agency of the defendant Chuuk state government. Thus these defendants are liable for the violation of the

plaintiffs' civil rights under 11 F.S.M.C. 701. Hauk v. Emilio, 15 FSM R. 476, 479 (Chk. 2008).

Since the FSM drew from United States counterparts both the civil rights statute the plaintiffs are suing under and the Rules of Civil Procedure, including Rule 25(d), it is appropriate to consult U.S. sources in determining whether the plaintiffs may sue someone in his former official capacity or whether Rule 25(d)(1) automatically substituted the current office-holder in his stead. Herman v. Bisalen, 16 FSM R. 293, 295 (Chk. 2009).

A suit against an offender in his or her official capacity is treated as a claim against the entity that employs that officer, but a public official that leaves office may still be liable for money damages in his or her personal capacity. Thus, an official capacity claim against a former official is meaningless unless it continues as a claim against that person's successor in office in the successor's official capacity. The office continues and is responsible for, and is presumed to have knowledge of, its earlier acts. Herman v. Bisalen, 16 FSM R. 293, 296 (Chk. 2009).

In a civil rights action under 11 F.S.M.C. 701, a private person who is not acting under color of law but who deprives another of, or injures, oppresses, threatens, or intimidates another in the free exercise or enjoyment of, or because of his having so exercised any right, privilege, or immunity secured to him by the Constitution or laws of the Federated States of Micronesia, may be held civilly liable under 11 F.S.M.C. 701(3) for that violation. George v. Palsis, 19 FSM R. 558, 569 (Kos. 2014).

While it is true that a municipal government is a "person" against whom relief can be (and has been) sought under the civil rights statute, a municipal government is not a person that can seek relief under the civil rights statute. Eot Municipality v. Elimo, 20 FSM R. 482, 491 (Chk. 2016).

While it is true that a municipal government is a "person" against whom relief can be (and has been) sought under the civil rights statute, a municipal government is not a person that can seek relief under the civil rights statute. Onanu Municipality v. Elimo, 20 FSM R. 535, 543 (Chk. 2016).

A municipality, as a matter of law, cannot maintain a civil rights claim against the state of which it is a political subdivision. Onanu Municipality v. Elimo, 20 FSM R. 535, 544 (Chk. 2016).

– Remedies and Damages

An injured victim is entitled to recover for mental anguish, including humiliation, resulting from unlawful conduct in violation of the victim's civil rights. Meitou v. Uwera, 5 FSM R. 139, 146 (Chk. S. Ct. Tr. 1991).

The government does not pay twice when it violates someone's civil rights and then is forced to pay attorney's fees. It pays only once – as a violator of civil rights. Its role as a provider of public services is distinct from its role as a defendant in a civil case. Thus an award of costs and reasonable attorney's fees should be made to a publicly funded legal services organization whose client prevailed in a civil rights action. Plais v. Panuelo, 5 FSM R. 319, 321 (Pon. 1992).

Compensatory damages awarded a party for the violation of civil rights includes reasonable attorney fees and costs of suit. Davis v. Kutta, 7 FSM R. 536, 549 (Chk. 1996).

State autonomy should be as wide-ranging as possible, but it is subject to the limits of the FSM Constitution. A state may not exceed the scope of its power by reliance on a state constitutional provision where to do so prevents enforcement of national civil rights legislation. Louis v. Kutta, 8 FSM R. 208, 212-13 (Chk. 1997).

The supremacy clause of the FSM Constitution does not admit a result where a state constitutional provision prevents the enforcement of a national statute which gives a private cause of action for rights guaranteed by the FSM Constitution, especially when it is the solemn obligation of state governments to uphold the principles of the FSM Constitution and to advance the principles of unity upon which the

Constitution is founded. Louis v. Kutta, 8 FSM R. 208, 213 (Chk. 1997).

A state may not use its own constitution to defeat enforcement of a judgment entered on a civil rights claim brought pursuant to the mandate of the national constitution and statutes. Thus, a state constitutional provision will not prevent a civil rights plaintiff from using national execution procedures to obtain satisfaction of his judgment. Louis v. Kutta, 8 FSM R. 208, 213 (Chk. 1997).

A successful plaintiff under the civil rights statute, 11 F.S.M.C. 701(3), is entitled to an award for costs and reasonable attorney's fees. Davis v. Kutta, 8 FSM R. 218, 220 (Chk. 1997).

An hourly fee is not an arbitrary ceiling with respect to attorney's fees recoverable under an 11 F.S.M.C. 701(3) civil rights action. Davis v. Kutta, 8 FSM R. 218, 222 (Chk. 1997).

When a party has entered into a contingent fee agreement reasonable under FSM MRPC Rule 1.5 and the contingent recovery is more than a fee calculated by an hourly rate times the hours expended, a court, in awarding civil rights attorney's fees, may award a reasonable fee pursuant to the agreement's terms. Davis v. Kutta, 8 FSM R. 218, 223 (Chk. 1997).

The purpose of the FSM civil rights fee provision is to permit an FSM civil rights litigant to employ reasonably competent counsel to pursue civil rights litigation without cost to him or herself. Davis v. Kutta, 8 FSM R. 218, 223 (Chk. 1997).

Because the point of departure for determining a reasonable fee in civil rights litigation is to look at the amount of time spent, counsel should maintain careful records of time actually spent, notwithstanding the existence of a contingency fee agreement. Davis v. Kutta, 8 FSM R. 218, 224 (Chk. 1997).

Civil rights attorney fee awards and awards of costs may be entered against multiple defendants in the same proportions as those in the original judgment. Davis v. Kutta, 8 FSM R. 218, 224 (Chk. 1997).

When a state government, acting by its agents, steps out of its role of protector of a citizen's constitutional rights, and violates the very rights it is meant to guard, a money judgment is the only practical means by which the state can compensate its citizens for the damage it inflicts. Louis v. Kutta, 8 FSM R. 312, 317 (Chk. 1998).

Under 11 F.S.M.C. 701 *et seq.* a private cause of action is provided to any person whose constitutional rights are violated. In order for the remedy provided by 11 F.S.M.C. 701(3) to be effective, it must be enforceable. Where the defendant in a civil rights action is a state, this means that the remedy should not be dependent upon subsequent state legislative action, such as appropriation of funds, which would thwart the Congressional mandate that 11 F.S.M.C. 701 is meant to implement. Accordingly, the FSM Supreme Court is not precluded from issuing an order in aid of judgment against a state in the absence of a state legislative appropriation. Davis v. Kutta, 8 FSM R. 338, 341 (Chk. 1998).

Interest on a judgment is payable under 6 F.S.M.C. 1401 at nine percent a year. 11 F.S.M.C. 701(3), which provides for an award of attorney's fees in a civil rights action, should be construed to permit interest on an unpaid fee award. Davis v. Kutta, 8 FSM R. 338, 341 n.2 (Chk. 1998).

Although Chuuk state law does not appear to recognize survival causes of action, the right to damages for civil rights violations under national law survives a victim's death. If it did not, the purpose of the civil rights cause of action would be thwarted. Estate of Mori v. Chuuk, 10 FSM R. 6, 13 (Chk. 2001).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages, and liability for attorney's fees will be assessed among the defendants in proportion to their responsibility for the judgment. Atesom v. Kukkun, 10 FSM R. 19, 23 (Chk. 2001).

The purpose of tort law is to afford a victim compensation for injuries sustained as the result of the

unreasonable or socially harmful conduct of another. This is true whether the tort is statutorily created, as are the civil rights claims under 11 F.S.M.C. 701(3), or is a creature of the common law, as is a battery cause of action. Atesom v. Kukkun, 10 FSM R. 19, 23 (Chk. 2001).

Although a civil rights violation claim and a battery claim are separate causes of action, when they arise from the same incident and they cause the same personal injury and when the damage award for the civil rights violation fully compensates the plaintiff for his personal injury, the court cannot award additional damages for the battery because such an award would constitute double recovery and would be a windfall and overcompensate the plaintiff. Atesom v. Kukkun, 10 FSM R. 19, 23 (Chk. 2001).

A court has the power to issue an order to a state official to perform a purely ministerial act – the issuance of a check – in order to cause the state to conform its conduct to the requirements of both the FSM Constitution and the national statute at issue, 11 F.S.M.C. 701. Davis v. Kutta, 10 FSM R. 98, 99 (Chk. 2001).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages. Estate of Mori v. Chuuk, 10 FSM R. 123, 124 (Chk. 2001).

So long as a party has prevailed in a civil rights suit as a whole, that party is entitled to fees for all time reasonably spent on the matter, including the time spent on pendent state law claims that would not otherwise be statutorily entitled to a fee award, when the pendent claims arise out of a common nucleus of operative fact. Estate of Mori v. Chuuk, 10 FSM R. 123, 124 (Chk. 2001).

Plaintiffs may recover all of their attorney's fees although the bulk of the damages was awarded on the state law claim and even though the entitlement to those fees arises from the civil rights statute because for attorney fee purposes in such an instance, it is sufficient that the non-fee claims (i.e., the state law claims) and the fee claims (i.e., the civil rights claims) arise out of a common nucleus of operative fact. Estate of Mori v. Chuuk, 11 FSM R. 535, 537-38 (Chk. 2003).

When both the civil rights claim and the wrongful death claim arose from a common nucleus of operative fact, for purposes of enforcing the judgment, and to be consistent with the principle that plaintiffs are entitled to all of their attorney's fees under 11 F.S.M.C. 701 even though they prevailed on a state law claim as well as a civil rights claim, the court will treat the judgment as though it is in its entirety based on a civil rights claim. Estate of Mori v. Chuuk, 11 FSM R. 535, 538 (Chk. 2003).

When the only reasonably effective means by which to obtain payment of a civil rights judgment against the state is through an order of garnishment directed to the national government, the anti-garnishment statute is unconstitutional to the extent that it precludes a garnishment order to pay a judgment that is based in material part on civil rights claims under 11 F.S.M.C. 701. Estate of Mori v. Chuuk, 11 FSM R. 535, 541 (Chk. 2003).

A civil rights judgment must not depend on legislative action for satisfaction. Estate of Mori v. Chuuk, 11 FSM R. 535, 541 (Chk. 2003).

A court finding that 6 F.S.M.C. 707 is unconstitutional to the extent that it prevents satisfaction of a judgment based on a violation of constitutional rights is limited to the facts before the court and applies only to a judgment against the state that is based on civil rights claims under the national civil rights statute, which confers a cause of action for violation of rights guaranteed by the FSM Constitution. Estate of Mori v. Chuuk, 11 FSM R. 535, 541 (Chk. 2003).

In the usual case payment of a money judgment against the state must abide a legislative appropriation, but a judgment for the violation of rights guaranteed by the FSM Constitution is a species apart. If there is no meaningful remedy for such a violation, which means a judgment subject to satisfaction in a reasonably expeditious manner, then that right afforded constitutional protection is an illusion, and, if that right is reduced to an illusion, then our Constitution itself is reduced to a solemn

mockery. Estate of Mori v. Chuuk, 11 FSM R. 535, 541 (Chk. 2003).

A garnishment order against the national government will issue to pay a civil rights judgment against Chuuk when the sum is less by at least an order of magnitude than the sums that Chuuk receives on a drawdown basis from the FSM when Chuuk accordingly has the ability to pay the judgment and when, based on the case's history, a garnishment order is the only means by which payment can reasonably be made. Estate of Mori v. Chuuk, 11 FSM R. 535, 542 (Chk. 2003).

Even if the Chuuk Financial Control Commission were at some future time to assume its responsibility to develop legislation for appropriation to address court judgments when it has thus far declined to do so, payment of the judgment would still have to await legislative appropriation, a state of affairs that the principle of supremacy of the FSM Constitution does not countenance where a judgment based on a civil rights violation is concerned. Davis v. Kutta, 11 FSM R. 545, 549 (Chk. 2003).

The remedy for violation of a constitutional right, to be meaningful, must be one that can be realized upon in a reasonably expeditious manner. When more than six and a half years have elapsed since the judgment was entered, 6 F.S.M.C. 707, which prohibits the garnishment of funds owed by the FSM to a state, is unconstitutional as it applies to the case's judgment for a violation of civil rights guaranteed by the FSM Constitution. In practical terms, that statute takes from the plaintiff the only means of securing a reasonably expeditious satisfaction of the judgment. Davis v. Kutta, 11 FSM R. 545, 549 (Chk. 2003).

Although a state constitutional and a statutory provisions barring payment without a legislative appropriation are neither facially objectionable, what is not constitutionally permissible is to use the requirement defensively to avoid payment of a judgment based on a civil rights claim brought under the national civil rights statute. Principles of supremacy under Article II of the FSM Constitution preclude this result. Estate of Mori v. Chuuk, 12 FSM R. 3, 11 n.5 (Chk. 2003).

A state trial court order that does not address the question of national court judgments based on the violation of civil rights guaranteed under the FSM Constitution cannot provide guidance with respect to enforcement of the FSM Supreme Court civil rights judgments. Estate of Mori v. Chuuk, 12 FSM R. 3, 12 (Chk. 2003).

Civil rights causes of action survive the victim's death because if it did not then the national civil rights statute's purpose would be thwarted. Herman v. Municipality of Patta, 12 FSM R. 130, 135 (Chk. 2003).

Civil rights damages may include damages for the victim's pain and suffering before his death. Calculating damages for pain and suffering is difficult because no fixed rules exist to aid in that determination, which lies in the court's sole discretion. Herman v. Municipality of Patta, 12 FSM R. 130, 137 (Chk. 2003).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages. The usual method is to award fees based on the hourly rate. Thus the initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate. Herman v. Municipality of Patta, 12 FSM R. 130, 137 (Chk. 2003).

While a continency fee is not an arbitrary ceiling with respect to attorney's fees recoverable under an 11 F.S.M.C. 701(3) civil rights action, neither is it a floor. A contingency fee may be used as a basis for an attorney fee award when there are no contemporaneous records of the time the attorney had spent on the case, but since the point of departure for determining a reasonable fee under 11 F.S.M.C. 701(3) is to look at the amount of time spent, counsel in civil rights litigation should maintain careful records of time actually spent, notwithstanding the existence of any contingency fee agreement. Herman v. Municipality of Patta, 12 FSM R. 130, 137 (Chk. 2003).

When plaintiffs are awarded reasonable fees and costs as compensatory damages under 11 F.S.M.C.

701(3), the liability for this will be assessed upon the defendants in proportion to their total liability on the rest of the judgment. Herman v. Municipality of Patta, 12 FSM R. 130, 137-38 (Chk. 2003).

The court has granted writs of garnishment against funds held by the national government for the benefit of the State of Chuuk only in one instance, and that is where a judgment was entered against the state for violations of 11 F.S.M.C. 701 *et seq.*, the national civil rights statute. Barrett v. Chuuk, 12 FSM R. 558, 560 (Chk. 2004).

The FSM Congress has specifically acted to confer a cause of action for violation of civil rights, 11 F.S.M.C. 701 *et seq.*, and it is for judgments based on such claims that the court has issued writs of garnishment against the state. Barrett v. Chuuk, 12 FSM R. 558, 561 (Chk. 2004).

When issuing a writ of garnishment becomes necessary to satisfy a civil rights judgment, the judiciary is clearly empowered to do so. The fact that the garnished is a state within this federation (and the garnishee is the national government) does not change the analysis because the FSM Constitution guarantees this nation's citizens certain protections, and Congress has passed laws allowing its citizens to sue for damages where those rights have been violated. It is not for one state to roll back those rights and privileges afforded by the national government, and the court would be derelict in our duty to allow it to do so. The trial court's action case was thus appropriate and within the bounds of its authority. Chuuk v. Davis, 13 FSM R. 178, 186 (App. 2005).

The remedy for a victim of an illegal search is not the self-help of resistance. Resistance to such authority to search and seize by self-help is not recognized in courts of law. Whoever suffers the imposition of an unlawful police search has the assurance that any evidence so acquired is rendered inadmissible in a subsequent criminal trial by the exclusionary rule. And in any event damage remedies are available in the courts for violations of constitutional rights stemming from either an unlawful search or arrest. These remedies are present in the FSM. FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

When the acts that comprise the false imprisonment tort are also the acts that constitute the civil rights violations, the court will not make a separate award of damages for this tort, since to do so would result in a double recovery. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 493 (Pon. 2005).

When the plaintiff was unlawfully denied the right to make contact with anyone outside the jail, but his right to communicate with family members was further compromised when his wife was not permitted to speak with him on the telephone, the court will award $500; when he was confined in unconstitutional conditions of confinement, the court will award $10 an hour, or $635 for 63½ hours; for the residual effects of his detention that he experienced during the two weeks after he was released, including stomach problems and lingering numbness in his hands resulting from being handcuffed, the court will award $150; for being held in excess of 24 hours, an unambiguous right, the court will award $3,000 for the more than two and a half days in jail (a separate award for not being brought before a judge within the statutorily-required time); an additional $500 resulting from the unlawful arrest and $200 awarded for an unlawful search. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 499-500 (Pon. 2005).

A contingency fee agreement in a civil rights case acts as neither a floor nor a ceiling on attorney's fees awarded under the statute. Such a rule serves the purpose of helping to insure that an attorney will not be undercompensated where important civil rights have been vindicated, and increases the likelihood that a plaintiff who has a meritorious claim will have access to the courts. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 524, 526 (Pon. 2005).

An hourly rate of $120 is a reasonable hourly rate for trial time in civil rights action, and a rate of $100 per hour is a reasonable hourly rate for the out-of-courtroom time in a civil rights case. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 524, 526 (Pon. 2005).

When, in a civil rights case had all of the plaintiff's witnesses been deposed in advance of trial, the trial time would have been shortened, since the questioning of the plaintiff's undeposed witnesses was

conducted in the manner of a discovery deposition, the court will estimate the reduction in trial time at 20 percent, and will treat 20 percent of the court time as research time that could have been spent deposing witnesses and award the research rate of $100 an hour for that time instead of the $120 an hour rate for trial time. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 524, 526-27 (Pon. 2005).

Even assuming the pro se plaintiff had successfully prosecuted his discrimination claim and sought attorney's fees under the civil rights statute, the attorney's fees claim would still have been denied. A prevailing pro se litigant is not entitled to an award of attorney's fees even if he is an attorney or legal practitioner. Hauk v. Lokopwe, 14 FSM R. 61, 66 (Chk. 2006).

Damages under the civil rights act generally include only compensatory damages. Annes v. Primo, 14 FSM R. 196, 206 (Pon. 2006).

The prevailing party in civil rights actions under 11 F.S.M.C. 701(3) is entitled to reasonable attorney fees and costs of suit as part of compensatory damages. The court must first determine the reasonableness of any claim for attorney's fees and costs. The usual method of determining reasonable attorney's fees awards is based on an hourly rate. Thus the initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. Walter v. Chuuk, 14 FSM R. 336, 340-41 (Chk. 2006).

Any award of attorney's fees must be based upon a showing and a judicial finding, that the amount of fees is reasonable. The plaintiffs must therefore submit detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. Walter v. Chuuk, 14 FSM R. 336, 341 (Chk. 2006).

A civil rights cause of action survives the victim's death because, if it did not, the national civil rights statute's purpose would be thwarted. Lippwe v. Weno Municipality, 14 FSM R. 347, 352 (Chk. 2006).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages. So long as a party has prevailed in a civil rights suit as a whole, that party is entitled to fees for all time reasonably spent on the matter, including the time spent on pendent state law claims that would not otherwise be statutorily entitled to a fee award, if the pendent claims arise out of a common nucleus of operative fact as the civil rights claim. Lippwe v. Weno Municipality, 14 FSM R. 347, 354 (Chk. 2006).

An employee of a state or local government who is discharged in violation of the civil rights statutes has a duty to actively look for and accept any reasonable offer of employment, otherwise back pay damages cannot be awarded. Robert v. Simina, 14 FSM R. 438, 443 (Chk. 2006).

When there was no evidence of physical injury to any plaintiff or of any physical manifestation of emotional distress by any plaintiff, there can be no award of damages for pain and suffering even if the plaintiffs had proven they had been wrongfully discharged in violation of their civil rights. Robert v. Simina, 14 FSM R. 438, 443 (Chk. 2006).

In order to recover compensatory damages, the plaintiffs must prove actual injury from the civil rights deprivation. When, if proper procedure had been followed, the plaintiffs still would have been terminated from their positions, there is no actual injury to compensate with back pay or other benefits. Nominal damages may, however, be awarded for the deprivation of the important right to procedural due process. Robert v. Simina, 14 FSM R. 438, 444 (Chk. 2006).

Common-law courts traditionally have vindicated deprivations of certain "absolute" rights that are not shown to have caused actual injury through the award of a nominal sum of money. By making the deprivation of such rights actionable for nominal damages without proof of actual injury, the law recognizes the importance to organized society that those rights be scrupulously observed; but at the same time, it remains true to the principle that substantial damages should be awarded only to compensate actual injury or, in the case of exemplary or punitive damages, to deter or punish malicious deprivation of rights.

Because the right to procedural due process is "absolute" in the sense that it does not depend upon the merits of a claimant's substantive assertions, and because of the importance to organized society that procedural due process be observed, the denial of due process should be actionable for nominal damages without proof of actual injury. Robert v. Simina, 14 FSM R. 438, 444 (Chk. 2006).

A plaintiff who is awarded nominal damages is a prevailing party. As prevailing parties in a civil rights action, the plaintiffs are entitled to their fees and costs. Robert v. Simina, 14 FSM R. 438, 444 (Chk. 2006).

A person who deprives another of any right or privilege protected under 11 F.S.M.C. 701 shall be civilly liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, without regard to whether a criminal case has been brought or conviction obtained. In an action brought 11 F.S.M.C. 701, the court may award costs and reasonable attorney's fees to the prevailing party. Wainit v. FSM, 15 FSM R. 43, 46 n.1 (App. 2007).

In order to determine whether a judge is liable for damages for his actions, the court asks whether the judge was performing judicial acts and whether his court had jurisdiction. When the answer to both questions is yes, the judge was not acting in complete absence of all jurisdiction, even when he had clearly acted in excess of his jurisdiction, and the judge was therefore immune from any suit for compensatory or punitive damages for his actions, but that does not end the inquiry. When the plaintiff had obtained permanent prospective injunctive relief against the judge under the civil rights act, it was entitled to the attorney's fees and costs incurred in obtaining that relief in that case, but not for any expenses incurred in the state court case in which the judge had exceeded his jurisdiction even though the FSM Supreme Court had to enjoin him from conducting any further proceedings in it. Ruben v. Petewon, 15 FSM R. 605, 608 (Chk. 2008).

When the defendant state court judge's actions upon which the plaintiffs base this suit were judicial in nature and the state court is a court of general jurisdiction, which would have had the jurisdiction to consider a motion for relief of judgment if one had been filed, the judge did not act in complete absence of jurisdiction. But when he did clearly act grossly in excess of his jurisdiction and when the plaintiffs obtained permanent prospective relief against him in this case, they are entitled to their expenses including attorney's fees and costs under 11 F.S.M.C. 701(3) for bringing this action and are thus entitled to judgment as a matter of law on their civil rights claim for attorney's fees and costs. The costs and fees allowed will be for work in this case and not that for work in the related state court cases. Ruben v. Petewon, 15 FSM R. 605, 608-09 (Chk. 2008).

Reasonable travel costs are allowable when there is a showing that no counsel is available on the island where the litigation took place, but photocopying expenditures are generally disallowed, especially here where it cannot be determined what portion of those expense were incurred in bringing this action, and state court appellate filing fees are also disallowed since they are another court's filing fees and recoverable in that court. Ruben v. Petewon, 15 FSM R. 605, 609 (Chk. 2008).

Although a compelling state interest exists in protecting the state from garnishment and execution of its funds as governments cannot effectively administrate essential public services with litigants constantly raiding their coffers, but since Congress has created a statutorily-based action for civil rights violations as these violations are particularly egregious in that they infringe upon what we commonly recognize as unalienable human rights, what must be struck is an adequate balance between protecting a government's ability to maintain sufficient funds to operate and the ability to hold the government accountable for violating its citizens' most basic rights. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 2009).

The FSM civil rights statute is intended to provide an effective remedy when constitutional rights are violated. A fundamental role of the government, be it state or national, is to safeguard those rights. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 2009).

A statute is unconstitutional to the extent that it prohibits garnishment of state funds to satisfy a civil rights judgment, including civil rights judgments involving purely economic damages as well as those involving physical injury damages. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 2009).

The FSM Constitution's supremacy clause does not permit a state law to prevent the enforcement of a national statute which gives a private cause of action for rights guaranteed by the FSM Constitution, especially when it is the solemn obligation of state governments to uphold the principles of the FSM Constitution and to advance the principles of unity upon which the Constitution is founded. Barrett v. Chuuk, 16 FSM R. 229, 234-35 (App. 2009).

A ship captain will be awarded his attorney's fees and costs incurred in successfully bringing his counterclaim for civil rights violation and may submit his affidavit in support of his claim for fees and costs, which should meet the specificity standard. FSM v. Koshin 31, 16 FSM R. 350, 355 (Pon. 2009).

Although an arrestee, who was not informed of her rights to access to counsel when she was handcuffed, was told her full rights at the police station, this does not excuse the police's failure to advise her of rights regarding to access to counsel on the scene when she was first placed in handcuffs. Since the arrestee was not harmed by the failure to advise her, when she was first placed in handcuffs, of rights regarding to access to counsel, the state is liable to her for nominal damages in the amount of one dollar. Berman v. Pohnpei, 16 FSM R. 567, 576 (Pon. 2009).

A prevailing party in a civil rights lawsuit is, under 11 F.S.M.C. 701(3), entitled to costs and reasonable attorney's fees even when the attorneys are from a non-profit legal services corporation since the right to a reasonable attorneys' fees award is the client's not the attorney's, and the amount that the client actually pays (or whether the client actually pays) his attorney is irrelevant. Sandy v. Mori, 17 FSM R. 92, 96-97 (Chk. 2010).

When a plaintiff has prevailed on its civil rights claim, the court may award it costs and reasonable attorney's fees. Since any attorney's fees award must be based upon a showing and a judicial finding that the amount of fees requested is reasonable, the plaintiff may file and serve detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which it makes a compensation claim so that the defendant may have notice and an opportunity to challenge the reasonableness of the fees and costs sought by the plaintiff. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 111 (Pon. 2010).

When the plaintiff prevailed on its civil rights claims against one defendant but did not prevail on its civil rights claims against the other two defendants (although it did prevail on a trespass claim against them), the one defendant that the plaintiff prevailed against on civil rights claims should not be liable for the plaintiff's attorney's fees incurred in prosecuting its claims against the other two defendants or for fees incurred in its defense of claims that other two defendants prosecuted against the plaintiff. This is because 11 F.S.M.C. 701(3) allows civil liability against any person who deprives another of his constitutional rights, which includes an award of reasonable attorney's fees to the prevailing party, but otherwise the general rule is that the parties bear their own attorney's fees. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 148, 150 (Pon. 2010).

In a civil rights action, the court may award costs and reasonable attorney's fees to the prevailing party when a review of the relevant case law and the statute's permissive language indicate that such an award is merited. Higgins v. Kolonia Town, 17 FSM R. 254, 263 (Pon. 2010).

When the plaintiffs have not alleged facts from which the court can make out a claim against Pohnpei for civil rights violations and when they have not prevailed in their requests for injunctive relief, the court must deny their request for attorney's fees under 11 F.S.M.C. 702(8). Berman v. Pohnpei, 18 FSM R. 67, 73 (Pon. 2011).

The civil rights statute creates a civil cause of action, 11 F.S.M.C. 701(3), for the violation of any right, privilege, or immunity secured to him by the Constitution or laws of the Federated States of Micronesia. Iwo v. Chuuk, 18 FSM R. 182, 184 (Chk. 2012).

A civil rights fee award statute controls what the losing defendant must pay, not what the prevailing plaintiff must pay his lawyer. What a plaintiff may be bound to pay and what an attorney is free to collect under a fee agreement are not necessarily measured by the "reasonable attorney's fee" that a defendant must pay pursuant to a court order. Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

Subsection 701(3) is a fee-shifting statute that shifts the liability for attorney's fees from the client, the party usually liable under a fee agreement, to a non-prevailing party. In an FSM civil rights case, the court "may award costs and reasonable attorney's fees to the prevailing party." But it does not follow that the time an attorney actually expended on the case is the amount of time reasonably expended or that the hourly rate is reasonable. Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

An $100 hourly rate is certainly a reasonable rate for attorney work in a civil rights case when attorney's fees are awarded under 11 F.S.M.C. 701(3). Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

Time expended on a rehearing petition that was summarily denied was thus completely unproductive and otherwise unnecessary and did not afford any relief and the 3.4 hours spent on it must be disallowed. Kaminanga v. Chuuk, 18 FSM R. 216, 220 (Chk. 2012).

A prevailing party must be one who has succeeded on any significant claim affording it some of the relief sought. At a minimum, to be considered a prevailing party within the meaning of the civil rights fee-shifting statute, the plaintiff must be able to point to a resolution of the dispute which changes the legal relationship between itself and the defendant. Beyond this absolute limitation, a technical victory may be so insignificant as to be insufficient to support prevailing party status. Kaminanga v. Chuuk, 18 FSM R. 216, 220 (Chk. 2012).

When the plaintiff has pled civil rights violations and the court has found a violation of the plaintiff's due process rights, the plaintiff can be awarded his attorney's fees and costs. Poll v. Victor, 18 FSM R. 235, 246 (Pon. 2012).

The FSM Supreme Court has issued writs of garnishment directed toward the assets of a state government when the underlying cause of action is based on a violation of the national civil rights statute, but it has declined to issue a writ of garnishment where the judgment debtor was a state government and the judgment was based on ordinary breach of contract. The rationale for the issued writs was the FSM Constitution's Supremacy Clause, which must control regardless of a state constitutional provision, or national law, to the contrary. Kama v. Chuuk, 18 FSM R. 326, 334 (Chk. S. Ct. Tr. 2012).

Regardless of whether civil liability can be imposed for failing to inform an arrestee of her rights or for failing to inform her of the cause and authority of her arrest, civil liability will be imposed when it was illegal to arrest her without a warrant where she was arrested. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

In a civil rights case, a prevailing plaintiff is entitled to an award of costs and reasonable attorney's fees as part of compensatory damages. Alexander v. Pohnpei, 18 FSM R. 392, 401 (Pon. 2012).

The FSM civil rights statute's purpose is to allow a civil rights litigant to employ reasonably competent counsel to pursue civil rights litigation without cost to herself, particularly when the damages are small or uncertain and would not otherwise induce an attorney to pursue the matter. Alexander v. Pohnpei, 18 FSM R. 392, 401 (Pon. 2012).

The civil rights statute provides that in an action brought under it, the court may award costs and reasonable attorney's fees to the prevailing party. Poll v. Victor, 18 FSM R. 402, 404 (Pon. 2012).

When the FSM civil rights statute is not as expansive as 42 U.S.C. § 1988 because it allows an attorney's fee award only in an action brought under 11 F.S.M.C. 701(3) and when an "action" is a court case while a "proceeding" includes both administrative and judicial proceedings, 11 F.S.M.C. 701(3) does

not authorize the award of attorney's fees for administrative proceedings, even for administrative proceedings that were a prerequisite to a later court action (the exhaustion of administrative remedies requirement). It authorizes an attorney's fee award only for actions (court cases) brought under 11 F.S.M.C. 701(3). Poll v. Victor, 18 FSM R. 402, 405 (Pon. 2012).

Attorney's fees and expenses are not recoverable under 11 F.S.M.C. 701(3) in an eminent domain case filed by the petitioner state since it is not a civil rights case and the respondent is receiving the process due him under the Chuuk statute and Constitution and thus his civil rights have not been violated In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

In civil rights cases, the FSM Supreme Court has ordered garnishment of civil rights judgments from state funds held by the national government when civil rights judgments have gone unpaid for a long period of time. Alexander v. Pohnpei, 19 FSM R. 133, 135 (Pon. 2013).

When an unlawful detention was a violation of the plaintiff's right to due process, it was a civil rights violation, which under 11 F.S.M.C. 701(3) entitles him to reasonable attorney's fees and costs. Inek v. Chuuk, 19 FSM R. 195, 200 (Chk. 2013).

Where the evidentiary hearing or trial mandated by the appellate court is to determine the plaintiff's actual damages for the defendant's violation of the plaintiff's civil rights when it terminated the lot lease five months early, and where damages beyond the five-month period are contingent on whether the plaintiff should be granted a new or renewed lease to the lot, that is not the subject of the trial but is the subject of what will be a different proceeding. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 378 (Pon. 2014).

A wrongfully discharged employee is entitled to the equitable remedy of reinstatement to his former position. Reinstatement is appropriate even if the position has been filled by another employee since, if a replacement's existence constituted a complete defense against reinstatement, then reinstatement could be effectively blocked in every case simply by immediately hiring an innocent third-party after the unlawful discharge has occurred, thus rendering the reinstatement remedy's deterrent effect a nullity. Manuel v. FSM, 19 FSM R. 382, 392 (Pon. 2014).

A false imprisonment claim is separate and distinct from a civil rights claim, but, at the same time, it may serve as a basis for deprivation of liberty under the FSM civil rights statute. The relevant concern in this regard is that damages should not be awarded for both claims, since to do so would be to permit a double recovery. Kon v. Chuuk, 19 FSM R. 463, 466-67 (Chk. 2014).

Valuing the loss of a person's liberty interest because he was subjected to the cruel and unusual punishment of being forced to remain in jail for 161 days after his sentence had ended, is, like trying to calculate damages for pain and suffering, difficult because no fixed rules exist to aid in that determination, which lies in the court's sole discretion. Kon v. Chuuk, 19 FSM R. 463, 467 (Chk. 2014).

In an action brought under the civil rights statute, the court may award costs and reasonable attorney's fees to the prevailing party. Kon v. Chuuk, 19 FSM R. 463, 467 (Chk. 2014).

Chapter 7 of Title 11 of the FSM Code creates a statutory cause of action for individuals whose constitutional rights have been violated. It was enacted to safeguard the rights guaranteed to all FSM citizens under Article IV of the FSM Constitution. Panuelo v. FSM, 20 FSM R. 62, 68 (Pon. 2015).

When a plaintiff has alleged his due process rights were violated but it is proven otherwise, the plaintiff cannot recover under the civil rights statute. Panuelo v. FSM, 20 FSM R. 62, 68 (Pon. 2015).

Under 11 F.S.M.C. 701(3), the court may award costs and reasonable attorney's fees to the prevailing party in a civil rights case. Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 82 (Pon. 2015).

Since the FSM civil rights statute is not as expansive as 42 U.S.C. § 1988 because it allows an

attorney's fee award only in an "action" brought under 11 F.S.M.C. 701(3) and since an "action" is a court case while a "proceeding" includes both administrative and judicial proceedings, 11 F.S.M.C. 701(3) does not authorize the award of attorney's fees incurred for administrative proceedings, even for administrative proceedings that are a prerequisite to a later court action (the exhaustion of administrative remedies requirement). Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 83 (Pon. 2015).

Since the statute authorizes an attorney's fee award only for actions (court cases) brought under 11 F.S.M.C. 701(3), fees for attorney time spent preparing for, participating in, and reviewing administrative proceedings before an agency and before the Governor will be disallowed. Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 83-84 (Pon. 2015).

When the defendant is not liable for the attorney's fees incurred in the plaintiff's litigation against other parties against whom the plaintiff did not have a viable civil rights claim, the court will disallow an attorney fee request for work solely in response to motions filed by those other defendant parties. Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 84 (Pon. 2015).

The court will allow fees for attorney time spent reviewing the appellate court's mandate as that was part of the process leading to trial on civil rights damages. Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 84 (Pon. 2015).

An FSM statute, 11 F.S.M.C. 701(3), creates a private right of action against any person, including governmental entities, for the violation of rights guaranteed by the Constitution. Palasko v. Pohnpei, 20 FSM R. 90, 94 (Pon. 2015).

In a civil rights case, even if the plaintiff has failed to prove any actual damages, the court can award nominal damages because of the importance of vindicating certain fundamental rights, but when there was no evidence introduced from which the court could draw the inference that the plaintiff's termination was the result of religious discrimination, there was thus no prima facie case made out on the civil rights claim. George v. Palsis, 20 FSM R. 111, 117 (Kos. 2015).

The burden of proof is upon the plaintiffs to show the fact and extent of the injury and the amount or value of damages. Determination of damages is an essential element of the plaintiffs' cause of action, which, at trial, the plaintiffs must prove as to amount by a preponderance of evidence. Linter v. FSM, 20 FSM R. 553, 562 (Pon. 2016).

When the evidence shows that the plaintiffs did in fact perform work during the relevant time period and that the standard operating procedure for many years was to submit employee-created time sheets similar to those that the plaintiffs submitted and when the government concedes that, if there was a valid contract, the plaintiffs would have been paid based on the submission of the same time sheets, there is sufficient evidence to carry the plaintiffs' burden on damages. Linter v. FSM, 20 FSM R. 553, 562 (Pon. 2016).

In an action brought under 11 F.S.M.C. 701(3), the court may award costs and reasonable attorney's fees to the prevailing party. Linter v. FSM, 20 FSM R. 553, 562 (Pon. 2016).

COMMERCE

A statute of limitations begins to run when the cause of action accrues. When a complaint alleges that a defendant's anticompetitive actions forced the plaintiff out of business the cause of actions accrues when the plaintiff went out of business. AHPW, Inc. v. FSM, 9 FSM R. 301, 304 (Pon. 2000).

Whether Pohnpei's power to regulate trochus means that any action which has an arguably regulatory effect on trochus cannot constitute an anticompetitive practice is an issue for trial, and a motion to dismiss in this respect must be denied. AHPW, Inc. v. FSM, 9 FSM R. 301, 304 (Pon. 2000).

Title 32, sections 301 *et seq.* date from the Trust Territory period but continue in effect pursuant to the FSM Constitution's Transition Clause. AHPW, Inc. v. FSM, 9 FSM R. 301, 305 (Pon. 2000).

The State of Pohnpei is deemed a person within the meaning of section 306 of the Anticompetitive Practices statute and may be a defendant as well as a plaintiff in suits brought under the statute. AHPW, Inc. v. FSM, 9 FSM R. 301, 305 (Pon. 2000).

A party to a commercial transaction, not one primarily for personal, family, or household purposes, may not bring a cause of action under Title 34 of the FSM Code since Title 34 only provides for consumer protection. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 77 (Pon. 2001).

32 F.S.M.C. 306(2) creates a civil cause of action under national law for violations of the prohibitions against anti-competitive practices. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 203 (Pon. 2001).

A case that asserts five causes of action under 32 F.S.M.C. 301 *et seq.*, is one that "arises under national law" within the meaning of Article XI, section 6(b). Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 203 (Pon. 2001).

The venue provision of 32 F.S.M.C. 306(2) must be read in conjunction with the service provisions of the FSM "long-arm statute," 4 F.S.M.C. 204, and with the FSM Code's venue provisions. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204 (Pon. 2001).

A foreign corporation served pursuant to 4 F.S.M.C. 204 may be sued within the FSM for violations of 32 F.S.M.C. 302 or 303, regardless of where the service occurs, so long as that foreign corporation has done specific acts within the FSM to bring it within the jurisdiction of the FSM Supreme Court. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204-05 (Pon. 2001).

Any person who is injured by another's violation of 32 F.S.M.C. 302 or 303 may sue therefor where the defendant resides or where service may be obtained, and may recover three times the damages sustained by him together with a reasonable attorney's fee and the costs of suit. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 413 (Pon. 2001).

There is no common law tort of unfair competition in the FSM because that field of law has been preempted by the Consumer Protection Act of 1970. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 414 (Pon. 2001).

Because the national government has the exclusive power to regulate foreign and interstate commerce, the Consumer Protection Act is the law of the FSM insofar as any advertising, sale, offer or distribution involves commerce between the states of the FSM or with any foreign entity. The Consumer Protection Act also is the law of the states of the FSM, insofar as it involves commerce which is intrastate and has not been repealed by the state legislatures. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 415 (Pon. 2001).

The Consumer Protection Act of 1970 exclusively provides the means by which unfair competition between businesses should be dealt with under both national and applicable state law. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 415 (Pon. 2001).

The Consumer Protection Act vests consumers with a civil cause of action against anyone engaged in activity which is deceptive or misleading, and authorizes the Attorney General to seek injunctive relief against such activity, to prosecute criminal violations of the Act, and to seek civil and criminal penalties against those who violate the Act. The Act does not provide a means for recourse by businesses against other competing businesses. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 415-16 Pon. 2001).

The Consumer Protection Act abolishes any common law action for unfair competition. Businesses do not have standing to sue competitors for violations of 34 F.S.M.C. 103, including passing off goods or

services as those of another. Because Congress has legislated comprehensively in this field, it should be Congress that decides whether to provide businesses with a private cause of action against competitors for engaging in unfair competition. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 416 (Pon. 2001).

Attempts to threaten or induce merchants not to sell competing products violate 32 F.S.M.C. 303. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 417 (Pon. 2001).

When it is not clear whether the plaintiff can demonstrate the type of illegal "combination" contemplated by 32 F.S.M.C. 302, and there is no relevant case law found in the FSM which interprets the anti-competitive practices law and when the court does not have before it any evidence of the parties' relative market shares, it is difficult to evaluate the likelihood of success of plaintiff's claims under 32 F.S.M.C. 301 *et seq*. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 417 (Pon. 2001).

The Attorney General has the authority to prosecute violations of the Consumer Protection Act, but private business entities do not. The Act recognizes that unfair or deceptive trade practices are criminal, and also confers standing on consumers who are injured by the practices to recover their actual damages or $100, whichever is greater. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 418 (Pon. 2001).

In commercial credit transactions, no person may directly or indirectly receive or charge interest which exceeds an annual percentage rate of twenty-four percent. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 475, 477 (Pon. 2001).

The term "counterfeit" has a specific legal meaning: to forge; to copy or imitate, without authority or right, and with a view to deceive or defraud, by passing the copy or thing forged for that which is original or genuine. Yang v. Western Sales Trading Co., 11 FSM R. 607, 616 (Pon. 2003).

Goods received through unauthorized distribution networks often are referred to as "gray market" goods, or parallel products. Gray market goods are genuine products possessing a brand name protected by trademark or copyright, which are typically manufactured abroad and then purchased and imported by third parties, bypassing authorized distribution channels. Yang v. Western Sales Trading Co., 11 FSM R. 607, 617 (Pon. 2003).

Summary judgment will be granted when, viewing the facts in the light most favorable to the plaintiff, the defendant national government's $40,000 appropriation did not, as a matter of law, violate any of the plaintiff's constitutional rights since the allotment was not a subsidy or other payment to pepper farmers that arguably reduced or otherwise affected its competitive advantage in a way that violated its constitutional rights and when the court does not construe this allotment as some form of financing of Pohnpei's allegedly unlawful activities. Any connection between the FSM allotment and the destruction of AHPW's pepper business is too remote since there is no showing that the allotment caused, or even contributed to the cause of, the destruction of its pepper operation. AHPW, Inc. v. FSM, 12 FSM R. 114, 118 (Pon. 2003).

Since it is not competition, but anticompetitive practices that is proscribed and since nothing in the record suggests that at the time of its 1995 allotment to Pohnpei, the FSM had any knowledge that Pohnpei intended to engage in unfair competitive practices, the FSM's allotment did not constitute, as a matter of law, an anticompetitive practice. AHPW, Inc. v. FSM, 12 FSM R. 114, 119 (Pon. 2003).

Pohnpei is a "person" for purposes of the anticompetition statutes. AHPW, Inc. v. FSM, 12 FSM R. 114, 123 (Pon. 2003).

Competition is not what 32 F.S.M.C. 301 *et seq.* proscribes, but rather anticompetitive practices. AHPW, Inc. v. FSM, 12 FSM R. 114, 123 (Pon. 2003).

Title 32, chapter 3 of the FSM Code prohibits anticompetitive conduct, not competition. AHPW, Inc. v.

FSM, 12 FSM R. 164, 168 (Pon. 2003).

The regulation of businesses is an exercise of the police power, recognized as necessary to protect the public health, morals and welfare. Regulation of intoxicating liquors pursuant to the police power is recognized in virtually every jurisdiction. Ceasar v. Uman Municipality, 12 FSM R. 354, 357 (Chk. S. Ct. Tr. 2004).

Since the police power is an incident of state sovereignty, municipal exercise of the police power may only occur when delegated by the state, and since municipalities ordinarily have no original police power, they have only such authority with respect to intoxicating liquors as is conferred upon them by the state, either in express terms or by implication. Thus, if a municipality is to have the legal right to regulate the possession and sale of alcoholic beverages, that right must have been delegated to it by the state legislature. Ceasar v. Uman Municipality, 12 FSM R. 354, 357-58 (Chk. S. Ct. Tr. 2004).

Chuuk municipalities once had the delegated right to regulate alcoholic beverage sales, but in 2001 the state legislature made major revisions to the law pertaining to intoxicating liquors and placed exclusive jurisdiction over the regulation of alcoholic beverages in the state. The Chuuk Legislature's enactment removed any prior municipal authority to regulate the possession and sale of alcoholic beverages – a municipality may not by imposition of licensing fees or taxes regulate the possession or sale of such substances. Ceasar v. Uman Municipality, 12 FSM R. 354, 358 (Chk. S. Ct. Tr. 2004).

Under 32 F.S.M.C. 302(3), it is illegal for one or more persons to create or use an existing combination of capital, skill, or acts the effect of which is to prevent competition in the manufacture, making, transportation, sale, or purchase of any merchandise, produce, or commodity. The State of Pohnpei is a "person" for purposes of this statute. AHPW, Inc. v. FSM, 12 FSM R. 544, 551 (Pon. 2004).

"Competition" means the effort of two or more parties, acting independently, to secure the business of a third party by the offer of the most favorable terms. "Merchandise" and "commodity" are similar enough in meaning to be interchangeable: "merchandise" is defined as each commodity bought and sold by merchants, while "commodity" is defined as any movable or tangible thing used in commerce as the subject of trade or barter. "Produce" as a noun means articles produced or grown from or on the soil. AHPW, Inc. v. FSM, 12 FSM R. 544, 551 (Pon. 2004).

When Pohnpei arbitrarily set the $1 a pound price for the purchase of pepper from the pepper farmers, a price that bore no relation to the world market price, it created a market condition with which Island Traders could not compete and was not able to purchase the raw pepper it required for its operations. Pohnpei thus prevented competition in the purchase of produce, and by preventing Island Traders from acquiring raw pepper for processing, Pohnpei also prevented competition in the manufacture of merchandise; the merchandise being the finished, processed pepper. Viewed in either light, Pohnpei violated 32 F.S.M.C. 302(3). AHPW, Inc. v. FSM, 12 FSM R. 544, 551-52 (Pon. 2004).

It is unlawful for a person to fix the price of a commodity. This prohibition against fixing the price charged for goods, merchandise, machinery, supplies, or commodities is directed toward sale, and not the purchase, of goods and does not apply when the facts do not involve selling of raw pepper, but conduct in purchasing raw pepper at an anticompetitive price. AHPW, Inc. v. FSM, 12 FSM R. 544, 552 (Pon. 2004).

Under 32 F.S.M.C. 302(2), it is illegal for one or more persons to create or use an existing combination of capital, skill, or acts the effect of which is to limit or reduce the production, or increase the price of, merchandise or any commodity. "Production" means that which is made; i.e. goods, or the fruit of labor, as the productions of the earth, comprehending all vegetables and fruits. AHPW, Inc. v. FSM, 12 FSM R. 544, 552 (Pon. 2004).

When Pohnpei's refusal to hold a trochus harvest allegedly stemmed from environmental concerns, but all of the reports addressing this issue recommended that a trochus harvest be held and the concern was not that there would be too little trochus, but that there would be too much, nothing stood in the way of reasonable limitations on the harvest that could have harmonized both Pohnpei's legitimate environmental

concerns and the national law requirement that it not limit the production of any commodity. Failure to do so violated 32 F.S.M.C. 302(2). AHPW, Inc. v. FSM, 12 FSM R. 544, 552 (Pon. 2004).

Anticompetitive conduct is tortious in nature. AHPW, Inc. v. FSM, 12 FSM R. 544, 553 (Pon. 2004).

Loss of future profits is a well-established basis for determining the measure of economic injury resulting from an anticompetitive act which forces the victim out of business. AHPW, Inc. v. FSM, 12 FSM R. 544, 554, 555 (Pon. 2004).

In unfair trade practices cases, courts draw a distinction between the amount of proof necessary to show that some damages resulted from the wrong, and the amount of proof necessary to calculate the exact amount of the damages. A lower burden of proof applies because the most elementary conception of justice and public policy require that the wrongdoer shall bear the risk of the uncertainty which his own wrong has created. AHPW, Inc. v. FSM, 12 FSM R. 544, 554 (Pon. 2004).

In anticompetitive practices cases where causation is established, the burden of proving damages is much less severe. This rule of leniency with regard to proof of damages is necessary because any other rule would enable the wrong-doer to profit by his wrongdoing at his victim's expense. It would be an inducement to make wrongdoing so effective and complete in every case as to preclude any recovery, by rendering the measure of damages uncertain. Once the fact of damage is established with reasonable certainty, the amount of damages need only be shown with as much certainty as the tort's nature and the case's circumstances permit. In such cases, if it is uncertain and speculative and whether damages have been incurred, then damages will be denied; however, if it is only the amount of the damages that presents the uncertainty, then the court will allow recovery so long as there is proof of a reasonable basis from which the amount can be approximated or inferred. AHPW, Inc. v. FSM, 12 FSM R. 544, 554 (Pon. 2004).

When there is no doubt about the violation of 32 F.S.M.C. 302(2), but when there is nothing of record to establish that even if a trochus harvest had been held after 1994, the plaintiff would have been successful in purchasing enough trochus so that it would have had an adequate source of supply for its button operation, the plaintiff has failed to establish that it was damaged by the defendant's conduct as proscribed 32 F.S.M.C. 302(2). Since that conduct was tortious in nature, the plaintiff is entitled only to nominal damages. AHPW, Inc. v. FSM, 12 FSM R. 544, 555 (Pon. 2004).

Damages under 32 F.S.M.C. 306(2) are subject to trebling. AHPW, Inc. v. FSM, 12 FSM R. 544, 555, 556 (Pon. 2004).

Averaging three years of normal operations when the pepper supply was continuous when the manufacturing process was uninterrupted to arrive at an annual profit, is a projection that provides a reasonable basis from which a plaintiff's lost profits can be approximated or inferred under the lower burden of proof applicable for damages in anticompetitive practices cases. AHPW, Inc. v. FSM, 12 FSM R. 544, 555 (Pon. 2004).

When the conduct's nature was discrete and specific, and would have been amenable to injunctive relief had the plaintiff sought it, once that relief had been awarded there could have been no prospective damages since the conduct giving rise to those damages would necessarily have ceased. There should be no recovery for further diminution of a business's value, predicated on the defendant's continuing wrongdoing, after the defendant has been enjoined. The court will thus not award prospective damages from the time of the lawsuit's filing onward because injunctive relief, to which the claim would have been amenable, would have terminated the conduct complained of. But since under the continuing tort doctrine, a plaintiff is entitled to recover all of the damages that result from on-going tortious conduct, even though the inception of the conduct lies outside the limitations period, the court will award damages from the start of the anticompetitive pepper processing operation in mid-1995 until the plaintiff filed suit. AHPW, Inc. v. FSM, 12 FSM R. 544, 555-56 (Pon. 2004).

When claims of damages for sums the plaintiff owed to third parties on the theory that since its

business operations were destroyed by the defendant's conduct, it cannot pay back those amounts, would have depended for their repayment on profits that the operation would have made but for the defendant's conduct. Since future profits are the measure of the business's damages, to allow a separate recovery for these sums would be to permit a double recovery. AHPW, Inc. v. FSM, 12 FSM R. 544, 556 (Pon. 2004).

When the lack of details provided in an attorney's fee affidavit is problematic, but Congress felt that the policy concerns underlying 32 F.S.M.C. 301 *et seq.* were strong, because a successful plaintiff may recover both reasonable attorney's fees and treble damages and the plaintiff has successfully vindicated an interest protected by this statute and when the case presented complex, novel issues and the relief sought was ultimately achieved, in lieu of denying a fee request altogether, the court may reduce the amount of the fee claimed. AHPW, Inc. v. FSM, 13 FSM R. 36, 41 (Pon. 2004).

The usual cause of action when a governmental entity has exercised its regulatory powers improperly is a constitutional due process claim. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 15 (App. 2006).

A state must abide by the same rules as anyone else engaging in business or in the market. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 17 (App. 2006).

Even under national law, sovereigns, any sovereign, have sovereign immunity. But sovereigns are generally considered to have waived that immunity when the sovereign has acted as a participant in commerce instead of as a sovereign. It would seem unfair if a state, as a competitor in a commercial enterprise, could not be held liable and assessed the same damages that another commercial competitor, who committed the same acts, would be assessed. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 20 n.5 (App. 2006).

The Constitution expressly grants the national government, not the state governments, the power to regulate foreign and interstate commerce, and taxation is a form of regulation. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 531 (Chk. 2011).

The court cannot accept an interpretation that operating a business within Pohnpei is, in and of itself, sufficient to establish the applicability of Pohnpei state tax law due to minimum contact analysis because to accept it would be to accept that a business whose task it is to act as an intermediary or broker between two clients – a producer and a consumer – who are both based outside the FSM would be assessed the Pohnpei first commercial sales tax, even if the tangible personal property never entered Pohnpei since this is the very heart and soul of international commerce. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 32 (Pon. 2011).

Goods cannot properly be deemed to have been sold until both parties to the sale have performed. Performance by the buyer requires payment in full or execution of some sort of instrument of credit which the seller is willing to accept in lieu of payment in full. Performance by the seller requires delivery. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 34 (Pon. 2011).

Whatever commercial banking business standards might apply to a bank cannot be the same as those for a retail/wholesale store. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 359 (App. 2012).

For a retail/wholesale store to cash checks with a corporate payee, particularly a large, off-island corporate payee with an off-island address printed on the check's face, with only an individual's personal endorsement and without written authorization from the corporate payee cannot possibly be considered a good faith commercial business standard. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 359 (App. 2012).

As a matter of law, no individual can ever have the apparent authority to cash a check that has a corporation as the payee, and, as a matter of law, any business that cashes such a check with a corporate payee is not engaged in a commercially reasonable business practice. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 359-60 (App. 2012).

COMMON LAW

There appears to be uniform acceptance by common law jurisdictions of the principle that government officials are considered employees for income tax purposes. This amounts to a common law rule of taxation and yields a result in harmony with the underlying principles of the taxation system established by the Federated States of Micronesia Income Tax Law. Rauzi v. FSM, 2 FSM R. 8, 12 (Pon. 1985).

By its terms, 1 F.S.M.C. 203 pointing to the *Restatements* as a guide for determining and applying the common law applies only to "courts of the Trust Territory." Since only courts established by the Trust Territory administration existed when the section was issued, it plainly was intended only for those courts at that time. In absence of any persuasive considerations to the contrary, it is logical to conclude that 1 F.S.M.C. 203 applies only to courts of the Trust Territory, not to courts of the Federated States of Micronesia or the various states. Rauzi v. FSM, 2 FSM R. 8, 14 (Pon. 1985).

1 F.S.M.C. 203, with its sweeping mandate that the *Restatements* and other common law rules as applied in the United States be the "rules of decision," would lure the courts in a direction other than that illuminated by the Constitution's Judicial Guidance Provisions, FSM Const. art. XI, § 11, which identifies as the guiding star, not the *Restatement* or decisions of United States courts concerning common law, but the fundamental principle that decisions must be "consistent" with the "Constitution, Micronesian custom and tradition, and the social and geographical configuration of Micronesia." Rauzi v. FSM, 2 FSM R. 8, 14 (Pon. 1985).

The FSM Supreme Court can and should consider the *Restatement* and reasoning of courts in the United States and other jurisdictions in arriving at its own decisions although it is not bound by those decisions and must not fall into the error of adopting the reasoning of those decisions without independently considering suitability of that reasoning for the Federated States of Micronesia. Rauzi v. FSM, 2 FSM R. 8, 14-15 (Pon. 1985).

No common law rule has been applied universally in all contexts to determine the status of government officials. Rauzi v. FSM, 2 FSM R. 8, 15 (Pon. 1985).

The common law for the Federated States of Micronesia referred to at 54 F.S.M.C. 112(3) is not based upon the law of England at the time of the American Revolution but upon the law of the United States, the Trust Territory and other nations in the common law tradition up to the initiation of constitutional government in 1979. Rauzi v. FSM, 2 FSM R. 8, 17 (Pon. 1985).

Common law principles may be drawn from statutes as well as court decisions. While the common law is articulated through court decisions, it has its source in legislative action as well as court decisions. Rauzi v. FSM, 2 FSM R. 8, 17 (Pon. 1985).

Comparative negligence, which has displaced contributory negligence in most jurisdiction in the United States, should be given careful consideration by courts even though the *Restatement (Second) of Torts* refers only to contributory negligence and is silent about comparative negligence. There is reason to doubt that the FSM Supreme Court is bound by 1 F.S.M.C. 203 pointing to the *Restatements* as a guide for determining and applying the common law. Ray v. Electrical Contracting Corp., 2 FSM R. 21, 23 n.1 (App. 1985).

The Micronesian Constitutional Convention anticipated that judges in the new constitutional court system would find it necessary to draw on experience and decisions of courts in other nations to develop a common law of the Federated States of Micronesia. The framers recognized the desirability of such a search and amended the earlier draft of the provision to be sure to leave it open to the constitutional courts to do so. Nonetheless, judges now are not to consider the relationship between the common law of the United States and the legal system here in the same way that relationship was viewed prior to self-government. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 139 (Pon. 1985).

Common law decisions of the United States are an appropriate source of guidance for this court for contract and tort issues unresolved by statutes, decisions of constitutional courts here, or custom and tradition within the Federated States of Micronesia. Review of decisions of courts of the United States, and any other jurisdictions, must proceed however against the background of pertinent aspects of Micronesian society and culture. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 142 (Pon. 1985).

A generally recognized principle of the common law is that questions neither brought to the attention of the court nor ruled upon are not to be considered as having been decided so as to constitute precedents. Semens v. Continental Air Lines, Inc. (II), 2 FSM R. 200, 204 (Pon. 1986).

Common law decisions of the United States are an appropriate source of guidance in addressing claims of abuse of process within the Federated States of Micronesia. Mailo v. Twum-Barimah, 2 FSM R. 265, 268 (Pon. 1986).

In considering the law concerning secured transactions, the FSM Supreme Court must look for guidance of the pre-UCC common law and may only declare the existence of such security interests as have been found by other courts to exist in the absence of statutes. Bank of Guam v. Island Hardware, Inc., 2 FSM R. 281, 288 (Pon. 1986).

When confronted with an issue of first instance, the Pohnpei Supreme Court may look beyond prior state experience for guidance, including looking towards the common law and United States precedents. People of Kapingamarangi v. Pohnpei Legislature, 3 FSM R. 5, 10 (Pon. S. Ct. Tr. 1985).

The Pohnpei Supreme Court may look to Pohnpeian customs and concepts of justice when there are no statutes governing the subject matter, but it may also draw from common law concepts when they are appropriate. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 64 (Pon. S. Ct. Tr. 1986).

A "general security agreement," without more does not establish a lien under common law or pursuant to any statute in the Federated States of Micronesia. In re Island Hardware, 3 FSM R. 332, 342 (Pon. 1988).

United States statutes regarding ships' mortgages will not be adopted as the common law of the Federated States of Micronesia, because their purposes are not applicable to the FSM and because their changing nature and complexity are not conducive to forming the basis of the common law of this nation. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 57, 59-60 (Truk 1989).

Where there are no directly controlling statutes, cases or other authorities within the Federated States of Micronesia, it may be helpful to look to the law of other jurisdictions, especially the United States, in formulating general principles for use in resolving legal issues bearing upon the rights of public employees and officers, in part because the structures of public employment within the Federated States of Micronesia are based upon the comparable governmental models existing in the United States. Sohl v. FSM, 4 FSM R. 186, 191 (Pon. 1990).

Statutory changes overruling previous judicial rulings may fundamentally alter the general law in the area newly governed by statute. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 372 (App. 1990).

Chuuk State has adopted common law tort principles as the law of Chuuk State where no specific constitutional or traditional impediment to its adoption exists. Epiti v. Chuuk, 5 FSM R. 162, 165 (Chk. S. Ct. Tr. 1991).

Under the common law the death of a criminal appellant pending appeal abates the proceedings ab initio – not only the appeal but all proceedings from the inception of the prosecution, thus requiring the appellate court to dismiss the appeal, and remand the case to the trial court to vacate the judgment and

dismiss the information. Palik v. Kosrae, 6 FSM R. 362, 364 (App. 1994).

Common law tort principles from other jurisdictions have previously been adopted by the Chuuk State Supreme Court where there has been no constitutional or traditional impediment to doing so. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 455 (Chk. 1994).

Common law decisions of the United States are an appropriate source of guidance for the FSM Supreme Court for contract issues unresolved by statutes, decisions of the constitutional courts here, or custom and tradition within the Federated States of Micronesia, but review of decisions of courts of the United States or other jurisdictions, must proceed against the background of pertinent aspects of Micronesian society and culture. Black Micro Corp. v. Santos, 7 FSM R. 311, 314 (Pon. 1995).

The common law of the United States and other nations in the common law tradition, up to the initiation of constitutional self-government in the FSM in 1979, is an essential part of the common law of Yap, but a court ought not fall into the error of adopting the reasoning of other common law jurisdictions' decisions without independently considering their suitability for Yap. Gimnang v. Yap, 7 FSM R. 606, 609 (Yap S. Ct. Tr. 1996).

United States common law decisions are an appropriate source of guidance for this court for contract and tort issues unresolved by statutes, decisions of constitutional courts here, or custom and tradition within the Federated States of Micronesia. United States courts have generally followed the provisions of the Restatement of Torts in situations where a plaintiff alleges that a defendant has negligently prevented a third party from rendering assistance. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 293-94 (Pon. 1998).

When FSM courts have not yet addressed an issue, the court may look to the Restatement and to decisions from jurisdictions in the common law tradition outside the FSM, all the while keeping in mind the suitability for the FSM of any given common law principle. Senda v. Semes, 8 FSM R. 484, 495 (Pon. 1998).

United States common law decisions are an appropriate source of guidance for the Kosrae State Court for tort issues unresolved by statutes, decisions of constitutional courts here, or custom and tradition within the Federated States of Micronesia. Talley v. Lelu Town Council, 10 FSM R. 226, 234, 236 (Kos. S. Ct. Tr. 2001).

The legislature has the power to modify or abolish common law rights or remedies and may supersede the common law without an express directive to that effect, as by adoption of a system of statutes comprehensively dealing with a subject to which the common law rule related. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 416 (Pon. 2001).

When the court looks to common law sources in considering the nature of the legislative privilege enjoyed by members of the Pohnpei Legislature, it is mindful of Article XI, section 11 of the FSM Constitution, which requires that FSM Supreme Court decisions be consistent with the Constitution, Micronesian customs and traditions, and the social and geographical configuration of Micronesia. AHPW, Inc. v. FSM, 10 FSM R. 420, 423 (Pon. 2001).

Although the court has previously recognized claims for indemnity based on contractual provisions between two parties, in the absence of a contractual provision it will not create a common law indemnity claim, therefore, in the absence of any contractual provisions between the parties, there is no basis for a claim of indemnity by a defendant against a plaintiff, the court will dismiss the defendant's counterclaim for indemnity. Primo v. Semes, 11 FSM R. 324, 329 (Pon. 2003).

At common law, a person is free to adopt and use any name he or she chooses, so long as there is no fraudulent purpose, and the name does not infringe on the rights of others. In re Suda, 11 FSM R. 564, 566 (Chk. S. Ct. Tr. 2003).

The right to assume any name, absent fraud or infringement of the rights of others, operates at common law independently of any court order. In the absence of a statute to the contrary, any person may ordinarily change his name at will, without any legal proceedings, merely by adopting another name. In re Suda, 11 FSM R. 564, 566 (Chk. S. Ct. Tr. 2003).

The court will recognize claims for indemnity based on contractual provisions between two parties, but, in the absence of a contractual provision, it will not create a common law indemnity claim. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 347 (Pon. 2004).

The court may employ a common law principle from other jurisdictions with a common law tradition when it is not contrary to the FSM Constitution, statutes, or custom and tradition and if it is suitable for adoption here. Lee v. Han, 13 FSM R. 571, 576 n.2 (Chk. 2005).

Although the FSM Code permits the restatements to be used when applying rules of common law in the absence of written law, the court can give the Restatement no such weight when interpreting written law – a congressionally-enacted statute. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 24 (App. 2006).

U.S. courts' common law decisions are an appropriate source of guidance for the FSM Supreme Court for contract and tort issues unresolved by statutes, decisions of constitutional courts here, or custom and tradition within the FSM. The FSM Constitution's judicial guidance clause requires that the court's review of U.S. courts' decisions proceed against the background of pertinent aspects of Micronesian society and culture, but where the business activities which gave rise to the lawsuit are not of a local or traditional nature, and the work setting and the work itself are of a markedly non-local, international character, the court need not conduct an intense search for applicable customary laws and traditional rules when none have been brought to its attention by the parties and none are apparent. Reg v. Falan, 14 FSM R. 426, 430 n.1 (Yap 2006).

Stare decisis is the doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points of law arise again in litigation. Stare decisis requires that the same rule of law previously announced be applied to any succeeding cases with similar facts. Nakamura v. Chuuk, 15 FSM R. 146, 149-50 (Chk. S. Ct. App. 2007).

When there is no guidance from FSM case law or statutes, it is appropriate to look to the common law of the United States because United States common law decisions are an appropriate source of guidance for contract and tort issues unresolved by statutes, decisions of constitutional courts here, or custom and tradition in the FSM. Jano v. Fujita, 15 FSM R. 405, 408 (Pon. 2007).

Where there is no specific precedent in FSM case law, the court may consider cases from other jurisdictions in the common law tradition. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 652 (Pon. 2008).

When no FSM case has discussed the specific elements of the causes of action for interference with contractual relations or interference with prospective business advantage, the court may consider authorities from other jurisdictions in the common law tradition. Jano v. Fujita, 16 FSM R. 323, 327 (Pon. 2009).

When prior FSM cases have not addressed a precise point, the court, in such instances, may look to authorities from other jurisdictions in the common law tradition. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438 n.3 (Pon. 2009).

Although the FSM Supreme Court has recognized claims for indemnity based on contractual provisions between two parties, and required precise clarity in the indemnification clause language, it is not prepared to create a common law indemnity claim. Thus, even assuming the court had found any defendant liable, when no contractual provision for indemnification between the plaintiff and any of the

defendants was presented to the court, the plaintiff's claim for indemnity fails. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 458 (Pon. 2009).

In instances where there is no FSM precedent, such as whether to require an attorney to appear for a corporation (although it has been a rather long-standing practice in the FSM Supreme Court), the court may consider cases from other jurisdictions in the common law tradition. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 n.2 (Pon. 2011).

Although the FSM Supreme Court may not be bound by 1 F.S.M.C. 203, which points to the Restatements as the rules of decision for courts in determining and applying the common law, that FSM Code provision does permit the Restatements to be used when applying common law rules in the absence of written law, while keeping in mind the suitability for the FSM of any given common law principle. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 n.14 (Pon. 2011).

Courts are statutorily authorized to consider the common law as expressed in the ALI Restatements of Law. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 n.3 (App. 2012).

Since, although courts are not bound to adopt common-law doctrines, they may, by statute, use the Restatements of the Law as the rules of decision to determine and apply the common law in the absence of written law while keeping in mind the suitability of any given common law principle for the FSM, if a court were to recognize an equitable indemnity cause of action, its elements would be those set forth in the Restatement. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 365 (App. 2012).

Statute law authorizes the court to consider the common law as expressed in the ALI Restatements of Law. Ruben v. Chuuk, 18 FSM R. 425, 430 n.1 (Chk. 2012).

Common law decisions from U.S. sources are an appropriate source of guidance for the FSM Supreme Court for contract and tort issues unresolved by statutes or decisions of constitutional courts within the FSM. Ihara v. Vitt, 18 FSM R. 516, 526 (Pon. 2013).

Customary law takes precedence over the common law. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 272 n.3 (Pon. 2015).

When presented with an issue of first impression and the absence of FSM case law on point, the court will examine relevant U.S. decisions for guidance and may look to authorities from other jurisdictions in the common law tradition. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

COMPACT OF FREE ASSOCIATION

Under the Compact of Free Association and the Federal Programs and Services Agreement, civilian employees of the United States government have immunity from civil and criminal process for wrongful acts and omissions done within the scope and in performance of official duty, unless expressly waived by the U.S. government. Samuel v. Pryor, 5 FSM R. 91, 95 (Pon. 1991).

A United States federal employee does not waive immunity from civil liability under the Compact of Free Association and the Federal Programs and Services Agreement when the civilian employee initiated litigation in the FSM Supreme Court in a separate lawsuit with different claims against different parties and where the affirmative misconduct is within the scope and in the performance of the official duty. Samuel v. Pryor, 5 FSM R. 91, 97 (Pon. 1991).

It is the duty of the FSM Supreme Court to review any national law, including a treaty such as the Compact of Free Association, in response to a claim that the law or treaty violates constitutional rights, and if any Compact provision is contrary to the Constitution, which is the supreme law of the land, then that provision must be set aside as without effect. Samuel v. Pryor, 5 FSM R. 91, 98 (Pon. 1991).

The Compact of Free Association's immunization provisions, which limit a plaintiff's right to sue a physician for malpractice, do not affect a fundamental right, and therefore, the provisions need not be subjected to a strict scrutiny, but instead should be tested under the less stringent rational relationship test. Samuel v. Pryor, 5 FSM R. 91, 104 (Pon. 1991).

The Compact of Free Association provides to the United States immunity from the jurisdiction of the FSM Supreme Court for claims arising from the activities of United States agencies or from the acts or omissions of the employees of such agencies. Samuel v. United States, 5 FSM R. 108, 111 (Pon. 1991).

By the terms of the Compact and its subsidiary extradition agreement the term "Signatory Government" includes not only the national, but also the state governments of the two nations. Therefore state as well as national law may be used to determine if the offense for which extradition is sought satisfies the dual criminality test–is criminal under the laws of both signatory governments. In re Extradition of Jano, 6 FSM R. 93, 102-03 (App. 1993).

Although the Compact waives the sovereign immunity of the U.S. government, it does not create new causes of action or fashion a remedy where one was previously not available. The Compact does not authorize monetary damages to individuals for breach of the Trusteeship Agreement. Alep v. United States, 6 FSM R. 214, 218-19 (Chk. 1993).

Although the Compact of Free Association waives U.S. sovereign immunity it does not create new causes of action or remedies beyond what was available to private litigants before the Compact. Nahnken of Nett v. United States (III), 6 FSM R. 508, 526 (Pon. 1994).

The waiver of sovereign immunity clause in the Compact did not create any new causes of action, but merely waived sovereign immunity with respect to valid existing claims. Alep v. United States, 7 FSM R. 494, 497 (App. 1996).

The only new cause of action created by the Compact is where the U.S. government accepts responsibility for losses or damages arising out of nuclear testing in the Marshall Islands between 1946 and 1958. Alep v. United States, 7 FSM R. 494, 498-99 (App. 1996).

Nothing in the Compact suspends or tolls the statute of limitations. Alep v. United States, 7 FSM R. 494, 499 (App. 1996).

After the commencement of full self-government in 1986, the Federated States of Micronesia remained, from the United States's perspective, a foreign country. Under the Compact of Free Association with the United States, the Federated States of Micronesia is a sovereign and independent nation. In re Neron, 16 FSM R. 472, 474 (Pon. 2009).

The FSM's argument that the court is without jurisdiction to hear the defendant's counterclaims in the ground that they are nonjusticiable political questions because the Compact is a treaty between the FSM and the United States and the improvement of infrastructure through grants to the FSM is specifically contemplated by the Compact, the implementation of which must comply with requirements spelled out in the Compact, is without merit because, carried to its logical end, it would also bar the FSM from asserting its contract claims against the defendant since the contract was entered into to facilitate improving infrastructure in compliance with the Compact requirements attached to the FSM receiving the funds to pay for infrastructure improvements. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 482 (Pon. 2009).

When none of the questions to be decided by the court directly touch upon treaty relations between the FSM and the United States, the FSM Supreme Court may determine whether the FSM wrongfully provided false information to U.S. officials, whether, if proven, those actions were actionable, and if so, what damages the defendant-counterclaimant suffered since the court can also decide the issue of whether either party breached the contract, and if so, who owes what sums to the other. The mere existence of a funding mechanism agreed to by two sovereign nations cannot strip the court of jurisdiction to issue a

decision on the merits of this case. Nor does the Compact intend to so hobble the court. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 484 (Pon. 2009).

Title 1 of the Compact governs the relationship between and amongst the parties to the Compact and its environmental protection section does not create a private cause of action since it provides that actions brought pursuant to that section may be initiated only by the FSM government. Damarlane v. Damarlane, 18 FSM R. 177, 179 (Pon. 2012).

The Compact of Free Association requires that, subject to the constitutional power of FSM courts to grant relief from judgments in appropriate cases, res judicata status be given to Trust Territory judgments. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

In an appropriate case, the Kosrae State Court has the power to grant a party relief from a Trust Territory High Court judgment through an independent action in equity. This has even been acknowledged by treaty with the United States. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 (App. 2014).

Under the Compact of Free Association, final judgments in civil cases rendered by any Trust Territory court continue in full force and effect, subject to the constitutional power of the courts of the Federated States of Micronesia to grant relief from judgments in appropriate cases. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 (App. 2014).

While a state may be designated as the administrator and allottee of Compact sector funds that are used to pay state employees, those funds are appropriated by the FSM Congress and remain subject to the provisions of the FSM Financial Management Act and the Compact of Free Association financial controls. The FSM Secretary of Finance has full and complete oversight over, and at all times full and complete access to all financial records for, all Compact funds of the state and national governments of the FSM. FSM v. Muty, 19 FSM R. 453, 460 (Chk. 2014).

The FSM has standing to sue for conversion when it was Compact sector funds that were converted. FSM v. Muty, 19 FSM R. 453, 460 (Chk. 2014).

The Compact of Free Association has a provision by which sentences imposed by FSM courts on U.S. citizens may be served in U.S. penal institutions, but if they go through the diplomatic channels and comply with transfer procedures and eligibility, but the Compact does not have a section that deals with an FSM citizen under a sentence rendered by a FSM court who seeks to serve the remaining term of his sentence in a U.S. jurisdiction. FSM v. Bisalen, 20 FSM R. 471, 473 (Pon. 2016).

CONSTITUTIONAL LAW

A fundamental principle of statutory interpretation is that when a statute can be read in two ways, one raising constitutional issues and the other interpreting the language as affecting matters clearly within the constitutional reach of Congress, the latter interpretation should prevail so that the constitutional issue is avoided. FSM v. Boaz (II), 1 FSM R. 28, 32 (Pon. 1981).

When interpreting a statute, courts should try to avoid interpretations which may bring the constitutionality of the statute into doubt. Tosie v. Tosie, 1 FSM R. 149, 157 (Kos. 1982).

While courts will not refuse to pass on the constitutionality of statutes in a proceeding in which such a determination is involved, needless consideration of attacks on their validity and unnecessary decisions striking down statutes will be avoided. Legislative acts are presumed to be constitutional; where fairly possible a construction of a statute will be made that avoids constitutional questions. Truk v. Hartman, 1 FSM R. 174, 180-81 (Truk 1982).

Courts should avoid, where possible, selecting interpretations of a statute which may bring into doubt the constitutionality of that statute. In re Otokichy, 1 FSM R. 183, 190 (App. 1982).

Constitutional issues should not be decided if the statute in question may be interpreted in such a way as clearly to conform with constitutional requirements. Suldan v. FSM (I), 1 FSM R. 201, 205 (Pon. 1982).

A court should not decide a constitutional issue when there remains a possibility that an administrative decision will obviate the need for a court decision. Suldan v. FSM (I), 1 FSM R. 201, 205 (Pon. 1982).

The Constitution does not contemplate that FSM citizens must first petition any person or body outside the Federated States of Micronesia as a condition to consideration of their constitutional claims by courts established under this Constitution. In re Iriarte (II), 1 FSM R. 255, 267 (Pon. 1983).

An unconstitutional statute may not be redeemed by voluntary administrative action. Suldan v. FSM (II), 1 FSM R. 339, 357 (Pon. 1983).

Unnecessary constitutional adjudication is to be avoided. Suldan v. FSM (II), 1 FSM R. 339, 357 (Pon. 1983).

If construction of a statute by which a serious doubt of constitutionality may be avoided is fairly possible, a court should adopt that construction. Suldan v. FSM (II), 1 FSM R. 339, 357-58 (Pon. 1983).

Article III, sections l and 2, of the FSM Constitution are self-executing and do not contemplate, or imply the need for, court action to confirm citizenship where no challenge exists. In re Sproat, 2 FSM R. 1, 7 (Pon. 1985).

If a dispute properly may be resolved on statutory grounds without reaching potential constitutional issues and without discussing constitutional principles, the court should do so. FSM v. Edward, 3 FSM R. 224, 230 (Pon. 1987).

No clause in the FSM Constitution is equivalent to the eleventh amendment of the United States Constitution, which generally bars citizens from using United States federal courts to seek monetary damages against states. Edwards v. Pohnpei, 3 FSM R. 350, 361 (Pon. 1988).

When dealing with statutes, before discussing constitutional issues a court must first address any threshold issues of statutory interpretation which may obviate the need for a constitutional ruling. Michelsen v. FSM, 3 FSM R. 416, 419 (Pon. 1988).

As a matter of constitutional law, the authority to exercise executive, legislative and judicial powers came to the Federated States of Micronesia under the FSM Constitution, by operation of law, not through delegation of Trust Territory functions. United Church of Christ v. Hamo, 4 FSM R. 95, 103 (App. 1989).

The appellate court will not decide a constitutional issue if not raised below and because unnecessary constitutional adjudication is to be avoided. Jonah v. FSM, 5 FSM R. 308, 313 (App. 1992).

The Chapman rule, which holds that a constitutional error can be found harmless only when it is harmless beyond a reasonable doubt, is suitable for the FSM. Jonah v. FSM, 5 FSM R. 308, 314 (App. 1992).

A statute is repealed by implication by a constitutional provision when the legislature, under the new constitutional provision, no longer has the present right to enact statutes substantially similar to the statute in question. FSM v. Jano, 6 FSM R. 9, 11 (Pon. 1993).

In the absence of any authority or compelling policy arguments the court cannot conclude that a law, the enforcement of which entails a harsh result, is unconstitutional, and can only note that the creation of potentially harsh results is well within the province of the nation's constitutionally empowered legislators. Mid-Pacific Constr. Co. v. Semes, 7 FSM R. 102, 104 (Pon. 1995).

A court should avoid unnecessary constitutional adjudication. Louis v. Kutta, 8 FSM R. 228, 229 (Chk. 1998).

Acts of Congress are presumed to be constitutional. Chuuk v. Secretary of Finance, 8 FSM R. 353, 374, 387 (Pon. 1998).

Article I, section 1 of the Constitution defines the FSM's national boundaries, and section 2 defines the states' boundaries in the event marine resources revenues should accrue to the state wherein the resources are found, but the Constitution's framers did not intend to confer ownership of marine resources, or revenues derived from such resources, when they defined the state boundaries. Offshore marine resources, and the division between national and state power with respect to these resources, are addressed in other articles of the Constitution. Chuuk v. Secretary of Finance, 8 FSM R. 353, 367-68 (Pon. 1998).

The constitutional government works not to override custom, but works in cooperation with the traditional system in an atmosphere of mutual respect. Senda v. Semes, 8 FSM R. 484, 497 (Pon. 1998).

Micronesian custom, and the constitutional legal system established by the people of the FSM, flow from differing (not necessarily inconsistent) premises and purposes. These two systems, then, can be seen as supplementary and complementary, not contradictory. Each has a valuable role to perform, independent of the other. Senda v. Semes, 8 FSM R. 484, 499 (Pon. 1998).

The right guaranteed in the Chuuk Constitution to move and migrate within the State and the right in the FSM Constitution to travel and migrate within the Federated States, do not protect travel or migration outside these boundaries. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 48 (Chk. S. Ct. Tr. 1999).

A municipal ordinance restricting absentee voting in municipal elections to persons in the state of Chuuk is not unconstitutional. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 48 (Chk. S. Ct. Tr. 1999).

Internal waters are those waters on the landward side, or inside, of the baselines of the territorial sea. The exclusive economic zone starts twelve nautical miles seaward of the baseline and extending outward for another 188 nautical miles. A desire to maximize the area that might be included within the baselines, subject to the FSM's international treaty obligations, cannot be interpreted as a recognition of state ownership of the ocean resources 12 to 200 nautical outside of those baselines when drawn. Chuuk v. Secretary of Finance, 9 FSM R. 424, 430-31 (App. 2000).

The framers' intent that the equidistance method be used to establish fair and equitable marine boundaries between the states in the event marine resource revenue should accrue to the state wherein the resources are found does not indicate state resource ownership because the Constitution explicitly provides for an event when such revenues would accrue to the state – when ocean floor mineral resources are exploited. Chuuk v. Secretary of Finance, 9 FSM R. 424, 431 (App. 2000).

When the Constitution defined state boundaries, the Constitution's framers did not intend to confer on the states the ownership of the exclusive economic zone's resources or all the revenues derived from them. Chuuk v. Secretary of Finance, 9 FSM R. 424, 431 (App. 2000).

When a government has the power to collect money, it has the power to disburse that money at its discretion unless the Constitution or applicable laws should provide otherwise. Chuuk v. Secretary of Finance, 9 FSM R. 424, 431 (App. 2000).

The Constitution's broadly stated express grants of power to the national government contain within them innumerable incidental or implied powers, as well as certain inherent powers. Chuuk v. Secretary of Finance, 9 FSM R. 424, 431 n.2 (App. 2000).

Because regulating the ownership, exploration, and exploitation of the exclusive economic zone's natural resources is a power expressly and exclusively delegated to the national government and because

the incidental power to collect assessments levied pursuant to that delegated power is indisputably a national power, the power to disburse those funds is also a national power, except where the Constitution provides otherwise (such as in Article IX, section 6). Thus even were the states the underlying owners of the exclusive economic zone's resources, such a conclusion would not entitle the states to the exclusive economic zone's revenues except where the Constitution so provides. Chuuk v. Secretary of Finance, 9 FSM R. 424, 431-32 (App. 2000).

Fishing fees are not assessed under the national government's constitutional authority to impose taxes on income. They are levied instead under the national government's constitutional authority to regulate the ownership, exploration, and exploitation of natural resources within the marine space of the Federated States of Micronesia beyond 12 miles from island baselines. Chuuk v. Secretary of Finance, 9 FSM R. 424, 434 (App. 2000).

Fishing fees are not income taxes because the national government's power to impose them does not derive from its power to tax income. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435 (App. 2000).

The Constitution provides three instances of mandatory unconditional revenue sharing with the states, which the framers evidently thought enough. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435 (App. 2000).

If a statutory provision is unconstitutional and can be severed from the rest of the legislative act, only that provision will be struck down. MGM Import-Export Co. v. Chuuk, 10 FSM R. 42, 44 (Chk. 2001).

The FSM Constitution does not apply to a lawsuit in a CNMI court over a transaction that occurred in Saipan. Northern Marianas Housing Corp. v. Finik, 12 FSM R. 441, 444 (Chk. 2004).

The Constitution's broadly stated express grants of power to the national government contain within them innumerable incidental or implied powers, as well as certain inherent powers. Jano v. FSM, 12 FSM R. 569, 576 (App. 2004).

The power to provide for the national defense includes the inherent authority to protect the nation from threats both foreign and domestic. Protecting from these threats includes regulating the possession of firearms and ammunition. Jano v. FSM, 12 FSM R. 569, 576 (App. 2004).

A litigant may assert a claim in state or local court based upon a right provided under both a state and FSM Constitutions, and if a state constitution grants fewer rights than the FSM Constitution, a litigant may rely upon and assert his rights under the FSM Constitution. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 307 (App. 2007).

Although a state court's determination of a litigant's rights under that state's constitution may be final and not subject to review by the FSM Supreme Court, a state court's determination of a litigant's rights guaranteed under the FSM Constitution is subject to de novo review by the FSM Supreme Court since a state constitution cannot deprive the FSM Supreme Court of its jurisdiction granted under the FSM Constitution because the FSM Constitution is the supreme law of the land. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 307 (App. 2007).

The only explicit right to suffrage found in the FSM Constitution is the right to "vote in national elections." So an alleged denial of a right to suffrage in a Chuuk state election would be the denial of a right under the Chuuk Constitution's suffrage provisions, and not a denial of FSM constitutional right to suffrage. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 397 (Chk. 2009).

The FSM Constitution contains no privileges and immunities clause. In re Neron, 16 FSM R. 472, 474 (Pon. 2009).

Constitutional rights are generally prospective, not retroactive. Heirs of Henry v. Heirs of Akinaga, 19

FSM R. 296, 304 (App. 2014).

The FSM Constitution's Article VII, section 2 provides no basis for a party to seek relief in the FSM Supreme Court and no basis on which the party is likely to prevail when the party does not argue that the Chuuk has an undemocratic constitution but instead contends that the Chuuk executive branch is expending Chuuk state funds (albeit originally appropriated by Congress) without an appropriation of those funds by the Chuuk Legislature and that this is a violation of Chuuk's democratic constitution. Mailo v. Lawrence, 20 FSM R. 201, 204 (Chk. 2015).

– Amendment

The National Constitutional Convention is given broad authority to revise the very foundation of government, and every institution and office of government may come within its reach. Constitutional Convention 1990 v. President, 4 FSM R. 320, 326 (App. 1990).

The nature of a constitutional convention as authorized by the FSM Constitution, with direct control of the people over the identity of convention delegates, and ultimate acceptance of the products of the convention's efforts, and the fact that the framers view a constitutional convention as a standard and preferred amendment mechanism, preclude congressional control over the convention's decision-making. Constitutional Convention 1990 v. President, 4 FSM R. 320, 327 (App. 1990).

Congress has no power to specify voting requirements for the Constitutional Convention and therefore any attempt to exercise this power so as to uphold tradition is also outside the powers of Congress under article V, section 2 of the Constitution, which is not an independent source of congressional power but which merely confirms the power of Congress, in exercising national legislative powers, to make special provisions for Micronesian tradition. Constitutional Convention 1990 v. President, 4 FSM R. 320, 328 (App. 1990).

The national court should not abstain from deciding a criminal case where the crime took place before the effective date of the 1991 amendment removing federal jurisdiction over major crimes because of the firmly expressed intention by the Constitutional Convention delegates as to the manner of transition from national jurisdiction to state jurisdiction. In re Ress, 5 FSM R. 273, 276 (Chk. 1992).

An amendment to the Constitution may be proposed by a constitutional convention, popular initiative, or Congress in a manner provided by law. A proposed amendment becomes part of the Constitution when approved by ¾ of the votes cast on that amendment in each of ¾ of the states. These are the only methods by which the Constitution may be amended. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 149 (App. 2005).

– Bill of Attainder

A bill of attainder is any legislative act that applies to either named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial by substitution of a legislative for a judicial determination of guilt. Robert v. Mori, 6 FSM R. 394, 401 (App. 1994).

A statute making all persons convicted of a felony in the Trust Territory courts ineligible for election to the FSM Congress does not constitute criminal punishment and does not substitute a legislative for a judicial determination of guilt and thus is not an unconstitutional bill of attainder. Robert v. Mori, 6 FSM R. 394, 401 (App. 1994).

The statutory ineligibility of persons convicted of Trust Territory felonies is a valid exercise of Congress's constitutional power to prescribe additional qualifications for election to Congress, and is not unconstitutional as a deprivation of a liberty interest without due process of law, or as an ex post facto law, or as a bill of attainder. Robert v. Mori, 6 FSM R. 394, 401 (App. 1994).

– Case or Dispute

A case must be one appropriate for judicial determination, that is, a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. In re Sproat, 2 FSM R. 1, 5 (Pon. 1985).

One reason the judicial power is limited to cases or disputes is to prevent the Judiciary from intruding into areas committed to other branches of government. In re Sproat, 2 FSM R. 1, 7 (Pon. 1985).

The principal objectives of the case and dispute requirement are to enhance the ability of the courts to make fair and intelligent decisions, and to keep the judicial power within its proper role. Innocenti v. Wainit, 2 FSM R. 173, 178-79 (App. 1986).

A concrete case or dispute clearly exists where a state legislature contends that an act of the legislature requires payment of a tax on imports and others insist that the act is null and void, and, depending on the outcome of the controversy, money may or may not be collected, and penalties may or may not be imposed. Innocenti v. Wainit, 2 FSM R. 173, 179 (App. 1986).

Where there is no indication that the sentencing order in question is an attempt to modify or affect the powers of the Director of Public Safety, absent indications that the order prevents the director from doing anything he wishes, the order creates no case or dispute as to the scope of the director's powers, and the court is thus without jurisdiction to speak on the issue. Loch v. FSM, 2 FSM R. 224, 237 (App. 1986).

While the court has statutory authority to hear appeals regarding the conduct of elections, its power to grant relief is limited to ordering a recount or a revote. Only Congress can decide who is to be seated and once it has seated a member unconditionally the matter is nonjusticiable. Aten v. National Election Comm'r (III), 6 FSM R. 143, 145 & n.1 (App. 1993).

A suit against the national government by the states alleging that the states are constitutionally entitled to 50% of all revenues from the EEZ is justiciable because the Supreme Court must reconcile any conflict between sections of the Constitution. Chuuk v. Secretary of Finance, 7 FSM R. 563, 569 (Pon. 1996).

Our Constitution's "case or dispute" clause, FSM Const. art. XI, § 6, mirrors the U.S. Constitution's "case or controversy" clause. FSM v. Louis, 9 FSM R. 474, 481 (App. 2000).

Article XI, section 6 of the Constitution restricts the FSM Supreme Court's jurisdiction to cases and disputes and the court is thereby precluded from making policy pronouncements on the basis of hypothetical or academic issues. FSM v. Louis, 9 FSM R. 474, 481 (App. 2000).

While our Constitution's wording is otherwise similar to that in article III, section 2, clause 1 of the U.S. Constitution, the FSM national courts have jurisdiction over "cases" and "disputes" while the U.S. federal courts have jurisdiction over "cases" and "controversies," but no significance can be attached to the difference between controversies and disputes. The FSM Constitution's case or dispute clause is thus similar to the U.S. Constitution's case or controversy clause. FSM v. Louis, 9 FSM R. 474, 482 (App. 2000).

A case must be one appropriate for judicial determination, that is, a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. FSM v. Louis, 9 FSM R. 474, 482 (App. 2000).

The Constitution does not authorize the FSM Supreme Court to declare the law anytime a justice feels moved to do so or authorize the court to respond to every request for a legal ruling directed to it by citizens. Instead, Article XI, section 6 of the Constitution grants jurisdiction, and the power to exercise judicial powers, only in five specific kinds of "disputes" and five types of "cases." FSM v. Louis, 9 FSM R. 474, 482

(App. 2000).

A case is not non-justiciable, one not proper for judicial review, when the plaintiff only seeks a fair chance to apply, through a constitutional procedure, for funds for which it is eligible. Udot Municipality v. FSM, 9 FSM R. 560, 563 (Chk. 2000).

The FSM Constitution's case or dispute clause is similar to the U.S. Constitution's case or controversy clause, and it has been determined that no significance could be attached to the difference between the terms "controversies" and "disputes." Enlet v. Bruton, 10 FSM R. 36, 40 (Chk. 2001).

One of the rationales for limiting a court's power to deciding the cases before it is to prevent the court from intruding into areas committed to the executive or legislative branches. Davis v. Kutta, 10 FSM R. 98, 99 (Chk. 2001).

Legislative houses are the final judges of their memberships and under the Chuuk Constitution each house is the sole judge of the election and qualification of its members. This does not make an election case about a member-elect non-justiciable until such time as the house has taken its final action. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 153 (Chk. S. Ct. App. 2001).

It is settled law in the FSM that the FSM Supreme Court has the ability to issue declaratory judgments so long as there is a case or dispute within the meaning of article XI, sections 6(a) or 6(b). Udot Municipality v. FSM, 10 FSM R. 354, 358 (Chk. 2001).

A court may decide only the case before it, and may not render an advisory opinion. A request for clarification that asks the court to opine on facts not before it, will be denied. Estate of Mori v. Chuuk, 12 FSM R. 24, 26 (Chk. 2003).

In order for a case to be "justiciable," or one over which the court has jurisdiction for purposes of rendering a decision, it must be one that is concrete and definite, and not abstract or hypothetical in nature. A case may not present questions that are moot or hypothetical, but rather must put forth issues that bear on the relationships of parties who have adverse legal interests. Urusemal v. Capelle, 12 FSM R. 577, 584 (App. 2004).

Although the extent and depth of either party's commitment to its view does not resolve the question of whether a justiciable dispute exists, the very divergence of those views highlights the fact that the important issues presented in the case bear in a fundamental way on the relationships between parties who have adverse legal interests. The issues resulting from these differing positions present a justiciable dispute. Urusemal v. Capelle, 12 FSM R. 577, 584-85 (App. 2004).

When a question is hypothetical, academic, or abstract, the court will not rule, and is generally precluded from ruling, on it. FSM v. Kansou, 12 FSM R. 637, 641 (Chk. 2004).

When the parties have stipulated to a judgment and one claim remains, in order for the court to exercise its jurisdiction to dispose of this one remaining claim, a case or dispute under Article XI, Section 6 of the FSM Constitution must exist. The case or dispute must exist at the time the court acts. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 173 (Kos. 2005).

While it is within Congress's sole power to determine, by statute, how, and for what, the national government will spend its funds, it is always within the judicial branch's power or jurisdiction to determine, in a proper case, whether those funds were spent in conformity with the statute. FSM v. Kansou, 14 FSM R. 128, 130 (Chk. 2006).

A trial justice may not, *sua sponte*, assert jurisdiction over a case which has been fully dismissed, particularly when that case was dismissed by another justice. When a case has been dismissed, there is no case or dispute remaining before the court. Ruben v. Petewon, 14 FSM R. 177, 183 (Chk. S. Ct. App.

2006).

The Constitution does not limit the grounds upon which the President can veto bills. The President can veto any bill for any reason he chooses. The Constitution requires the President to return to Congress, within ten days, a bill he has vetoed along with his objections. Congress then makes its own determination of whether those objections will stand by either overriding or sustaining the veto. Invalidation or nullification of a Presidential veto is textually committed by the Constitution to Congress because the power to override a Presidential veto is expressly delegated to Congress. Christian v. Urusemal, 14 FSM R. 291, 294 (App. 2006).

The President's reasons for vetoing a bill cannot be questioned in the judicial branch. The court has no jurisdiction to grant the relief of declaring the President's vetoes void regardless of what the President's objections were. Christian v. Urusemal, 14 FSM R. 291, 294 (App. 2006).

When the Congress Speaker asks the court, before any enactment process has been completed, to advise the parties on exactly where in the process they stand, the Speaker asks the court for an advisory opinion, which it cannot give. The Constitution restricts the FSM Supreme Court's jurisdiction to actual cases and disputes. It does not sit to render advisory opinions. Christian v. Urusemal, 14 FSM R. 291, 294 (App. 2006).

It is a basic principle of justiciability that a court will not render an advisory opinion. FSM v. Koshin 31, 16 FSM R. 15, 21 (Pon. 2008).

The FSM Supreme Court's jurisdiction is constitutionally limited to actual cases and disputes thereby precluding it from making pronouncements on hypothetical, abstract, or academic issues or when the matter is moot. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 398 (Chk. 2009).

When the constitutional issues the plaintiffs raise are either a part of an election contest over which the court has no jurisdiction or are hypothetical, abstract, or academic, the court lacks jurisdiction over the case. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 398 (Chk. 2009).

The legal principles of justiciability, separation of powers, the political question doctrine do not apply to a case that, at its core, is one in which each party alleges the other breached a contract, and in which the defendant also counterclaims for civil rights violation, abuse of process, civil conspiracy, intentional interference with contractual relations, libel, and slander. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 484 (Pon. 2009).

The FSM Supreme Court does not have the jurisdiction or power to render advisory opinions since the Constitution only grants the court jurisdiction to decide actual or concrete cases or disputes. Kosrae v. Benjamin, 17 FSM R. 1, 4 (App. 2010).

The court will not provide a decision in a case that is not currently before it and it will not render advisory opinions. Further, the court cannot opine on facts that are not currently before it. Lee v. FSM, 18 FSM R. 106, 108 (Pon. 2011).

A court will address the part of a motion to dismiss concerning subject-matter jurisdiction first since if the movant were to prevail on this ground any court ruling on the other grounds would be nothing more than advisory opinions, and the court does not have the authority to render advisory opinions. Iwo v. Chuuk, 18 FSM R. 182, 183-84 (Chk. 2012).

When the defendant has filed a summary judgment motion and a motion to dismiss for lack of jurisdiction, the court will consider the motion to dismiss first because if the court were to grant the motion to dismiss, any ruling the court made on the summary judgment motion would, at best, be an advisory opinion since it would have been made without jurisdiction and the FSM Supreme Court does not have the authority to render advisory opinions. Hauk v. Mijares, 18 FSM R. 185, 186-87 (Chk. 2012).

A motion for preliminary approval of a settlement must be denied when the class plaintiffs seek approval of a compromise of a hypothetical cause of action that they have not pled against a party that is neither a defendant nor a cross-defendant. Because there is no case or dispute for the settlement agreement to settle, the settlement agreement cannot be approved since there is no real settlement to approve or reject and since the court cannot make hypothetical rulings. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 231 (Yap 2013).

An appellate court does not sit to render decisions on abstract legal propositions or issue advisory opinions. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 513 (App. 2016).

– Case or Dispute – Mootness

A case must be one appropriate for judicial determination, that is, a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. In re Sproat, 2 FSM R. 1, 5 (Pon. 1985).

A claim becomes moot when the parties lack a legally cognizable interest in the outcome. If an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. Berman v. FSM Supreme Court (II), 7 FSM R. 11, 16 (App. 1995).

A case must be one appropriate for judicial determination, that is, a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. FSM v. Louis, 9 FSM R. 474, 482 (App. 2000).

The FSM Supreme Court's lack of jurisdiction over, or inability to decide, a moot case is firmly rooted in the FSM Constitution's requirement that there be a case or a dispute. A case or dispute becomes moot when the parties lack a legally cognizable interest in the outcome. FSM v. Louis, 9 FSM R. 474, 482 (App. 2000).

If an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. FSM v. Louis, 9 FSM R. 474, 482 (App. 2000).

When even if the court reversed the garnishment order, any relief it could grant the FSM on the sovereign immunity issue would be ineffectual since 6 F.S.M.C. 707 makes the FSM no longer subject to garnishment of funds it owes to a state, and when, although the general rule is that the payment of a judgment does not make an appeal moot, the FSM has stated that it will not seek repayment of the funds that it paid the plaintiff, the FSM would have no interest in the case's outcome and the issues it raised on appeal are moot. FSM v. Louis, 9 FSM R. 474, 482-83 (App. 2000).

An exception to the mootness doctrine exists when there is a situation in which an otherwise moot case may have a continuing effect on future events, including future litigation. FSM v. Louis, 9 FSM R. 474, 483 (App. 2000).

When other trial division cases recognize the principle of sovereign immunity and the trial court decision appealed from only observed that in the absence of a specific expression by the legislature, sovereign immunity would not prevent the court from garnishing property held by the FSM for a state, when the constitutionality of the FSM's sovereign immunity statute was not before the court, and when the FSM served only as a mere garnishee in a situation which Congress has prevented from recurring by the enactment of 6 F.S.M.C. 707, the trial court decision will not effect future litigation involving the FSM and the FSM's appeal is thus moot. FSM v. Louis, 9 FSM R. 474, 483-84 (App. 2000).

When it appears that the problem will arise again, and would otherwise be incapable of review, the court has jurisdiction because the most notable exception to the mootness doctrine is a situation in which an

otherwise moot case may have a continuing effect on future events, including future litigation. Udot Municipality v. FSM, 9 FSM R. 560, 562 (Chk. 2000).

Because the FSM Supreme Court generally (with some exceptions) lacks jurisdiction over a moot cause of action, it must be dismissed. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 119 (Pon. 2001).

Earmarking $50,000 of a prior appropriation to be spent in the plaintiff municipality does not take away the municipality's standing by making its claim moot when the appropriation still has an undifferentiated category called "other needs," and when the municipality's past inability to apply for funds already spent, and the likelihood that the situation would arise again, but be incapable of review, all favor a finding of continuing standing. Udot Municipality v. FSM, 10 FSM R. 354, 358 (Chk. 2001).

An argument that a party once had standing but no longer does is an argument that the case is now moot. One exception to the mootness doctrine is that the court retains jurisdiction when the problem will arise again, and would otherwise be incapable of review. Udot Municipality v. FSM, 10 FSM R. 354, 358 (Chk. 2001).

No justiciable controversy is presented if events subsequent to an appeal's filing make the issues presented in a case moot. A claim becomes moot when the parties lack a legally cognizable interest in the outcome, and if an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. Enactment of a statute after judgment is entered and before the appeal is heard can make an appeal moot. Wainit v. Weno, 10 FSM R. 601, 610 (Chk. S. Ct. App. 2002).

An appellate court may receive proof or take notice of facts outside the record for determining whether a question presented to it is moot. Wainit v. Weno, 10 FSM R. 601, 610 (Chk. S. Ct. App. 2002).

When an appeal is dismissed as moot, the established rule is for the appellate court to reverse or vacate the judgment below and dismiss the case. Wainit v. Weno, 10 FSM R. 601, 611 (Chk. S. Ct. App. 2002).

The FSM Constitution's "case or dispute" clause restricts the FSM Supreme Court's jurisdiction to cases and disputes, and the court is thereby precluded from making policy pronouncements on the basis of hypothetical or academic issues. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 409-10 (App. 2003).

The Supreme Court's lack of jurisdiction over, or inability to decide, a moot case is firmly rooted in the Constitution's requirement that there be a case or a dispute. A case or dispute becomes moot when the parties lack a legally cognizable interest in the outcome. If an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 410 (App. 2003).

When the issues presented in a petition for a writ of mandamus concerning the discovery of non-party borrower records have become moot because, by virtue of a trial court order, no further discovery will take place, the issuance of a writ of mandamus to the trial court to disallow or restrict the discovery would be ineffectual since there will be no further discovery. The petition will therefore be dismissed. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 410 (App. 2003).

There may be exceptions to the mootness doctrine, *e.g.*, for situations in which an otherwise moot case may have a continuing effect on future events, including future litigation. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 410 n.5 (App. 2003).

When the sole issue before the appellate court was whether the Director's rejection of an election petition as untimely was in compliance with the applicable statute and when the only relief the court could have granted would have been to vacate the Director's denial, remand the matter to the Director, and order the Director to consider the petition on the merits and when the Director himself has resolved this one issue in petitioner's favor and considered and ruled on the petition's merits, there is no further relief that the court

could grant that the Director has not already granted. The appeal is moot. Fritz v. National Election Dir., 11 FSM R. 442, 444 (App. 2003).

If an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. Fritz v. National Election Dir., 11 FSM R. 442, 444 (App. 2003).

Article XI, section 6 of the Constitution restricts the FSM Supreme Court's jurisdiction to actual cases and disputes. The court is thereby precluded from making pronouncements on the basis of hypothetical, abstract, or academic issues or when the matter is moot. Fritz v. National Election Dir., 11 FSM R. 442, 444 (App. 2003).

An appellate court does not sit to render decisions on abstract legal propositions or to render advisory opinions. Fritz v. National Election Dir., 11 FSM R. 442, 444 (App. 2003).

When any relief that a court would grant would be ineffective, then the court must deem the dispute moot. The mootness doctrine precludes a court from addressing a dispute's merits when the court can no longer grant any relief which would have any practical effect. McIlrath v. Amaraich, 11 FSM R. 502, 506 (App. 2003).

When the submission of a letter constitutes compliance with the court order to file a brief, the petitioners' central claim that it cannot be compelled to submit a brief is rendered moot, and in the usual case, this would preclude the consideration of any of the petition's issues because the FSM Supreme Court lacks jurisdiction over, and cannot decide, moot cases since the Constitution requires that there be a case or a dispute. But an exception to the mootness doctrine exists when an otherwise moot case may have a continuing effect on future events, including future litigation, and when it appears that the problem will arise again, and would otherwise be incapable of review, a court may still have jurisdiction under this exception. McIlrath v. Amaraich, 11 FSM R. 502, 506 (App. 2003).

A case or dispute becomes moot when the parties lack a legally cognizable interest in the outcome. McIlrath v. Amaraich, 11 FSM R. 502, 506 (App. 2003).

A claim is moot when the parties lack a legally cognizable interest in the outcome. A case must be one appropriate for judicial determination, as distinguished from an hypothetical or abstract dispute. The controversy must be definite and concrete, touching the legal relations of parties having adverse interests. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 580 (Chk. S. Ct. Tr. 2003).

Even when the real parties in interest have already taken office, both the plaintiffs and the real parties in interest have a legally cognizable interest in the outcome, because if the election is declared unconstitutionally void, the plaintiffs may have another chance at victory and if the election is declared valid, then the real parties in interest may savor their victory and because it is not an abstract dispute, but a very real problem which threatens the very foundation of democracy, the right of the people to vote in free and fair and democratic elections. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 580 (Chk. S. Ct. Tr. 2003).

An exception to the mootness doctrine clearly applies when it appears to the court that the problem may rise again, and when a determination of the issues may have a continuing effect on future events, including future litigation. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 580 (Chk. S. Ct. Tr. 2003).

When an appeal was from an order revoking pretrial release and the issue on appeal was the right to pretrial release, the appellant's subsequent conviction and release makes the appeal moot. Reddy v. Kosrae, 11 FSM R. 595, 596 (App. 2003).

No justiciable controversy is presented if events subsequent to the filing of an appeal make the issues presented moot, and an appellate court may receive proof or take notice of facts outside the record for determining whether a question presented to it is moot. Reddy v. Kosrae, 11 FSM R. 595, 596-97 (App. 2003).

The court is without jurisdiction to consider and will dismiss a moot appeal. Reddy v. Kosrae, 11 FSM R. 595, 597 (App. 2003).

When the appellants have not in fact been required to perform any non-statutory accounting and another appellant has already submitted an accounting, the appellants' challenge of a trial court order that others complete a proper accounting is moot. FSM v. Udot Municipality, 12 FSM R. 29, 42 (App. 2003).

A dispute becomes moot when the parties lack a legally cognizable interest in the outcome and if any relief it could grant would be ineffectual. FSM v. Udot Municipality, 12 FSM R. 29, 42 (App. 2003).

When even if the issue of mootness had been raised, the case still fell within the exception to the mootness doctrine that it may have a continuing effect on future events, including future litigation and may be capable of repetition, yet evading review, the court will address the issue. FSM v. Udot Municipality, 12 FSM R. 29, 49 (App. 2003).

An interlocutory appeal may be considered moot when the trial court has issued a final judgment in the case below and the appellant has since filed a notice of appeal on the same issues. FSM Dev. Bank v. Adams, 12 FSM R. 456, 460 (App. 2004).

Under an exception to the mootness doctrine, when the court's rulings will have a continuing effect on future events and future litigation and will offer guidance to future litigants, which should have the positive effect of eliminating or lessening unwarranted attempts at interlocutory appeals, thus conserving judicial resources, the court will review the matter. FSM Dev. Bank v. Adams, 12 FSM R. 456, 460 (App. 2004).

A criminal defendant's claim that if he is not granted a stay of his sentence of imprisonment pending appeal his appeal will become moot can only be deemed frivolous or for the purpose of delay since even if a criminal appellant has finished his sentence before his appeal is decided, that will not render his appeal moot because of a criminal conviction's collateral consequences, such as the legal disabilities that ensue. FSM v. Petewon, 14 FSM R. 463, 469 (Chk. 2006).

A case becomes moot when the party raising an issue lacks a legally cognizable interest in the outcome of the issue, and if the relief sought would, if granted, be ineffectual. Wainit v. FSM, 14 FSM R. 476, 478 (App. 2006).

No justiciable controversy is presented if events subsequent to the filing of an appeal make the issues presented moot. The FSM Supreme Court lacks jurisdiction to consider cases or issues that are moot, and therefore must dismiss or deny the same. Wainit v. FSM, 14 FSM R. 476, 478 (App. 2006).

When the appellant has been released from jail on parole, any relief that the appellate court could grant the appellant on his request for release pending the outcome of his appeal, would be entirely ineffectual. As such, the appellant's request for release pending appeal is moot and will be denied as moot. Wainit v. FSM, 14 FSM R. 476, 478 (App. 2006).

Since an appellate court may receive proof or take notice of facts outside the record for determining whether a question presented to it is moot, the court therefore may take notice of the opinion in a related appeal case. Nikichiw v. Marsolo, 15 FSM R. 177, 178 (Chk. S. Ct. App. 2007).

No justiciable controversy is presented if events subsequent to an appeal's filing make the issues presented in a case moot. A claim becomes moot when the parties lack a legally cognizable interest in the outcome, and if an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot, and if the appeal has become moot, the court no longer has jurisdiction to hear and decide it. Nikichiw v. Marsolo, 15 FSM R. 177, 179 (Chk. S. Ct. App. 2007).

When the opinion and the writ of prohibition issued in a different appeal has already granted the

appellants all of the relief that they first sought in this case, this appeal has become moot because any relief the court could now grant would be ineffectual, and a motion to dismiss will therefore be granted. Nikichiw v. Marsolo, 15 FSM R. 177, 179 (Chk. S. Ct. App. 2007).

When an appeal is dismissed as moot, the established rule is for the appellate court to reverse or vacate the judgment below and dismiss the case. Nikichiw v. Marsolo, 15 FSM R. 177, 179 (Chk. S. Ct. App. 2007).

An exception to the mootness doctrine clearly applies when it appears to the court that the problem may rise again, and when a determination of the issues may have a continuing effect on future events, including future litigation. Kinemary v. Siver, 16 FSM R. 201, 208 (Chk. S. Ct. App. 2008).

A case becomes moot when the party raising the issue lacks a legally cognizable interest in the issue's outcome, and if the relief sought would, if granted, be ineffectual. In re Mefy, 16 FSM R. 401, 403 (Chk. 2009).

When the issues raised in an application for a writ of habeas corpus are moot because the applicants have already been granted the relief sought – release from jail – any consideration or relief would thus be ineffectual. No justiciable case or dispute is presented when events subsequent to a case's filing make the issues presented moot. Since the FSM Supreme Court lacks jurisdiction to consider moot cases or issues, it must dismiss a moot application because, when the court lacks jurisdiction over a case, it should not remain lifelessly on the docket however harmless that may seem. In re Mefy, 16 FSM R. 401, 403 (Chk. 2009).

Even if the prosecution succeeded in convincing an appellate court that a trial court's rulings were erroneous, the prosecution would be constitutionally barred from retrying an accused found not guilty and that would make the prosecution appeal a moot appeal seeking an advisory opinion on statutory interpretation and the appellate court does not have jurisdiction to consider or decide moot appeals. Kosrae v. Benjamin, 17 FSM R. 1, 4 (App. 2010).

A case or dispute becomes moot when the parties lack a legally cognizable interest in the outcome. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 634, 635 (Chk. S. Ct. Tr. 2013).

A case must be one appropriate for judicial determination, that is, a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character or one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 634, 635 (Chk. S. Ct. Tr. 2013).

A case would fall within the exception to the mootness doctrine when it may have a continuing effect on future events, including future litigation, and may be capable of repetition yet evading review. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 634, 635-36 (Chk. S. Ct. Tr. 2013).

A motion to dismiss for mootness will be denied when the court record demonstrates that the action in question has occurred in the past, and but for the injunction, would have occurred in this instance absent the issue being considered, the action in question will likely occur in the future, thereby effectively evading review save for the application of the doctrine of "capable of repetition, yet evading review." Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 634, 636 (Chk. S. Ct. Tr. 2013).

A motion is not "moot" when the parties still have a legally cognizable interest in the case's outcome because a case or dispute becomes moot only when the parties lack a legally cognizable interest in the outcome. Berman v. FSM Nat'l Police, 19 FSM R. 118, 126 (App. 2013).

An appellate court may receive proof or take notice of facts outside the record to determine whether a question presented to it is moot, and, if events after an appeal is filed make the issue presented moot, no justiciable dispute is presented and the court is without jurisdiction to consider the appeal – it must dismiss

a moot appeal. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143-44 (App. 2013).

A claim becomes moot when the parties lack a legally cognizable interest in the litigation's outcome. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 144 (App. 2013).

A court is precluded from making pronouncements on the basis of a hypothetical, abstract, or academic issue or when the matter is moot. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 144 (App. 2013).

When an appellant asserts that the six-year statute of limitations means he is not legally liable for any payments that were due over six years before the lawsuit was filed and all the extra interest that accrued because those payments were missed and the appellee has conceded that the judgment against the appellant should be reduced by those amounts, the parties no longer have a legally cognizable dispute about this issue's outcome and the issue is moot. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 144 (App. 2013).

Since no justiciable case or dispute is presented when events after the filing of an appeal make the issues presented moot, the appellate court lacks jurisdiction to consider or decide moot appeals. Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

– Case or Dispute – Political Question

Where there is in the Constitution a textually demonstrable commitment of the issue to a coordinate branch of government, such as Congress being the sole judge of the elections of its members, it is a nonjusticiable political question not to be decided by the court because of the separation of powers provided for in the Constitution. Aten v. National Election Comm'r (III), 6 FSM R. 143, 145 (App. 1993).

Placement of proposed constitutional amendments on the ballot does not transform a claim into a non-justiciable political question. It does not constitute a commitment of the issue to any of the branches of government. Chuuk v. Secretary of Finance, 9 FSM R. 73, 74-75 (Pon. 1999).

When there is in the Constitution a textually demonstrable commitment of an issue to a coordinate branch of government, such as Congress being the sole judge of the elections of its members, it is a nonjusticiable political question not to be decided by a court because of the separation of powers provided for in the Constitution. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16-17 (App. 2006).

When there is no textually demonstrable constitutional commitment that declaring a trochus harvest is reserved solely to one branch of government without the involvement of any other branch or that the power to engage in commercial activity is reserved solely to one branch of government, the political question doctrine does not apply. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 17 (App. 2006).

An argument that the political question doctrine bars the court from becoming involved in a case because a state law gives a state regulatory body the power followed to its logical conclusion would mean that no court could ever rule an executive action illegal because some law empowers the executive to make that decision. In other words, the principle of judicial review, enshrined in both the FSM and Pohnpei Constitutions, would be overthrown and the government's actions could never be questioned or reviewed in any court. That cannot be so. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 17 (App. 2006).

When there is in the Constitution a textually demonstrable commitment of the issue to a coordinate branch of government (such as Congress being the sole judge of the elections of its members) it is a nonjusticiable political question not to be decided by the court because of the separation of powers provided for in the Constitution. FSM v. Kansou, 14 FSM R. 128, 130 (Chk. 2006).

A President's reason for vetoing the bills passed during the Fourteenth Congress's Second Special Session is a non-justiciable issue because when the Constitution has a textually demonstrable commitment of an issue to a coordinate branch of government, it is a nonjusticiable political question not to be decided

by the court because of the separation of powers provided for in the Constitution. Christian v. Urusemal, 14 FSM R. 291, 294 (App. 2006).

If Congress seats a candidate unconditionally an election contest becomes a non-justiciable political question. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 359 (Chk. 2009).

The FSM's argument that the court is without jurisdiction to hear the defendant's counterclaims in the ground that they are nonjusticiable political questions because the Compact is a treaty between the FSM and the United States and the improvement of infrastructure through grants to the FSM is specifically contemplated by the Compact, the implementation of which must comply with requirements spelled out in the Compact, is without merit because, carried to its logical end, it would also bar the FSM from asserting its contract claims against the defendant since the contract was entered into to facilitate improving infrastructure in compliance with the Compact requirements attached to the FSM receiving the funds to pay for infrastructure improvements. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 482 (Pon. 2009).

The legal principles of justiciability, separation of powers, the political question doctrine do not apply to a case that, at its core, is one in which each party alleges the other breached a contract, and in which the defendant also counterclaims for civil rights violation, abuse of process, civil conspiracy, intentional interference with contractual relations, libel, and slander. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 484 (Pon. 2009).

When the Constitution contains a textually demonstrable commitment of an issue to a coordinate branch of government, it is a nonjusticiable political question not to be decided by the court because of the Constitution's requirements for the separation of powers. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 186 (Pon. 2010).

Under the political question doctrine, when there is in the Constitution a textually demonstrable commitment of an issue to a coordinate branch of government, it is a nonjusticiable political question not to be decided by a court because of the separation of governmental powers provided for by the Constitution. Chuuk v. FSM, 20 FSM R. 373, 375 (Chk. 2016).

Among the formulations describing a political question is a case where there is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or the impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of government; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question. Chuuk v. FSM, 20 FSM R. 373, 375-76 (Chk. 2016).

Since the national government, and therefore Congress, has no discretion but must remit the first 50% of the national tax collected to the state treasury of the state it was collected in, a dispute about that first 50% would not be a nonjusticiable political question, although a dispute over a percentage higher than 50% would be a nonjusticiable political question textually committed to a discretionary Congressional decision. Chuuk v. FSM, 20 FSM R. 373, 376 (Chk. 2016).

The matter does not present a nonjusticiable political question when it is not apparent why the constitutional mandate that 50% of national tax revenues be paid into the treasury of the state where collected would not be self-executing (except if Congress wants a higher percentage remitted to the states). Chuuk v. FSM, 20 FSM R. 373, 376 (Chk. 2016).

– Case or Dispute – Ripeness

When a party has been specifically warned by the attorney general that he is required to obtain a foreign investment permit under national statute which imposes criminal sanctions for failure to comply, the question of whether a permit is required is sufficiently ripe to support a suit seeking declaratory judgment. Michelsen v. FSM, 3 FSM R. 416, 418-19 (Pon. 1988).

When the government is attempting to enforce against the plaintiffs tax statutes which the plaintiffs believe, by the statutes' own terms, do not properly apply to them, and the plaintiffs have been warned that they are potentially subject to criminal and civil penalties if they do not comply, it is a case or dispute sufficiently ripe for the plaintiffs to seek a declaratory judgment. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 115 (Chk. 1997).

When the plaintiff argues it is exempt from the tax under state and national law as an entity wholly owned and operated by the national government functioning solely for public benefit and the state asserts that the plaintiff's corporate status exposes it to state taxation (regardless of the national government's stock ownership and indirect control) and claims that the FSM Constitution does not authorize the national government to prevent the imposition of a "use tax" on imported goods used or consumed in the state, and when the state requests a declaration that its use tax scheme does not violate the FSM Constitution and makes its motion aware that the court's resolution of the plaintiff's motion does not require it to address whether the use tax law conflicts with the FSM Constitution even though the plaintiff's complaint includes a cause of action raising that very argument, all of the issues addressed in the motions are properly raised by the pleadings and involve justiciable controversies of special public concern worthy of resolution at this time. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 292, 293-94 (Pon. 1999).

An objection based on lack of ripeness in a case concerning appropriated funds that have not yet been distributed cannot prevail when the manner of the funds' distribution appears (at this stage of the proceedings) to violate the Constitution. Udot Municipality v. FSM, 9 FSM R. 560, 562-63 (Chk. 2000).

The court lacks jurisdiction to hear an election appeal filed too soon because the statute does not grant the court jurisdiction over election cases until the administrative steps and time frames in 9 F.S.M.C. 902 have been adhered to. Such an appeal is therefore dismissed as premature (unripe). Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

When the plaintiff's claims all derive from the common allegation that its facility will be taken from it at the end of the parties' lease, when the parties have signed a lease agreement that purports to confer ownership of the facility on the defendant at a specified time, and when the parties have a good faith dispute as to the validity of this result under the National Constitution, this renders the case ripe for adjudication. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 229 (Pon. 2005).

Standing is a threshold issue going to this court's subject matter jurisdiction and thus is addressed first. Standing must be found for each count of a complaint or that count will be dismissed. Ripeness is also a threshold issue. Sipos v. Crabtree, 13 FSM R. 355, 362 (Pon. 2005).

A matter must also be ripe for adjudication for there to be a case or dispute over which the court can exercise jurisdiction. Sipos v. Crabtree, 13 FSM R. 355, 366 (Pon. 2005).

When any attorney's fee forfeiture (which is the plaintiff's allegedly threatened injury) could not possibly occur until after trial and conviction of his clients in another case, and, since only if that occurs, the government might (but not even then, certainly) seek forfeiture of any fee earned by the plaintiff, the alleged injury is, at this time, too speculative and remote for this case to be ripe for adjudication. It is thus not a concrete controversy capable of adjudication now since none of the four counts, to the extent that they seek redress for or protection of the plaintiff's allegedly threatened fees, are ripe for adjudication. Sipos v. Crabtree, 13 FSM R. 355, 366 (Pon. 2005).

When the complaint either asserts the rights of others not a party to the case or seeks relief not available here or seeks redress for or protection of the plaintiff's allegedly threatened attorney's fees and the fee claim is not ripe for adjudication, the entire complaint will be dismissed for lack of standing and ripeness. Sipos v. Crabtree, 13 FSM R. 355, 366 (Pon. 2005).

Although it is doubtful whether the Constitution's Professional Services Clause protects an attorney's fee from forfeiture in any or all circumstances where the law would seem to allow it, that is an issue that

must await another day when there is a case or dispute before the court ripe for adjudication. Sipos v. Crabtree, 13 FSM R. 355, 366 (Pon. 2005).

When Chuuk has warned Continental that it is required to collect a service tax as set forth in a regulation implementing a tax statute and that criminal penalties may be imposed on Continental or its employees for failure to comply, the question of whether the Chuuk service tax on Continental passengers and freight shippers is lawful is sufficiently ripe to support a suit seeking declaratory judgment. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 157-58 (Chk. 2010).

Ripeness is also a threshold justiciability issue. For the FSM Supreme Court to exercise its jurisdiction, the issue raised must be ripe for adjudication. A matter is ripe when there is an actual, present controversy not merely a hypothetical or speculative conflict. Kallop v. Pohnpei, 18 FSM R. 130, 133 (Pon. 2011).

When the plaintiffs allege a possible, theoretical injury, but have asserted no real injury to them and when they have also not alleged a threatened injury, they have not alleged any actual harm to them under the aforementioned circumstances, and therefore as to this contention, the matter is not ripe for adjudication. Kallop v. Pohnpei, 18 FSM R. 130, 133 (Pon. 2011).

A party cannot sue until its cause of action has accrued. A matter must be ripe for adjudication for there to be a case or dispute over which the court can exercise jurisdiction. Onanu Municipality v. Elimo, 20 FSM R. 535, 545 (Chk. 2016).

– Case or Dispute – Standing

Standing to sue was an unsettled area of United States law when the FSM Constitution was ratified and the issue of standing to sue within the FSM is one that calls for independent analysis rather than rigid adherence to the decisions of United States courts construing that Constitution. Aisek v. Foreign Inv. Bd., 2 FSM R. 95, 98-99 (Pon. 1985).

In deciding who may litigate in the FSM Supreme Court, the goal is to develop principles consistent with the language of the Constitution and calculated to meet the needs of the people and institutions within the Federated States of Micronesia. Aisek v. Foreign Inv. Bd., 2 FSM R. 95, 100 (Pon. 1985).

Where dive shop operators allege actual or threatened economic injury as a result of increased competition flowing from business activities of a pleasure cruise ship providing diving opportunities in the same geographical area where the plaintiffs operate, and where they have placed before the court information sufficient to establish the reasonableness of their fear of economic injury, their law suit challenging the legality of the issuance of a foreign investment permit to a cruise ship may not be dismissed for lack of standing. Aisek v. Foreign Inv. Bd., 2 FSM R. 95, 100 (Pon. 1985).

Where plaintiffs seek to challenge issuance to a third party of a permit which plaintiffs reasonably allege will cause them harm, and where they allege that the actions of a national senator were crucial to issuance of the permit, those plaintiffs have standing to be heard on the question of whether the senator's membership on the board is violative of the "incompatibility clause," article IX, section 13 of the FSM Constitution. Aisek v. Foreign Inv. Bd., 2 FSM R. 95, 101 (Pon. 1985).

There is in the FSM no separate requirement that there be a nexus, that is, a logical connection between persons threatened by injury from the actions of an administrative agency and the statutory provisions under which the agency is operating. Aisek v. Foreign Inv. Bd., 2 FSM R. 95, 102 (Pon. 1985).

The issue of standing to sue, because it was a particularly unsettled area in United States law when the FSM Constitution was drafted and ratified, is an area especially calling for independent analysis rather than adherence to decisions construing similar provisions in the United States Constitution. Innocenti v. Wainit, 2 FSM R. 173, 178-79 (App. 1986).

The standing requirement is not expressly stated in the Constitution but implied as an antecedent to the constitutional case or dispute requirement, and should be interpreted so as to implement the objectives of that requirement. Innocenti v. Wainit, 2 FSM R. 173, 179 (App. 1986).

Business people have standing to challenge the constitutionality of an excise tax based on imports where the addition of the tax increases the cost that business people must pay for goods intended for resale to consumers. Innocenti v. Wainit, 2 FSM R. 173, 180 (App. 1986).

Plaintiff's possessory interest in land is sufficient to maintain standing to bring action for damages wrought when a road was built across the land. Benjamin v. Kosrae, 3 FSM R. 508, 511 (Kos. S. Ct. Tr. 1988).

When a public officer is requested to perform a duty mandated by law which he feels would violate the constitution, he has standing to apply to the court for a declaratory judgment declaring the statute unconstitutional. Siba v. Sigrah, 4 FSM R. 329, 334 (Kos. S. Ct. Tr. 1990).

A party has standing to sue when that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain judicial resolution of that controversy. The implied requirement that a party have standing should be interpreted so as to implement the objectives of the constitutional requirement that a case or dispute exist. In re Parcel No. 046-A-01, 6 FSM R. 149, 153 (Pon. 1993).

A leasehold interest in land is a sufficient possessory interest to give a party standing to maintain an action for trespass. In re Parcel No. 046-A-01, 6 FSM R. 149, 154 (Pon. 1993).

Private individuals lack standing to assert claims on behalf of the public. When the state government has certified ownership of land, and the traditional leaders' suit to have that land declared public land failed, private individuals cannot raise the same claim. In re Parcel No. 046-A-01, 6 FSM R. 149, 157 (Pon. 1993).

Noncitizen plaintiffs have standing to sue for trespass if they have a leasehold interest in the land. Ponape Enterprises Co. v. Soumwei, 6 FSM R. 341, 343 (Pon. 1994).

The FSM will not apply a Trust Territory rule based on Trust Territory Code provisions that only the government had standing to challenge title to land to deny standing to private persons challenging title to land under entirely separate FSM Constitutional provisions on citizenship, especially since the authority for the Trust Territory rule was derived from now-deleted language in an American legal encyclopedia. Etscheit v. Adams, 6 FSM R. 365, 383-84 (Pon. 1994).

A party who denies ownership of the seized items has no standing to ask for return of the property. Chuuk v. Mijares, 7 FSM R. 149, 150 (Chk. S. Ct. Tr. 1995).

A surviving co-obligor has standing to sue for failure to obtain credit life insurance for a deceased co-obligor. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 249 (Chk. 1995).

The states have standing to sue the national government where the states claim they are entitled to 50% of all revenues from the EEZ because it is an otherwise justiciable controversy in which they have a sufficient stake or interest. Chuuk v. Secretary of Finance, 7 FSM R. 563, 570 (Pon. 1996).

While it may be that in the usual case a judgment debtor would not have standing to contest or appeal the distribution of funds collected pursuant to the judgment, but where the result of the case will have a substantial financial impact on the judgment debtor, he is an aggrieved party with standing to appeal because standing exists where a party has a direct pecuniary interest in the outcome of the litigation. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 669 (App. 1996).

While it is generally true that parties may not assert the rights of third parties or non-parties, where the plaintiff ship charterers would be subject to the obligations and liabilities of an employer, such as withholding taxes, and that failure to perform those obligations would expose the plaintiffs to civil and criminal penalties if the crew is subject to FSM wage and salary taxes, the plaintiffs are attempting to assert only their own rights and have standing. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 115 (Chk. 1997).

Private individuals lack standing to assert claims on behalf of the public and cannot bring claims against the state on behalf of the public with respect to state land. Therefore a private landowner does not have standing to sue the state with respect to black rocks deposited below the ordinary high water mark because that is state land, but he does have standing to sue with respect to black rocks located above the high water mark and on his land. Jonah v. Kosrae, 9 FSM R. 335, 341 (Kos. S. Ct. Tr. 2000).

When, at the formal hearings, a person testified that her father had willed the parcel at issue to her brother and she did not submit any testimony in support of her own personal claim even though she was given an opportunity at the end of her testimony to give a statement about any "last word will" made by her father, neither she, nor her daughter, now claiming under her, had a right to notice of the parcel's Determination of Ownership because she was not an interested party, and her daughter cannot now claim to be an interested party. Jonas v. Paulino, 9 FSM R. 513, 516 (Kos. S. Ct. Tr. 2000).

A municipality that is one of eight eligible to receive development funds has standing to raise whether it has been fairly allowed to apply for some of them. Udot Municipality v. FSM, 9 FSM R. 560, 562 (Chk. 2000).

Because the court must have a case or dispute before it in order to exercise jurisdiction, if a plaintiff lacks standing to bring a suit there is then no case or dispute to adjudicate. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

A contention that a plaintiff is not singled out and thus suffers no irreparable harm peculiar to itself because it is one of eight in the same boat, does not indicate a lack of standing on the plaintiff's part, but rather that any of the eight would also have had standing to sue if it so chose. Udot Municipality v. FSM, 10 FSM R. 354, 358 (Chk. 2001).

Earmarking $50,000 of a prior appropriation to be spent in the plaintiff municipality does not take away the municipality's standing by making its claim moot when the appropriation still has an undifferentiated category called "other needs," and when the municipality's past inability to apply for funds already spent, and the likelihood that the situation would arise again, but be incapable of review, all favor a finding of continuing standing. Udot Municipality v. FSM, 10 FSM R. 354, 358 (Chk. 2001).

An argument that a party once had standing but no longer does is an argument that the case is now moot. One exception to the mootness doctrine is that the court retains jurisdiction when the problem will arise again, and would otherwise be incapable of review. Udot Municipality v. FSM, 10 FSM R. 354, 358 (Chk. 2001).

A person may act as a clan representative and be a party-plaintiff in his representative capacity when he was an acknowledged lineage representative prior to and during the negotiations over the lineage land and was named as a lineage representative on the land's certificate of title. Marcus v. Truk Trading Corp., 11 FSM R. 152, 158-59 (Chk. 2002).

An *afokur* has no right to sue for himself over lineage land and will be dismissed from such a lawsuit as a party in his individual capacity, because even if the lineage should prevail in the suit, the court could not award the *afokur* anything since whatever he might personally receive would be contingent on the lineage granting him permission to share in its recovery. Marcus v. Truk Trading Corp., 11 FSM R. 152, 159 (Chk. 2002).

By not granting a defendant's motion to dismiss on the grounds that plaintiffs lacked standing, the court

does not somehow imply that it, at that stage of the proceedings, has made any findings of ownership or right to possession of the property in question. Ambros & Co. v. Board of Trustees, 11 FSM R. 333, 336 (Pon. 2003).

Since a finding of contempt is final and appealable, the legality of the specific sanction of imprisonment should be reviewed at the same time in the interest of judicial economy. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 380 (App. 2003).

The standing issue is addressed first as it is a threshold issue going to a court's subject matter jurisdiction. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 496 (Kos. 2003).

The standing requirement is not expressly stated in the FSM Constitution, but is implied as an antecedent to the Article XI, Section 6 "case or dispute" requirement and should be interpreted so as to implement that requirement's objectives. The issue of standing to sue is an area which calls for the FSM Supreme Court's independent analysis rather than adherence to decisions construing similar provisions in the U.S. Constitution. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 496 (Kos. 2003).

A party has standing to sue when that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain judicial resolution of that controversy. The implied requirement that a party have standing should be interpreted so as to implement the objectives of the constitutional requirement that a case or dispute exist. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 496 (Kos. 2003).

This court is mandated by Article XI, Section 11 of the Constitution to first consult and apply sources from within the FSM. The overall goal is to develop principles of standing which are consistent with the Constitution's language and designed to meet the needs of the nation's people and institutions. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 496-97 (Kos. 2003).

Two factors are central to the determination of whether a party has standing. First, the party must allege a sufficient stake in the outcome of the controversy and it must have suffered some threatened or actual injury resulting from the allegedly illegal action. Second, the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. While not constitutionally based, three additional factors or prudential principles need to be considered before the standing question can be resolved. First, generalized grievances shared by substantially the whole population do not normally warrant standing. Second, even when an injury sufficient to satisfy the constitutional requirement is alleged, the petitioner generally must assert its own legal rights and interests, and cannot rest its claim to relief on the legal rights or interests of third parties. Third, the petitioner's complaint must fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 497 (Kos. 2003).

The first standing factor to be addressed is whether the plaintiff has alleged a sufficient stake in the controversy's outcome and whether it has suffered some threatened or actual injury resulting from the defendant's allegedly illegal action. The injury must be an invasion of a legally protected interest which is concrete and particularized, and actual or imminent. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 497 (Kos. 2003).

The second standing factor is that there must be a causal connection between the injury and the conduct complained of. The injury must be fairly traceable to the defendant's challenged action and not the result of the independent action of some third party not before the court. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 497 (Kos. 2003).

The Kosrae Legislature's alleged injury of not having its policy decisions abided by or infringed upon, cannot be fairly traced to the Development Bank's challenged actions under the Investment Development Act because while the bank has the responsibility to evaluate and comment upon a project's commercial feasibility and public infrastructure need, the FDA, not the bank has the loan's final approval. Therefore, the alleged injury cannot be traced to the bank's allegedly faulty or incomplete reports that may or may not

have led to the loan's approval when the loan's approval was the result of independent action of the FDA which is not a party before the court. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 497-98 (Kos. 2003).

Another standing factor to be addressed is redressability. Will the relief requested make any legal difference that will redress the petitioner's injury? Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 498 (Kos. 2003).

When the statutory language states only that a state government shall submit a project and when no evidence was offered that the Kosrae Legislature had any formal role in the submittal process, either by way of formal approval or the ability to disapprove a project, the court can find no legally delineated role for the Kosrae Legislature in the submittal process and therefore no injury to it from the governor's submittal. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 499 (Kos. 2003).

Passage of a legislative resolution that submits a request to the Governor which the Governor may or may not carry out at his discretion creates no legally enforceable rights by which the Kosrae Legislature may compel the Governor's compliance, especially when the Governor is not a party to the action. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 499 (Kos. 2003).

A law enacted by the Kosrae Legislature is the highest form of setting forth the legislature's policy decisions and such laws can create legal rights that may be enforceable in the courts. But when the subject bill is not yet law, having been vetoed by the Governor, and the bill requires action by the Governor who is not a party to the action, there is no injury to the plaintiff created from noncompliance with the bill's provisions. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 499 (Kos. 2003).

The three additional factors to be examined for determining standing are: 1) generalized grievances shared by substantially the whole population do not normally warrant standing; 2) the petitioner generally must assert its own legal rights and interests, and cannot rest its claim to relief on third parties' legal rights or interests; and 3) the petitioner's complaint must fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 500 (Kos. 2003).

When the plaintiff's grievances with regard to possible harmful ramifications of the proposed disposition of the Kosrae IDF state earmarked subaccount funds, is the type of generalized grievance shared by substantially the whole population, such generalized grievances do not warrant standing. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 500 (Kos. 2003).

When the plaintiff's grievances with regard to the bank's inadequate and incomplete reporting to the FDA go to the FDA's legal rights or interests and not to the Kosrae Legislature's, and when it is purely speculative as to what effect more accurate and complete reports might have had on the FDA's decision making especially since the FDA had "pre-approved" the loan before the report was made, it is likely that the result would not be different. The report is therefore not reviewable and the injury not redressable. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 500 (Kos. 2003).

When a complaint does not fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question and neither the statute or constitutional provisions involved provide support for standing, the complaint does not fall within the zone of interest to be protected by the Investment Development Act's provisions which do not provide the plaintiff a cause of action where there was no intent by the FSM Congress to create one. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 500-01 (Kos. 2003).

When the Attorney General could not protect the state's interest since he was personally involved in the matter but when independent legal advice was offered by another attorney in the Attorney General's office who could have been used to protect the state's interest or alternatively, outside counsel could be retained for the same purpose, this does not give the Legislature as a co-equal branch of the state

government, standing to sue to protect the state's interest. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 501 (Kos. 2003).

Since the Kosrae Legislature is not the intended beneficiary of the Investment Development Act's statutory provisions requiring the bank to make reports to the FDA, its alleged injury is not directly traceable to the bank's reports. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 501 (Kos. 2003).

When the plaintiff does not have standing to pursue an action for a preliminary injunction, the court lacks subject matter jurisdiction over the action and the case will be dismissed. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 501 (Kos. 2003).

Issues of standing are discussed first, for a party's standing is a potentially dispositive threshold issue going to the court's subject matter jurisdiction. FSM v. Udot Municipality, 12 FSM R. 29, 39 (App. 2003).

Whether a party has standing is a question of law reviewed *de novo* on appeal. FSM v. Udot Municipality, 12 FSM R. 29, 40 (App. 2003).

The standing requirement is not expressly stated in the Constitution, but is implied as an antecedent to the "case or dispute" requirement found in Article XI, section 6 of the Constitution, and should be interpreted so as to implement that requirement's objectives. FSM v. Udot Municipality, 12 FSM R. 29, 40 (App. 2003).

When deciding a question of standing, the FSM Supreme Court utilizes a case-specific analysis and as mandated by Article XI, section 11 of the Constitution, it first consults and applies sources from within the FSM. The overall goal is to develop principles of standing which are consistent with the Constitution's language and designed to meet the needs of our nation's people and institutions. FSM v. Udot Municipality, 12 FSM R. 29, 40 (App. 2003).

A party has standing to sue when that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain judicial resolution of that controversy. The implied requirement that a party have standing should be interpreted so as to implement the objectives of the constitutional case or dispute requirement. FSM v. Udot Municipality, 12 FSM R. 29, 40 (App. 2003).

Two factors are central to the determination of whether a party has standing. First, the party must allege a sufficient stake in the controversy's outcome and it must have suffered some threatened or actual injury resulting from the allegedly illegal action or erroneous court ruling. Second, the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. FSM v. Udot Municipality, 12 FSM R. 29, 40 (App. 2003).

While not constitutionally based, three additional rules need to be applied before the question of standing can be resolved. First, generalized grievances shared by substantially the whole population do not normally warrant standing. Second, even when an injury sufficient to satisfy the constitutional requirement is alleged, the party generally must assert its own legal rights and interests, and cannot rest its claim to relief on the legal rights or interests of third parties. Third, the interests which the party is seeking to protect must fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. FSM v. Udot Municipality, 12 FSM R. 29, 40 (App. 2003).

When some appellants' interests are sufficiently distinct from those of other appellants and when they have suffered some injury which would be redressible by appeal's resolution in their favor, they have standing to raise issues in the appeal that the other appellants did not raise. FSM v. Udot Municipality, 12 FSM R. 29, 41 (App. 2003).

When some appellants have interests, responsibilities, and functions that are distinguishable from the other appellants because Congress has delegated them authority to create legally enforceable contracts and because they have a significant role in implementing public projects, and when they have been injured

in the performance of their duties by the trial court's order and their alleged injury can be traced to the challenged action and is not a generalized grievance shared by substantially the whole population, those appellants have competing contentions and are adversaries with sufficient interest in the outcome to have standing to challenge the trial court rulings on appeal. FSM v. Udot Municipality, 12 FSM R. 29, 42-44 (App. 2003).

A party has standing to challenge both the legality of the process and compliance with the Financial Management Act and related regulations to the extent that such compliance impacts upon the relief that it requests when it has more than a general interest in the legality of this process as it contends that, under a fair and transparent application process, it would receive at least the opportunity to apply for and receive some of the funds for its own projects. Thus, the trial court in finding standing properly recognized and focused on the party's threatened economic injury when the process by which the Faichuk appropriations were being administered was alleged to be unlawful. FSM v. Udot Municipality, 12 FSM R. 29, 45 (App. 2003).

Although the Financial Management Act does not create a private right of action for parties in general to contest violations of its provisions, a party has standing when it requests the opportunity to seek funding from the challenged public laws without participating in an unlawful process and the FSM's failure to comply with the Act and its related regulations impacts upon the relief that it requests and when, in order for it to seek funding, determination of what portion of funds remained unobligated and might still be available was necessary and an accounting was a necessary and appropriate tool to achieve this. FSM v. Udot Municipality, 12 FSM R. 29, 45 (App. 2003).

A municipality may have standing when it has demonstrated a threatened economic injury and a sufficient stake in the controversy's outcome and this threatened economic injury is a direct result of, and can be traced to, the illegality of the subject provision in the appropriation and the manner in which it was being implemented, when the injury would be redressed by a favorable decision, when the injury is not a generalized injury shared by substantially the whole population, but it is asserting its own legal rights and interests, and is not resting its claim to relief on the legal rights or interests of third parties, and when its complaint falls within the zone of interest to be protected by the statutory and constitutional provisions in question. FSM v. Udot Municipality, 12 FSM R. 29, 46 (App. 2003).

When a plaintiff obtained an assignment that was registered and subsequently dissolved by the Public Lands Board, the plaintiff was directly and adversely affected by the Board's decision, and thus has standing to sue the Board. There can be no question that the plaintiff is the real party in interest. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 90 (Pon. 2003).

When the deceased's brother failed to provide the court with evidence of his representation of the deceased's heirs in the matter, his appearance is accepted as a pro se representation of himself and his claimed interests, but when the brother is not an heir, he does not have standing to file a motion for reconsideration on his own behalf because he is not a party to the matter, and on this basis his motion will be denied. Edwin v. Heirs of Mongkeya, 12 FSM R. 220, 222 (Kos. S. Ct. Tr. 2003).

The two concepts of standing and justiciability interrelate, since standing is a prerequisite to a justiciable "case or dispute" under Article XI, Section 6(a) and (b) of the Constitution. There can be no case or dispute if a party lacks standing to bring suit in the first place. Urusemal v. Capelle, 12 FSM R. 577, 583 (App. 2004).

While the requirement of standing is not set forth in so many words in the Constitution, it is implicit in the "case or dispute" requirement found in Article XI, Section 6 of the Constitution. A party has standing sufficient to allow him to sue when that party has a sufficient stake or interest in an otherwise justiciable case or dispute to obtain judicial resolution of the controversy. Urusemal v. Capelle, 12 FSM R. 577, 583 (App. 2004).

Two factors are central to the determination of whether a party has standing. First, the party must

allege a sufficient stake in the outcome of the controversy and it must have suffered some threatened or actual injury resulting from the allegedly illegal action or erroneous court ruling. Second, the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Urusemal v. Capelle, 12 FSM R. 577, 583 (App. 2004).

Since the President, as the country's Chief Executive and by virtue of that office the chief law enforcement officer, has a stake or interest in insuring that disruption of the judicial process does not occur from the delay in the administration of justice resulting from a specially assigned justice's disapproval, when he has suffered actual injury resulting from an allegedly illegal action, which can be traced to the challenged action and can be redressed by a court decision (that is to say by a judicial determination that both the resolution and the statute on which it is based are unconstitutional), he thus has a sufficient stake in the controversy's outcome to have standing. Urusemal v. Capelle, 12 FSM R. 577, 583 (App. 2004).

When the President is contesting, not the manner in which the special justice was assigned, but the manner in which he was removed, the delay resulting from a specially assigned justice's removal pursuant to 4 F.S.M.C. 104(2) is a real injury sufficient to bestow standing on the President to contest the constitutionality of that statute. Urusemal v. Capelle, 12 FSM R. 577, 584 (App. 2004).

A party has standing to sue where that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain a judicial resolution of that controversy. Edgar v. Truk Trading Corp., 13 FSM R. 112, 115 (Chk. 2005).

The plaintiffs have a sufficient stake or interest to maintain a case when they allege that they were not paid a portion of the funds they were specifically entitled to under the terms of the agreement to sell land to the defendant, but that someone else wrongfully received those funds and when they claim as damages only those funds that they are entitled to, but were not paid. The court is thus in a position to resolve the matter by awarding appropriate damages. Edgar v. Truk Trading Corp., 13 FSM R. 112, 115 (Chk. 2005).

Standing is a threshold issue going to this court's subject matter jurisdiction and thus is addressed first. Standing must be found for each count of a complaint or that count will be dismissed. Ripeness is also a threshold issue. Sipos v. Crabtree, 13 FSM R. 355, 362 (Pon. 2005).

Although standing is not an expressly-stated requirement of the FSM Constitution, it is implied as an antecedent to the "case or dispute" requirement found in the Constitution's jurisdictional grant to the court, and must be interpreted so as to implement that requirement's objectives. That is, there must be a case or dispute in order for the FSM Supreme Court to have jurisdiction over the subject matter. Sipos v. Crabtree, 13 FSM R. 355, 362 (Pon. 2005).

The issue of standing to sue is an area which calls for this court's independent analysis rather than adherence to decisions construing similar provisions in the United States Constitution. Sipos v. Crabtree, 13 FSM R. 355, 363 (Pon. 2005).

For there to be standing, opposing parties must have sufficiently competing contentions and adverse interests such that the adversaries will thoroughly consider, research, and argue the points of law at issue. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. Two factors are central to the determination of whether a party has standing. First, he must allege a sufficient stake in the controversy's outcome and he must have suffered some threatened or actual injury resulting from the allegedly illegal action, and, second, the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Sipos v. Crabtree, 13 FSM R. 355, 363 (Pon. 2005).

While not constitutionally based, three additional, prudential principles need to be considered before the standing question can be resolved. First, generalized grievances shared by substantially the whole population do not normally warrant standing. Second, even when an injury sufficient to satisfy the constitutional requirement is alleged, the plaintiff generally must assert his own legal rights and interests,

and cannot rest its claim to relief on the legal rights or interests of third parties. Third, the plaintiff's complaint must fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Sipos v. Crabtree, 13 FSM R. 355, 363 (Pon. 2005).

The first factor to be addressed in a standing inquiry is whether the plaintiff has alleged a sufficient stake in the controversy's outcome and whether he has suffered some threatened or actual injury resulting from defendants' allegedly illegal action. The injury must be an invasion of some legally protected interest which is concrete and particularized, and actual, or imminent. Sipos v. Crabtree, 13 FSM R. 355, 363 (Pon. 2005).

To have standing, a plaintiff must suffer some threatened or actual injury resulting from defendant's allegedly illegal action and the injury must be an invasion of a legally protected interest which is concrete and particularized, and actual or imminent, but when the plaintiff's assertion of injury that runs to all counts of his complaint is that his threatened injury of attorney fee forfeiture is too speculative, it does not pass the first factor of the standing test. Sipos v. Crabtree, 13 FSM R. 355, 363-64 (Pon. 2005).

When no fee forfeiture proceeding has been instituted against the plaintiff and the government has stated that it has no intention of seeking pre-conviction attachment or seizure of attorney fees and would consider seeking forfeiture only if the criminal defendants are convicted; when in spite of the plaintiff's assertion of a chilling effect on representation of those defendants, he entered an appearance on their behalf; when that case has yet to go to trial and no one has been convicted; and when no determination has been made of the status of any of the funds that might be subject to forfeiture, there is yet no injury or likelihood of any injury to the plaintiff and the dispute is purely of a hypothetical or abstract character. To be a threatened injury which is actual or imminent, the court would have to presume that the plaintiff's clients are guilty, before that has been proven, or that they will be convicted, before a verdict has been rendered. Since that case may end with the plaintiff's clients' acquittal or dismissal, the threatened injury may remain forever hypothetical, is thus neither actual nor imminent. Sipos v. Crabtree, 13 FSM R. 355, 364-65 (Pon. 2005).

The second factor in a standing inquiry is that the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Part of this standing factor is redressability – will the relief requested make any legal difference that will redress the plaintiff's injury? Sipos v. Crabtree, 13 FSM R. 355, 365 (Pon. 2005).

A party cannot raise the claims of third persons; he may raise only his own claims. He generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties. Sipos v. Crabtree, 13 FSM R. 355, 365 (Pon. 2005).

Since the alleged wrongful interference with the plaintiff's ability to represent his clients is an alleged violation of his clients' rights, not of his rights, those rights are for his clients to assert. Thus to the extent that a cause of action is based on the violation of the rights of others, the plaintiff lacks standing to bring it because it is not redressible – he cannot seek redress for these allegations. Sipos v. Crabtree, 13 FSM R. 355, 365 (Pon. 2005).

When a request for relief is a declaration of when an attorney may accept a fee without the fee being subject to forfeiture at a later time by a confiscation order, it asks for an advisory opinion. The court has no jurisdiction to give advisory opinions, because to do so would violate the Constitution's case or dispute requirement. An advisory opinion is thus not a form of redress available to a plaintiff. Sipos v. Crabtree, 13 FSM R. 355, 365 (Pon. 2005).

When the plaintiff seeks as relief an order unsealing another case, even if it were his own rights he was asserting and not those of other non-parties, he would have to seek that relief in the court handling that case or a criminal case that arose from it, not in this case since that proposed relief does not redress the threatened injury – loss of attorney's fees – in this case. Sipos v. Crabtree, 13 FSM R. 355, 365 (Pon. 2005).

When the complaint either asserts the rights of others not a party to the case or seeks relief not available here or seeks redress for or protection of the plaintiff's allegedly threatened attorney's fees and the fee claim is not ripe for adjudication, the entire complaint will be dismissed for lack of standing and ripeness. Sipos v. Crabtree, 13 FSM R. 355, 366 (Pon. 2005).

It is generally true that a litigant cannot assert someone else's rights, but this does not apply when it is not a matter of asserting another's rights but of maintaining the integrity of the judicial process. McVey v. Etscheit, 14 FSM R. 207, 214 (Pon. 2006).

When the claim against the FSM asserts that the FSM published false and misleading information about certain crewmen and the vessel's captain is the only crew member who is a party to the action, the court must assume that this is his personal claim since a party must assert his own legal rights and interests, and cannot rest his claim to relief on third parties' legal rights or interests. FSM v. Kana Maru No. 1, 14 FSM R. 368, 373 (Chk. 2006).

A party has standing to sue when that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain judicial resolution of that controversy. The implied requirement that a party have standing is interpreted so as to implement the objectives of the constitutional case or dispute requirement. Standing exists when a party has a direct pecuniary interest in the litigation's outcome. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 414 (Yap 2006).

When the plaintiffs "own" the natural resources through the *tabinaw*, the plaintiffs' exclusive rights to use and exploit the marine resources of the area affected by a grounding and subsequent oil spill give them standing to maintain a class action with respect to the issues at trial – damages to the marine resources from the grounding and oil spill. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 415 (Yap 2006).

A party has standing to challenge a certificate of title when, although he admits that some of the land was sold to others, he asserts that even after those sales, he still retained part of the land. Dereas v. Eas, 14 FSM R. 446, 453-54 (Chk. S. Ct. Tr. 2006).

Generally, a party has standing to sue when that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain a judicial resolution of that controversy. Ehsa v. Pohnpei Port Auth., 14 FSM R. 481, 484 (Pon. 2006).

When the amended complaint names as plaintiffs Timakio Ehsa, PMS, and "all foreign fishing vessels (dba) FSM Access Agreement," and when PMS, whose financial viability depends on the services it provides the commercial vessels and the fees it collects from those vessels, has more than an incidental interest in the action's outcome, the court will decline to dismiss the complaint on the basis of lack of standing. Ehsa v. Pohnpei Port Auth., 14 FSM R. 481, 484 (Pon. 2006).

When the debt the defendant owes the plaintiff was assigned by the plaintiff to its credit insurer and thereafter the insurer paid $48,554.11 to the plaintiff pursuant to its insurance arrangement and then made attempts to collect the outstanding debt from the defendant but its collection efforts were unsuccessful and when the plaintiff then procured a reassignment of the debt from its insurer and agreed to reimburse the insurer first and in full from any recovery, net of reasonable attorney's fees incurred in the plaintiff's recovery attempts, the plaintiff, as a result of the reassignment, is the proper party in interest and has standing to bring the action to recover the debt from the defendant. American Trading Int'l, Inc. v. Helgenberger, 15 FSM R. 50, 51-52 (Pon. 2007).

A party cannot raise the claims of third persons. She may raise only her claims. She must assert her own legal rights and interests, and cannot rest her claim to relief on the legal rights or interests of a third party. Ruben v. Hartman, 15 FSM R. 100, 114 (Chk. S. Ct. App. 2007).

An insurance policy beneficiary has standing to sue for unpaid insurance policy benefits. John v.

Chuuk Public Utility Corp., 15 FSM R. 169, 171 (Chk. 2007).

Whether a party has standing to sue is a question of law reviewed de novo on appeal. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 59 (App. 2008).

The issue of standing is a threshold issue going to a court's subject matter jurisdiction and therefore standing is properly challenged in the form of a motion to dismiss brought under Rule 12(b)(1) because when a plaintiff does not have standing to pursue an action, the court lacks subject matter jurisdiction over the action and the case will be dismissed. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 219 (Chk. S. Ct. Tr. 2008).

To the extent that the prisoners are asserting that Chuuk has a right to be paid money by the national government because of their incarceration in Chuuk state jail, the prisoners are asserting, not their own rights, but the State of Chuuk's rights, which they cannot do because they lack standing to raise a non-party's rights. FSM v. Sias, 16 FSM R. 661, 664 (Chk. 2009).

It is inconceivable that a party could be made to suffer criminal or civil penalties for the failure to collect a tax but would not have standing to challenge the tax's constitutionality (and thus the requirement that the party must collect it). The inability of a party required by law to collect a tax to challenge that tax's validity would deprive that party of its property (compliance costs, tax collection costs, remittance costs, etc.) without any due process of law. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 158-59 (Chk. 2010).

If the requirement of standing is given a narrow construction when there is involved constitutional or important statutory rights then there is, in effect, no practical remedy for anyone with an interest in enforcing the right – and the right becomes a mockery. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 159 (Chk. 2010).

Two factors are central to the determination of whether a party has standing: 1) the party must allege a sufficient stake in the dispute's outcome and it must have suffered some actual or threatened injury resulting from the allegedly illegal action, and 2) the injury must be such that it can be traced to the challenged action and must be of the kind a favorable decision will likely redress. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 159 (Chk. 2010).

When Continental has alleged a sufficient stake in the action's outcome and is threatened not only with substantial costs if it complies but also with civil and criminal penalties if it does not and these threatened injuries are all traceable to the Chuuk service tax and would be addressed by a favorable decision, it may therefore challenge the legal requirement that it collect the tax (and remit it to the State) even if technically, only the statutorily defined taxpayer has the legal ability to challenge the tax's validity. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 159 (Chk. 2010).

Whether Pohnpei had reasonable suspicion to stop someone or probable cause to arrest him is not an issue his wife has standing to raise. A party cannot rest her claim for relief on the rights of third persons since she lacks standing to raise a non-party's claims and rights. Berman v. Pohnpei, 17 FSM R. 360, 370 (App. 2011).

A party lacks standing to make any contention about an unequal application of state policy for completing accident reports when it is her husband's claim, and not hers, since that "policy" was not applied to her (she had not been in an "accident") but to her husband. Only he could raise a claim arising from an unequal application of accident report obligations. She lacks standing. Berman v. Pohnpei, 17 FSM R. 360, 370 (App. 2011).

Although generally only a client or a former client has standing to move to disqualify counsel in a civil case on the basis of a conflict of interest, even then a non-client may seek disqualification when the ethical breach so infects the litigation in which disqualification is sought that it impacts the moving party's interest in

a just and lawful determination of her claims since she may have the constitutional standing needed to bring a motion to disqualify based on a third-party conflict of interest. Marsolo v. Esa, 17 FSM R. 480, 484-85 (Chk. 2011).

Opposing counsel may have standing to seek counsel's disqualification even though they are not representing an aggrieved client or former client because bar members have an ethical obligation and are authorized to report any ethical violations in a case. Marsolo v. Esa, 17 FSM R. 480, 485 (Chk. 2011).

A trustee, guardian, or custodian of funds has standing to sue to obtain control of or to prevent the loss of funds that it should be holding in trust, guarding, or having custody of, so it could discharge its legal duties and responsibilities toward the party for whose benefit it was holding those funds. Marsolo v. Esa, 18 FSM R. 59, 64 (Chk. 2011).

It is doubtful whether a movant, who is a defendant only in the second cause of action, has standing to move to dismiss the third or the first cause of action. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 93 (Yap 2011).

When the complaint alleges that a person is bound by the mortgage because another defendant, who signed the mortgage, held that person's power of attorney to act on his behalf in regard to the land, the plaintiff is estopped from and cannot deny that that person is a party to the mortgage and, since he is a party to the mortgage, he has standing to enforce its provisions. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 94 (Yap 2011).

Standing and justiciability are threshold issues going to the FSM Supreme Court's subject matter jurisdiction and thus are addressed first. Kallop v. Pohnpei, 18 FSM R. 130, 133 (Pon. 2011).

Standing must be found for each count of a complaint or that count will be dismissed. Kallop v. Pohnpei, 18 FSM R. 130, 133 (Pon. 2011).

A vessel owner's right to seek a limitation of its liability is created by an FSM statute, and as the vessel's owner at the time of its grounding and thus the potentially liable party, a company has standing to raise this statute as a defense to limit its liability for the vessel's grounding, regardless of any arguments that the FSM Secretary of Transportation and Communications, as the receiver of wrecked and abandoned vessels, may have current ownership rights over the vessel. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 312 (Yap 2012).

A plaintiff has a personal stake in the litigation's outcome when the Plan's insurance premiums are taken from his senatorial salary and when, since he is one of the two co-equal heads of the Chuuk Legislature, it appears that he has standing in his representative capacity. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 505 (Chk. 2013).

State employees suing for unpaid compensation for work they performed, obviously have a sufficient stake in the case's outcome when they allege that they each have suffered an actual injury (insufficient pay) and that that injury can be traced to the Director's challenged action and their claim is one that a favorable court decision can redress by awarding damages. Kosrae v. Edwin, 18 FSM R. 507, 514 (App. 2013).

When the State Tax Act provides that no person shall have a right of action to challenge the validity of any tax levied by the Act unless that person first pays to the state the tax in question, under protest, and when the state has seized by tax levy $2,931.29, and the state rightly considers that seizure to be a partial payment under protest, the court, without having to analyze it further, unquestionably has jurisdiction over a challenge to the cigarette tax because a cigarette tax payment was made under protest. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 152 (Chk. 2013).

The FSM has standing to sue for conversion when it was Compact sector funds that were converted. FSM v. Muty, 19 FSM R. 453, 460 (Chk. 2014).

An intervention, whether as of right or permissive, hinges upon whether the court can properly recognize the would-be intervenor's alleged interest in the subject cause of action. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 218 (Pon. 2015).

To intervene to prosecute a third-party beneficiary claim when the movant lacks privity of contract and there is no existing statutory provision that the movant might be able to avail itself, the movant must make a showing that it has actually suffered a loss or injury, which would be capable of being redressed through its proposed intervention, and which is separate from the rights and claims asserted by the existing parties. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 218 (Pon. 2015).

Standing exists when a party has a direct pecuniary interest in the litigation's outcome. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 218 (Pon. 2015).

In order to intervene under Rule 24, an applicant must have an interest which is of such a direct and immediate character, that the proposed intervenor will either gain or lose by the immediate operative effect of that judgment, but when the would-be intervenor has no direct pecuniary interest in the litigation's outcome, it lacks the requisite standing to intervene as an interested party. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 219 (Pon. 2015).

Although the standing requirement is not expressly delineated within the FSM Constitution, it is implied as an antecedent to the "case or dispute" requirement found in Article XI, § 6 and should be interpreted, so as to implement that requirement's objectives. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 511 (App. 2016).

Whether a party has standing is a question of law reviewed *de novo* on appeal. Since standing cannot be waived, an appellate court is obliged to conduct an independent inquiry, with respect to the parties' standing to challenge national laws, even though the parties have not raised, and the trial court not ruled on, the standing issue. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 511 (App. 2016).

Two factors are central to the determination of whether a party has standing. Initially, a party must allege a sufficient stake in the controversy's outcome and must have suffered some threatened or actual injury resulting from the allegedly illegal action or erroneous court ruling. Next, the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 511 (App. 2016).

While not constitutionally based, three additional rules need to be applied before the question of standing can be resolved. First, generalized grievances shared by substantially the whole population do not normally warrant standing. Second, even when an injury sufficient to satisfy the constitutional requirement is alleged, the party must generally assert its own legal rights and interests and cannot rest its claim to relief on the legal rights and interests of third parties. Third, the interests which the party is seeking to protect, must fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 511-12 (App. 2016).

Generalized grievances shared by the public at large, do not confer standing on specific individuals. An interest in having the government conform to the limitations imposed by the Constitution, without more, is clearly a shared interest and therefore, the government's alleged failure represents a generalized grievance. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 512-13 (App. 2016).

In any matter before the court, the issue of standing should be addressed first as it is a threshold issue going to the court's subject matter jurisdiction. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 639 (Pon. 2016).

Although not expressly stated in the FSM Constitution, the "case or dispute" requirement in Article XI, Section 6 of the FSM Constitution is interpreted to imply the requirement that a party has standing to bring a suit. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 639 (Pon. 2016).

A party has standing to sue when that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain judicial resolution of that controversy. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 639 (Pon. 2016).

The implied requirement that a party have standing should be interpreted so as to implement the objectives of the constitutional requirement that a case or dispute exist. Thus, the opposing parties must have sufficiently competing contentions and adverse interests such that the adversaries will thoroughly consider, research, and argue the points of law at issue, and the controversy must be definite and concrete, touching the legal relations of the parties having adverse legal interests. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 639-40 (Pon. 2016).

The two central factors for determining whether a party has standing are: 1) the party must allege a sufficient stake in the controversy's outcome and it must have suffered some threatened or actual injury resulting from the allegedly illegal action, and 2) the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Three additional prudential principles also need to be considered: 1) generalized grievances shared by substantially the whole population do not normally warrant standing; 2) even when an injury is sufficient to satisfy the constitutional requirement is alleged, the petitioner generally must assert its own legal rights and interests, and cannot rest its claim on the legal rights or interests of third parties; and 3) the petitioner's complaint must fall within the zone of interest to be protected or regulated by the statute or constitutional guarantee in question. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 640 (Pon. 2016).

When deciding a question of standing, the FSM Supreme Court utilizes a case-specific analysis and as mandated by Article XI, Section 11 of the FSM Constitution, the court will first consult and apply sources from within the FSM. The overall goal is to develop principles of standing which are consistent with the Constitution's language and designed to meet the needs of our nation's people and institutions. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 640 (Pon. 2016).

Because it is the plaintiffs who invoke the court's jurisdiction, it is the plaintiffs' burden to prove that standing exists. Therefore, when the defendants challenge standing in a motion to dismiss or as an affirmative defense, the plaintiffs' complaint must contain facts that, if true, would be sufficient to establish that standing exists. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 640 (Pon. 2016).

The court recognizes the customary and traditional rights of municipalities, clans, families, and individuals to control the use of, or material in, marine areas below the ordinary high watermark and otherwise engage in the harvesting of fish and other marine resources from reef areas, but any traditional and customary right to control the use of, or material in, marine areas below the ordinary high watermark is subject to, and limited by, the inherent rights of the Pohnpei Public Lands Trust as the owner of such marine areas. Accordingly, the Mwoalen Wahu does not have standing on the basis that there exists a customary law that gives the traditional leaders the right to control the use of marine areas in their respective municipalities. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 641-42 & n.1 (Pon. 2016).

To the extent a claimed customary right is still in effect, the Mwoalen Wahu members have a legal right under the Pohnpei Constitution to institute legal proceedings in order to protect their constitutionally protected interests. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

Standing to sue was an unsettled area of United States law when the FSM Constitution was ratified and the issue of standing to sue within the FSM is one that calls for independent analysis rather than rigid adherence to the decisions of United States courts construing that Constitution. Based on this, the court will continue applying the prudential standing principles in determining whether a particular plaintiff has standing. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 644 n.3 (Pon. 2016).

For there to be standing, the plaintiff must have suffered some threatened or actual injury resulting from the defendants' allegedly illegal action, and the injury must be an invasion of a legally protected interest which is concrete and particularized, and actual or imminent. Mwoalen Wahu Ileile en Pohnpei v.

Peterson, 20 FSM R. 632, 644 (Pon. 2016).

For there to be standing, the "injury in fact" test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 644 (Pon. 2016).

The first prong of the test for standing is satisfied when the customary right to receive oferings from their constituents and subjects is shared among each member of the Mwoalen Wahu, is protected by the Pohnpei Constitution, and is imminently threatened by the defendants' allegedly illegal conduct because it has been shown that sea cucumber declines pose an intensified threat to Pohnpei's nearshore coral-reef ecosystem and thus all marine life within that ecosystem, thereby posing an increased threat to the Mwoalen Wahu members' rights to receive offerings from marine life that inhabit that ecosystem. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 644 (Pon. 2016).

The plaintiffs' reasonable fears of environmental pollution is sufficient injury-in-fact to support standing. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 645 (Pon. 2016).

Although the court is mandated to first consult and apply sources from within the FSM, it is appropriate to look to United States case law for guidance on a complex standing issue, while proceeding against the background of pertinent aspects of Micronesian law, society, and culture. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 645 n.4 (Pon. 2016).

For there to be standing, the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 645 (Pon. 2016).

When, without a sea cucumber harvest, the Mwoalen Wahu will remain in the same posture as in the past and its members will continue to receive offerings by their constituents and subjects whereas a sea cucumber harvest threatens to reduce the structure and habitat of Pohnpei's reefs and negatively impact marine life, including marine life that Mwoalen Wahu members have a customary right to receive from their people, the threatened injury is directly traced to the challenged action and would be redressed by a decision in the plaintiffs' favor. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 645 (Pon. 2016).

Standing's prudential principles do not necessarily go to the core of the court's jurisdiction based on the "case or dispute" constitutional principle, but rather reflect an effort by the court to determine whether it should exercise judicial self-restraint when it seems wise not to entertain a case. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 645 n.5 (Pon. 2016).

Generalized grievances shared by substantially the whole population do not normally warrant standing and the petitioner generally must assert its own legal rights and interests, and cannot rest its claim on the legal rights or interests of third parties, but organizational standing to sue based on the rights of its members is proper. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 645 (Pon. 2016).

For there to be standing, the petitioner's complaint must fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 646 (Pon. 2016).

When the customary right the Mwoalen Wahu seek to protect is clearly within the zone of interests sought to be protected under Article 5 of the Pohnpei Constitution which upholds, respects, and protects the customs and traditions of the traditional kingdoms of Pohnpei and when sea cucumber commercialization is regulated by Pohnpei statute, the plaintiffs' complaint has fallen within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 646 (Pon. 2016).

If the requirement of standing is given a narrow construction when constitutional rights are involved,

then there is, in effect, no practical remedy for anyone with an interest in enforcing the right – and the right becomes a mockery. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 646 (Pon. 2016).

The plaintiffs have standing to bring the matter before the court when they have alleged facts establishing a concrete injury and a sufficient causal relationship between the injury and the alleged violation and if the injury can be remedied by a judicial decree. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 646 (Pon. 2016).

Under the Pohnpei Marine Sanctuary and Wildlife Refuge Act of 1999, any person may commence a civil suit on his own behalf to enjoin any person who is alleged to be in violation of § 5-107 of that Act, and "person" includes any individual, corporation, partnership, association or other entity, and any governmental entity including, but not limited to, the FSM or any of the FSM states or any political subdivision thereof, and any foreign government, subdivision of such government, or any entity thereof. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 647 (Pon. 2016).

Since, unlike 26 Pon. C. § 5-115 which expressly grants to the Attorney General the right to bring a suit to enjoin a person who is in "imminent violation," the citizen suit provision of 26 Pon. C. § 5-117 only allows a person to commence a civil suit to enjoin a person who is "alleged to be in violation" of § 5-107," the plain statutory language can only be read to allow the Attorney General the power to seek equitable relief for an imminent violation but not private persons who do not allege facts that are sufficient to grant traditional constitutional standing when it has not asserted injury to itself. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 647 (Pon. 2016).

When a plaintiff has not alleged a concrete injury and a sufficient causal relationship between the injury and the alleged "violation," its claims will be dismissed because standing must be found for each count of a complaint or that count will be dismissed. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 648 (Pon. 2016).

A standing issue is addressed first, as it is a threshold issue going to a court's subject matter jurisdiction. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 56 (App. 2016).

Although standing is not expressly stated within the FSM Constitution, it is implied as an antecedent to the "case or dispute" requirement found in Article XI, § 6 and should be interpreted so as to implement the objectives of that requirement. Two factors are central to the determination of whether a party has standing: 1) the party must allege a sufficient stake in a controversy's outcome and it must have suffered some threatened or actual injury resulting from the allegedly illegal action or erroneous court ruling, and 2) the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 57 (App. 2016).

When the asserted ownership of a parcel constitutes a sufficient stake in the outcome; and when a challenge to the Kosrae State Court's ruling is capable of being redressed by a favorable decision in the FSM Supreme Court appellate division, an appellant, who did not appeal the Land Court decision to the Kosrae State Court, possesses standing to bring the present appeal. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 57 (App. 2016).

Whether a party has standing is a question of law, to be reviewed de novo on appeal. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 57 (App. 2016).

– Certification of Issues

When a case in a state or local court involves a substantial question requiring the interpretation of the Constitution, national law, or a treaty, on application of a party or on its own motion the court shall certify the question to the Supreme Court appellate division. The Supreme Court appellate division may decide the case or remand it for further proceedings. Koike v. Ponape Rock Products Co., 1 FSM R. 496, 501 (Pon. 1984).

Under article XI, section 8 of the FSM Constitution, a state court receiving a proper motion is required to certify any substantial constitutional question to the FSM Supreme Court appellate division for proper disposition. Koike v. Ponape Rock Products Co., 1 FSM R. 496, 501 (Pon. 1984).

Article XI, section 8 of the Constitution, providing for state court certification of issues of national law, gives the FSM Supreme Court appellate division another tool to oversee the development of national law jurisprudence, but also provides the option of remand so that the state court may address issues of national law. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM R. 33, 35 (App. 1989).

Under normal circumstances, the decision as to whether to decide or remand a question certified under article XI, section 8 of the Constitution will be made only by the constitutionally appointed justices of the FSM Supreme Court, without convening a third judge and without oral argument. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM R. 33, 35 (App. 1989).

Unless definite articulable reasons to the contrary appear, questions certified under article XI, section 8 of the Constitution normally will be remanded to the state court. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM R. 33, 35 (App. 1989).

Where the issues certified to the FSM Supreme Court by a state court under article XI, section 8 of the FSM Constitution are narrowly framed and not capable of varying solutions, and it appears that a greater service may be provided by simply answering the questions posed by the state court, the FSM Supreme Court will not remand the certified questions to the state court. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM R. 33, 35 (App. 1989).

Certified questions are decided by those constitutionally appointed justices who are not disqualified. Etscheit v. Adams, 6 FSM R. 608, 609 (App. 1994).

The Constitution provides that the FSM Supreme Court Appellate Division may decide questions certified from state and local courts, not from the FSM Supreme Court Trial Division. Etscheit v. Adams, 6 FSM R. 608, 610 (App. 1994).

Certification is normally granted by the court that will be applying the guidance sought to its decision, not yet made, not by the court that is requested to hear the certified question. Etscheit v. Adams, 6 FSM R. 608, 610 (App. 1994).

When the FSM Supreme Court appellate division receives a certified question from a state or local court it has the discretion to decide the question or to remand it for decision. Jackson v. Kosrae, 7 FSM R. 504, 505 (App. 1996).

Certified questions will normally be remanded to state court unless well-articulated reasons are presented for their resolution by the FSM Supreme Court appellate division. When the state court might resolve the case without reaching the certified constitutional question remand is proper. Jackson v. Kosrae, 7 FSM R. 504, 506 (App. 1996).

Certified questions narrowly framed and not capable of varying resolutions may be accepted by the FSM Supreme Court appellate division when a greater service would be provided by answering the questions posed. Pernet v. Woodruff, 10 FSM R. 239, 241 (App. 2001).

– Chuuk

Lease agreement executed by the Chuuk State is void insofar as it purports to "incur public indebtedness" without legislative authority by way of an appropriation or statute. Billimon v. Chuuk, 5 FSM R. 130, 135-36 (Chk. S. Ct. Tr. 1991).

The framers did not intend that the constitutional provision barring persons convicted of a felony from serving in the legislature, even if pardoned, to have retroactive effect so as to bar a person who was both convicted and pardoned before the enactment of the Chuuk State Constitution from appearing on the official ballot for state legislator. Robert v. Mori, 6 FSM R. 178, 179-80 (Chk. S. Ct. Tr. 1993).

The Chuuk State Constitution recognizes all traditional rights and ownership over all reefs, tidelands, and other submerged lands subject to legislative regulation of their reasonable use. Nimeisa v. Department of Public Works, 6 FSM R. 205, 209 (Chk. S. Ct. Tr. 1993).

It was the intent of the framers of the Chuuk State Constitution to return the rights and ownership of all reefs, tidelands (all areas below the ordinary high watermark), and other submerged lands to the individual people of Chuuk State. Nimeisa v. Department of Public Works, 6 FSM R. 205, 210 (Chk. S. Ct. Tr. 1993).

Statutes and case law inherited from the Trust Territory are invalid to the extent that they are inconsistent with the state constitution which is the supreme law of Chuuk. Nimeisa v. Department of Public Works, 6 FSM R. 205, 210 (Chk. S. Ct. Tr. 1993).

The constitutional grant of ownership of the tidelands back to the rightful individual owners, shall be given prospective application only. Nimeisa v. Department of Public Works, 6 FSM R. 205, 212 (Chk. S. Ct. Tr. 1993).

The reversion of reefs, tidelands and other submerged lands to private owners granted by article IV, section 4 of the Chuuk Constitution does not apply to any tidelands that were previously filled or reclaimed. Nena v. Walter, 6 FSM R. 233, 236 (Chk. S. Ct. Tr. 1993).

Under the FSM Constitution the FSM Supreme Court may hear cases on appeal from the highest state court in which a decision may be had if that state's constitution permits it. The Chuuk State Constitution permits such appeals, which, in civil cases, Chuuk statute provides be made by certiorari. Gustaf v. Mori, 6 FSM R. 284, 285 (App. 1993).

A court begins its analysis with the presumption that all legislative enactments are constitutional. The burden is on the plaintiff to clearly demonstrate to the court that the ordinance is unconstitutional. Wainit v. Weno, 7 FSM R. 121, 122 (Chk. S. Ct. Tr. 1995).

The Chuuk Constitution protects persons from an unreasonable invasion of privacy. The right to privacy depends upon whether a person has a reasonable expectation that the thing, paper or place should remain free from governmental intrusion. A person's right to privacy is strongest when the government is acting in its law enforcement capacity. In re Legislative Subpoena, 7 FSM R. 261, 266 (Chk. S. Ct. Tr. 1995).

Under the Chuuk Constitution, statutory authorization is required as a predicate to expenditure of state funds, and the Chuuk state court does not have the power to issue an execution order against state property. Louis v. Kutta, 8 FSM R. 208, 210 (Chk. 1997).

The Chuuk Constitution provides that existing Chuukese custom and tradition shall be respected. Chuuk v. Sound, 8 FSM R. 577, 578 (Chk. S. Ct. Tr. 1998).

Because the Chuuk Constitution provides that Chuukese is the state language, but both Chuukese and English are official languages, a criminal appellant in the Chuuk State Supreme Court has no constitutional right to a transcript in both Chuukese and English. Reselap v. Chuuk, 8 FSM R. 584, 586 (Chk. S. Ct. App. 1998).

No resident entitled to vote may be denied the privilege to vote or be interfered with in voting. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 47 (Chk. S. Ct. Tr. 1999).

The right guaranteed in the Chuuk Constitution to move and migrate within the State and the right in the

FSM Constitution to travel and migrate within the Federated States, do not protect travel or migration outside these boundaries. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 48 (Chk. S. Ct. Tr. 1999).

A municipal ordinance restricting absentee voting in municipal elections to persons in the state of Chuuk is not unconstitutional. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 48 (Chk. S. Ct. Tr. 1999).

The secret ballot provision of Chuuk Constitution article XII, section 2 relates only to general elections and has no application to proceedings in the House of Representatives. Christlib v. House of Representatives, 9 FSM R. 503, 507 (Chk. S. Ct. Tr. 2000).

The Chuuk Constitution provides that no person, otherwise qualified to vote, may be denied the privilege to vote. The unreasonableness of candidate qualifying fees is an effective denial of the privilege to vote. Nameta v. Cheipot, 9 FSM R. 510, 512 (Chk. S. Ct. Tr. 2000).

While the Chuuk Constitution may not make voting abroad a constitutionally-protected right, it does not prohibit voting out-of-state. Such voting is a privilege that the Legislature may create and regulate by statute and it has done so. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 153 (Chk. S. Ct. App. 2001).

The prevailing rule is that when the Constitution provides no direct authority to establish qualifications for office in excess of those imposed by the Constitution, such qualifications were unconstitutional by their very terms and under equal protection, due process, and freedom of speech and assembly. Lokopwe v. Walter, 10 FSM R. 303, 306 (Chk. S. Ct. Tr. 2001).

Tideland ownership derives from the Chuuk Constitution's recognition (as of its effective date, October 1, 1989) of traditional rights in the tidelands. Phillip v. Moses, 10 FSM R. 540, 544 (Chk. S. Ct. App. 2002).

The Governor may declare a state of emergency and issue appropriate decrees if required to preserve public peace, health or safety at a time of extreme emergency caused by civil disturbance, natural disaster, or immediate threat of war or insurrection. A declaration of emergency may impair civil rights to the extent actually required for the preservation of peace, health or safety. In re Paul, 11 FSM R. 273, 277 (Chk. S. Ct. Tr. 2002).

Article XI, § 12(b) of the Chuuk Constitution clearly provides that citizens' civil rights may be impaired by a declaration of emergency, but that impairment rights may only occur to the extent actually required for the preservation of peace, health or safety, so that when the Governor's declaration of emergency made no reference to the suspension of civil rights, or of the need to do so to preserve peace, health or safety, it was solely addressed to the creation and implementation of emergency response and recovery efforts to Tropical Storm Chata'an. In re Paul, 11 FSM R. 273, 279 (Chk. S. Ct. Tr. 2002).

In circumstances short of war, rebellion, insurrection or invasion where suspension of the Chuuk citizens' civil rights is warranted require the Governor's clear and unambiguous statement in the declaration of emergency itself, and even if such a clear and unambiguous statement were made, a citizen's continued right to petition for a writ of habeas corpus, except in cases of war, rebellion, insurrection or invasion, would provide a remedy to any improper suspension of civil rights by the declaration of emergency. In re Paul, 11 FSM R. 273, 279 (Chk. S. Ct. Tr. 2002).

Where the Chuuk Constitution specifically authorizes the appointment of qualified attorneys in Chuuk as temporary appellate justices on a per case basis and the Constitution's framers therefore must have contemplated that counsel in one appeal may well be a temporary justice on a different appeal, the presence of qualified attorneys on an appellate panel is not a ground to grant a rehearing. Rosokow v. Bob, 11 FSM R. 454, 457 (Chk. S. Ct. App. 2003).

In keeping with the Chuuk Constitution Judicial Guidance Clause's requirement that court decisions must be in conformity with "the social and geographical configuration of the State of Chuuk," parol evidence

may be used to impeach a written election return that was based upon an oral communication by radio because Chuuk's geographical configuration is such that the transmission of election returns from the outer islands is oral (by radio). In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477 (Chk. S. Ct. App. 2003).

There will be an independent Election Commission, vested with powers, duties and responsibilities, as prescribed by statute, for the administration of elections in Chuuk. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 576 (Chk. S. Ct. Tr. 2003).

The Chuuk Constitution's supremacy clause provides that the Chuuk Constitution is the supreme law of the state, and that an act of government in conflict with it is invalid to the extent of the conflict. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 577 (Chk. S. Ct. Tr. 2003).

The Chuuk Constitution bans taxes on real property. In re Engichy, 12 FSM R. 58, 69 n.6 (Chk. 2003).

In determining the extent of the powers of the judiciary under a state constitution, the rule is that the state constitution confers on the judicial department all the authority necessary to exercise powers as a co-ordinate department of the government. Kupenes v. Ungeni, 12 FSM R. 252, 262 (Chk. S. Ct. Tr. 2003).

With regard to grants of legislative and judicial power by state constitutions, and especially regarding the principle barring implied limitations on such powers, the whole of such legislative and judicial power reposing in the sovereignty is granted to those bodies, except as it may be restricted in the same instrument. Thus the state courts have and should maintain vigorously all the inherent and implied powers necessary to function properly and effectively as a separate department in the scheme of government. Kupenes v. Ungeni, 12 FSM R. 252, 262-63 (Chk. S. Ct. Tr. 2003).

The relevant Chuuk constitutional provisions do not bar the Legislature from providing by statute for an appeal directly from the Chuuk State Election Commission to the Chuuk State Supreme Court appellate division. The Constitution does provide for appeals from administrative agencies to the Chuuk State Supreme Court trial division, but the Constitution does not make the trial division's jurisdiction exclusive, and the trial division's jurisdiction is further qualified with the proviso "as may be provided by law." Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 589 (Chk. S. Ct. App. 2007).

The Legislature, under its power to prescribe by statute for the regulation of the certification of elections and under its power to provide by law for review of administrative agency decisions, has the power to place the jurisdiction to review Election Commission decisions in the Chuuk State Supreme Court appellate division rather than in the trial division with an appeal to the appellate division and a further possible appeal to the FSM Supreme Court appellate division. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 589 (Chk. S. Ct. App. 2007).

The court's only authority in election matters is to hear appeals from Chuuk State Election Commission decisions regarding the conduct of elections. Only a house of the Legislature can decide who is to be seated as a member. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 590 (Chk. S. Ct. App. 2007).

A member of the Chuuk Legislature may hold no other public office or public or private employment with a few exceptions and membership on an election tribunal is not one of those exceptions. The Chuuk Constitution is the supreme law of Chuuk and a governmental act by a municipality that violates it is invalid to the extent of the violation. The inclusion of state legislature members on a municipal Special election tribunal commission violated the Chuuk Constitution and so that that body's composition was improper and its acts invalid. Esa v. Elimo, 15 FSM R. 198, 204 (Chk. 2007).

The Chuuk Board of Education has eight members who are appointed by the Governor with the advice and consent of the Senate. The Education Department head, who is also appointed by the Governor with the advice and consent of the Senate, serves as the Board's executive director. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 60 (Chk. S. Ct. Tr. 2010).

The Director's responsibilities to the Board of Education include duties and functions as assigned by the Board, attendance at Board meetings, and providing logistical and administrative needs to the Board and other needs as declared by the Board, and the Board is the only authority that may remove the Director, which is by a majority vote of all Board members for misconduct, incompetency, neglect of duty, or other good cause. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 61 (Chk. S. Ct. Tr. 2010).

The FSM Constitution's Article VII, section 2 provides no basis for a party to seek relief in the FSM Supreme Court and no basis on which the party is likely to prevail when the party does not argue that the Chuuk has an undemocratic constitution but instead contends that the Chuuk executive branch is expending Chuuk state funds (albeit originally appropriated by Congress) without an appropriation of those funds by the Chuuk Legislature and that this is a violation of Chuuk's democratic constitution. Mailo v. Lawrence, 20 FSM R. 201, 204 (Chk. 2015).

– Chuuk – Case or Dispute

The judicial decision-making power is typically exercised by a court which has heard competing contentions of adversaries having sufficient interests in the outcome to thoroughly consider, research, and argue the points at issue. Even then, a court's declarations of law should be limited to rulings necessary to resolve the dispute before it. Thus, the case must be one appropriate for judicial determination, that is, a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 219 (Chk. S. Ct. Tr. 2008).

When the plaintiff seeks declaratory relief, the court has jurisdiction to issue a declaratory judgment so long as there is a case or dispute within the meaning of Chuuk Constitution, article VII, §§ 3 and 4. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 219 (Chk. S. Ct. Tr. 2008).

When the primary issue is whether the Board had legal authority to terminate a director at the time the termination was allegedly made and when that issue remains a living controversy regardless of who the current Board members are, the action will continue unabated. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 221 (Chk. S. Ct. Tr. 2008).

– Chuuk – Case or Dispute – Standing

Although the standing requirement is not explicitly stated in the Chuuk constitution, the implied requirement that a party have standing should be interpreted to implement the constitutional requirement that a "case" or "dispute" exist. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 219 (Chk. S. Ct. Tr. 2008).

When jurisdictional issues are inextricably intertwined with the case's merits and issues of fact remain, a motion to dismiss for lack of subject matter jurisdiction will be denied, and if a motion to dismiss for lack of standing is denied, the court does not somehow imply that, at that stage of the proceedings, it has made any findings on a claim's merits. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 219 (Chk. S. Ct. Tr. 2008).

When the record is not sufficiently developed to enable the court to either resolve the factual and legal issues as to whether Board members' terms had expired when the decision to terminate the director was made, or to determine if, as a matter of law, the Board members were legally entitled to act in a *de facto* capacity despite the expiration of their terms, there are still significant factual and legal issues that need resolution before the court can make a final determination on the Board's standing to sue the director. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 219-20 (Chk. S. Ct. Tr. 2008).

When the Board has a clear statutory mandate allowing it to terminate a director for cause; when there is no authority to support the argument that a governmental agency or department must obtain the Attorney

General's consent in order to file suit over a matter that is committed to its discretion; and when the Attorney General is a defendant in the lawsuit, it would severely test the notion that the Board has certain matters committed to its discretion if it could not enforce the exercise of its discretion without an adversary's consent. When it is alleged that the Director failed to comply with the Board's decision to terminate his directorship, and the Board has the discretion to terminate the director for cause, the Board has standing to enforce the exercise of its discretion since whether the Board's exercise of its statutory duty to terminate the director was legal and enforceable is a justiciable controversy in which the Board has a direct interest. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 220 (Chk. S. Ct. Tr. 2008).

If the Attorney General did have exclusive authority to determine when suits could be brought by instrumentalities of the executive branch, then all matters committed to the discretion of executive officials would, in effect, really be within the Attorney General's discretion. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 220 n.3 (Chk. S. Ct. Tr. 2008).

When the Attorney General's office is representing an opposing party and therefore disqualified from representing the Board and when the question of whether the Board had the authority to terminate a directorship and of whether that termination was valid creates a case or dispute that is ripe for judicial determination, the Attorney General's consent is not required for there to be standing. And any issues regarding the Board's chosen counsel may be addressed through a motion to disqualify or other means, but it is not relevant to standing analysis. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 220-21 (Chk. S. Ct. Tr. 2008).

– Chuuk – Due Process

A person's constitutional right to due process of law, and his right to be free from cruel and unusual punishment is violated when an officer instead of protecting the person from attack, threw him to the ground, and beat the person in the jail. Meitou v. Uwera, 5 FSM R. 139, 144 (Chk. S. Ct. Tr. 1991).

Since retrospective application of a constitutional provision barring persons convicted of felonies, even if pardoned, from holding legislative office is not an invalid ex post facto law, retrospective application of the provision is also not invalid as a bill of attainder or a denial of due process. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 271-72 (Chk. S. Ct. Tr. 1993).

The FSM Constitution's due process provision protects persons from the governments, and those acting under them, established or recognized by the Constitution, and does not create causes of action against private parties. The Chuuk Constitution due process provision functions in the same manner. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

Among the fundamental rights of Chuuk citizens set forth in Article III of the Chuuk Constitution is the right of due process of law. In re Paul, 11 FSM R. 273, 277 (Chk. S. Ct. Tr. 2002).

It is fundamental that no person may be deprived of liberty without due process of law. Due process of law, in the case of citizens accused of a crime, includes the right to be promptly brought before a Chuuk State Supreme Court justice, or other judicial officer, and to be informed of the charges being brought against him. In re Paul, 11 FSM R. 273, 278 (Chk. S. Ct. Tr. 2002).

One of the fundamental due process rights afforded to criminal defendants is the right to be brought without unnecessary delay before a judicial officer, and that the period of confinement prior to initial appearance cannot exceed, except in extraordinary cases, twenty-four hours. In re Paul, 11 FSM R. 273, 278 (Chk. S. Ct. Tr. 2002).

The right of a person arrested for the commission of a crime to due process of law, including the right to be promptly brought before a Chuuk State Supreme Court justice or other judicial officer for initial appearance within 24 hours of his arrest, is a fundamental right afforded to all Chuuk citizens. Only under the most extraordinary circumstances, and then only with a specific, clear, and unambiguous statement,

may a Governor's declaration of emergency suspend this due process right or other civil rights of Chuuk citizens. In re Paul, 11 FSM R. 273, 280 (Chk. S. Ct. Tr. 2002).

Termination resulting from the decision of any government employee (other than a "principal officer" or "advisor") to run for public office violates that employee's free speech and association rights as guaranteed by the Chuuk Constitution, as well as depriving the employee of a property interest (his right to continued employment) without due process of law. Tomy v. Walter, 12 FSM R. 266, 271-72 (Chk. S. Ct. Tr. 2003).

When no court notice of the case's hearing on the merits was ever served on the defendants, the defendants' and the real party in interest's rights to due process of law under the Chuuk and FSM constitutions were violated because a trial court commits plain error, and violates a litigant's right to due process, when the court fails to serve the notice of a trial date and time on that litigant. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 224 (Chk. S. Ct. App. 2007).

Any order in aid of judgment may be modified by the court as justice may require, at any time, upon application of either party and notice to the other, or on the court's own motion. But a court cannot decide its own motion without first giving either party notice or an opportunity to be heard because that would violate a litigant's due process rights guaranteed by both the Chuuk and FSM Constitutions since notice and an opportunity to be heard is the essence of due process. Albert v. O'Sonis, 15 FSM R. 226, 234 (Chk. S. Ct. App. 2007).

When a court's notice of trial on the merits is not served on a party, that party's rights to due process of law under the Chuuk and FSM Constitutions are violated, and the failure to serve notice of a trial date and time is plain error. Phillip v. Moses, 18 FSM R. 247, 250 (Chk. S. Ct. App. 2012).

Notice and an opportunity to be heard is the essence of due process as guaranteed by both the Chuuk and FSM Constitutions. Phillip v. Moses, 18 FSM R. 247, 250 (Chk. S. Ct. App. 2012).

– Chuuk – Equal Protection

The protection afforded by the Chuuk Constitution due process and equal protection provisions can only be asserted when the denials of such rights is based on account of race, sex, religion, language, dialect, ancestry, national origin, or social status. Christlib v. House of Representatives, 9 FSM R. 503, 507 (Chk. S. Ct. Tr. 2000).

A state court litigant's right to equal protection is not violated because he can only get a judgment in the state court and cannot get a judgment in the FSM Supreme Court. Kama v. Chuuk, 20 FSM R. 522, 533 (Chk. S. Ct. App. 2016).

Each court system, national and state, treats all persons before it equally under the law and the difference in each court system's jurisdictional requirements is not unequal treatment under the laws. Kama v. Chuuk, 20 FSM R. 522, 533 (Chk. S. Ct. App. 2016).

– Chuuk – Impairment of Contracts

The prohibition against the impairment of contracts is not absolute. The contract must be valid and enforceable when made. A contract which is illegal when made is unenforceable because no obligation arises from an illegal contract, thus there is no obligation that may be impaired. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 341 (Chk. S. Ct. Tr. 1995).

No obligation may arise from an agreement that lacks consideration, since consideration is required for a valid contract to exist. Therefore, the termination of a contract that lacks consideration does not violate the prohibition against impairment of the obligations of contracts. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 341 (Chk. S. Ct. Tr. 1995).

When the State of Chuuk is a party to a contract there is a distinction between a breach of a contract by the state and impairment of the obligation of the contract. The distinction depends on the availability of a remedy in damages. If the state's action does not preclude a damage remedy the contract has been breached and the non-breaching party can be made whole. The state has the same power as an individual to break or terminate contracts. As long as the private individual or company that is the other party has a remedy at law no impairment of the obligation of contracts occurs. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 341 (Chk. S. Ct. Tr. 1995).

Reading the constitutional provision barring impairment of contracts in harmony with the provision allowing general reduction of salaries, the exclusion of contract employees does not preclude the Chuuk Legislature from enacting a general reduction of salaries. Chuuk State Supreme Court v. Umwech (II), 7 FSM R. 630, 632 (Chk. S. Ct. Tr. 1996).

– Chuuk – Interpretation

When a constitutional provision is ambiguous and no constitutional convention journal was ever compiled then the constitutional convention reports may be consulted to discern the framers' intent. Nimeisa v. Department of Public Works, 6 FSM R. 205, 209 (Chk. S. Ct. Tr. 1993).

In deciding whether the new rule should be applied retroactively from the date of the court's judgment, or prospectively when rendering judgments on new constitutional rules, courts are to be guided by the following three factors: 1) the purpose to be served by the particular new rule; 2) the extent of reliance which had been placed upon the old rule; and 3) the effect on the administration of justice of a retroactive application of the new rule. Nimeisa v. Department of Public Works, 6 FSM R. 205, 210-11 (Chk. S. Ct. Tr. 1993).

Where there has been good-faith reliance on an old rule, and retroactive application of the new rule would defeat such reliance, and where retroactive application would only unjustifiedly burden the administration of justice with meritless claims doubting the good faith reliance on the old rule, the new constitutional rule will apply to the parties of the case and be given prospective effect. Nimeisa v. Department of Public Works, 6 FSM R. 205, 211-12 (Chk. S. Ct. Tr. 1993).

When the language of the Chuuk Constitution does not define the term "tidelands" contrary to the common usage of the word or its accepted legal definition, and the legislative history does not indicate that the framers intended another meaning the court will employ the meaning of the term consistent with its legal usage at the time of the Constitution's enactment. Nena v. Walter, 6 FSM R. 233, 236 (Chk. S. Ct. Tr. 1993).

Where constitutional language is borrowed from another constitution the borrowed language will be interpreted in the light of the interpretation of the original language, but insertion of new or different language must be interpreted to intend that some sort of new or different meaning be given to that altered portion of the constitutional text. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 265 (Chk. S. Ct. Tr. 1993).

Statutes and constitutional provisions must be read together when the statutes are pre-constitution and because they are only effective to the extent they are not in conflict with the Chuuk Constitution. Sana v. Chuuk, 7 FSM R. 252, 254-55 (Chk. S. Ct. Tr. 1995).

In interpreting a provision of the Chuuk Constitution that is identical to the same provision in the United States Constitution it is appropriate, in the absence of any local precedent, to look to the law of the jurisdiction from which the provision was drawn. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 341 (Chk. S. Ct. Tr. 1995).

It is true that when a provision of the Chuuk Constitution is ambiguous, and because no constitutional convention journal was ever compiled, the constitutional convention reports may be consulted to discern

the framers' intent. But the constitutional provision must first be ambiguous, unclear, or inconclusive before a court can proceed to the legislative history to determine the provision's meaning. Stinnett v. Weno, 8 FSM R. 142, 146 (Chk. 1997).

Statements prepared afterward for use in a lawsuit are not satisfactory legislative history and cannot be used to show the framers' intent. Stinnett v. Weno, 8 FSM R. 142, 146 (Chk. 1997).

Language in a committee report in support of language that did not become part of the constitution cannot be relied upon to discover the real intent of the framers. At best it can only be used to show what was not their intent. Stinnett v. Weno, 8 FSM R. 142, 147 (Chk. 1997).

When the meaning of a constitutional provision is forthright, a court will apply its analysis to the constitutional provision's language as it appears on its face. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

The language, "and may delegate certain taxing powers to the municipal governments by statute," contemplates that municipal governments are invested with the power to tax only insofar as they receive that power from the state government. Without express delegation to a municipality of the authority to tax, the municipality lacked this power. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

When the Chuuk Constitution says the state "may delegate certain taxing powers to the municipal governments by statute," it is plain that "certain" in this context means nothing more, and nothing less, than that the state government may delegate such of its taxing powers as it sees fit – the point is that the option is the state government's. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

When a section of the Chuuk Constitution is clear on its face, consideration of this provision's legislative history is inappropriate. Weno v. Stinnett, 9 FSM R. 200, 208 (App. 1999).

A committee report that refers to language that is not in the Constitution and that accompanied a committee proposal that was killed by the Constitutional Convention cannot be relied upon to discover the real intent of the framers. At best it can only be used to show what was not their intent. Weno v. Stinnett, 9 FSM R. 200, 208 (App. 1999).

The only conclusion to be fairly drawn from the deletion of a sentence giving the municipal governments the exclusive power to levy head taxes and business license fees from the proposal as adopted is that the Chuuk Constitution's framers did not intend that the municipal governments should have the power to levy head taxes and business license fees. Weno v. Stinnett, 9 FSM R. 200, 208 (App. 1999).

When constitutional language is clear, no outside reference is needed to explain any ambiguity. Christlib v. House of Representatives, 9 FSM R. 503, 507 (Chk. S. Ct. Tr. 2000).

When a case's disposition and the plaintiffs' sought relief do not require construction of statute as to its constitutionality, courts will not undertake a decision based upon a constitutional issue. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 545 (Chk. S. Ct. Tr. 2000).

While courts will not refuse to pass on the constitutionality of statutes in any proceeding in which such a determination is necessarily involved, the courts' invariable practice is not to consider the constitutionality of state legislation unless it is imperatively required, or unavoidable. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 545 (Chk. S. Ct. Tr. 2000).

The principle of avoiding constitutional questions was conceived out of considerations of sound judicial administration and is in accord with the principle of separation of powers of government. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 545 (Chk. S. Ct. Tr. 2000).

The court will not rule on a statute's constitutionality when it can limit the case's disposition to interpretation of the statute's language as it applies to the question. Pacific Coast Enterprises v. Chuuk, 9

FSM R. 543, 545 (Chk. S. Ct. Tr. 2000).

Because the constitutional provision states that only one Chuuk State Supreme Court justice may hear or decide an appeal, and because "may" is permissive, not mandatory language, the Constitution contemplates that there may be an occasion when no Chuuk State Supreme Court justice would hear an appeal. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 151 (Chk. S. Ct. App. 2001).

Analysis of the constitution must start with the words of the constitutional provision. If these words are clear and permit only one possible result, the court should go no further. In re Paul, 11 FSM R. 273, 277 (Chk. S. Ct. Tr. 2002).

Any part of a constitution should be interpreted and considered against the background of other provisions of the same constitution. An effort should be made to reconcile all provisions so that none is deprived of meaning. In re Paul, 11 FSM R. 273, 278 (Chk. S. Ct. Tr. 2002).

If the wording of the constitutional provisions is unambiguous, the words should control, and when more than one constitutional provision has an effect on the question being decided, the varying provisions must be interpreted in a manner which gives effect to each provision, so that no provision of the constitution is rendered meaningless. In re Paul, 11 FSM R. 273, 278 (Chk. S. Ct. Tr. 2002).

In interpreting constitutional provisions, courts must seek to ensure that the purposes sought to be accomplished by the constitution are not defeated by the interpretation of any particular provision. No court is authorized to so construe any clause of a constitution as to defeat its obvious ends when another construction will enforce and protect it. A constitution must be interpreted so as to carry out the general purposes of the government, and not defeat them. Kupenes v. Ungeni, 12 FSM R. 252, 262 (Chk. S. Ct. Tr. 2003).

A constitution is to be liberally construed, not only according to its letter, but also according to its true spirit, to carry into effect the principles of government which it embodies and the general purpose of its enactment. Kupenes v. Ungeni, 12 FSM R. 252, 262 (Chk. S. Ct. Tr. 2003).

The principle of practicality provides that when two interpretations of constitutional language are available and one is productive of invalidity and chaos, while the other saves validity and avoids chaos, the latter interpretation will be adopted. Kupenes v. Ungeni, 12 FSM R. 252, 262 (Chk. S. Ct. Tr. 2003).

When a particular interpretation of a constitutional provision has been in effect for a long period without objection, any practice adopted through such an interpretation may create acceptance of the practice by acquiescence. A long-continued understanding and application of a provision amounts to a practical construction of it. Such a construction, acquiesced in for many years, is frequently resorted to by the courts because it is entitled to great weight and will not be disregarded unless it clearly appears that it is erroneous. The general rule is that the exercise of powers and general acquiescence therein for a long period of years, especially if commencing with the government's organization, may be treated as fixing the construction of the Constitution and as amounting to a contemporary and practical exposition of it. Kupenes v. Ungeni, 12 FSM R. 252, 262 (Chk. S. Ct. Tr. 2003).

Since the constitution must be interpreted in such a way as to carry out is purposes and since the purpose of the unified judiciary must be to ensure that fair and impartial justice be provided to every citizen of Chuuk, in a case where all sitting justices are disqualified, unavailable, or have recused themselves, fair and impartial justice will be unavailable unless the Chief Justice has some method available to ensure a fair and impartial hearing. Kupenes v. Ungeni, 12 FSM R. 252, 263 (Chk. S. Ct. Tr. 2003).

Since the constitution must be liberally, not restrictively, construed, any attempt to place limitations on the Chief Justice's power, where no words of limitation appear, would require a restrictive interpretation of the constitution, and would violate the rules of interpretation as applied to judiciaries. Kupenes v. Ungeni, 12 FSM R. 252, 263 (Chk. S. Ct. Tr. 2003).

Interpreting the Chief Justice's rule-making authority and his authority to "appoint and prescribe duties of other officers and employees, as prohibiting the appointment of a special trial justice unless the appointee meets the Article VII, § 9 qualifications of associate justices, would invite invalidity and chaos. Instead, the principle of acquiescence controls. Kupenes v. Ungeni, 12 FSM R. 252, 263-64 (Chk. S. Ct. Tr. 2003).

The Chuuk Constitution provides no guidance, positively or negatively, regarding whether special trial justices are permissible, and if so, what their minimum qualifications must be. Absent any words of limitation in the constitution, the Chief Justice has and should maintain vigorously all the inherent and implied powers necessary to permit the judiciary to function properly and effectively as a separate department in the scheme of government. These inherent and implied powers include the power to adopt general court orders for the appointment of special trial justices and to establish minimum qualifications for those special justices which equal the qualifications for temporary appellate justices under the constitution. Kupenes v. Ungeni, 12 FSM R. 252, 265 (Chk. S. Ct. Tr. 2003).

A constitutional provision that requires things to be done without prescribing the result that should follow if those things are not done, is directory in character, not mandatory. Buruta v. Walter, 12 FSM R. 289, 293 (Chk. 2004).

In analyzing constitutional questions, a court should consider all provisions of that constitution, because different sections may relate to the same subject matter, giving the specific provision questioned added meaning. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 225 (Chk. S. Ct. App. 2007).

Because issues of statutory construction and constitutional construction are issues of law, courts have final authority over them, and the issues are ripe for summary judgment, which will be granted to the party that is entitled to it as a matter of law. In ruling on these issues of law, the language of the statutory and constitutional provisions is controlling and the court will construe and give effect to the provisions' plain meaning. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 60 (Chk. S. Ct. Tr. 2010).

A court must be careful not to read into a constitution provisions which are not there nor rewrite a constitution to include provisions that seem to be omitted. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 22 (Chk. S. Ct. Tr. 2011).

The Chuuk Constitution is clear and unambiguous that when referring to the Governor's office, a Governor's "term" is a fixed four-year period. Thus, the phrase "current term" clearly means that if a governor is re-elected for a second four-year term, new nominations (or re-nominations) must be submitted to the Senate but otherwise a cabinet official may remain in office for a full four years unless the Governor earlier removes him (or he is impeached or he resigns). But when a new governor fills out the remainder of his predecessor's unexpired term, the new governor may retain the existing cabinet officials and special assistants without submitting their names for reconfirmation. Senate v. Elimo, 18 FSM R. 137, 139-40 (Chk. S. Ct. Tr. 2012).

The specific meaning of the phrase "current term" or "term" as used in the Chuuk Constitution means a fixed number of years, as set by the Constitution. From the Chuuk Constitution's context, "term" when applied to the executive branch office-holders can only refer to the fixed four-year period. Senate v. Elimo, 18 FSM R. 137, 140 (Chk. S. Ct. Tr. 2012).

In rendering a decision, the Chuuk State Supreme Court must first consult and apply legal sources of Chuuk State. Kama v. Chuuk, 18 FSM R. 326, 331 (Chk. S. Ct. Tr. 2012).

When it is an issue of first impression, U.S. court decisions may be used for guidance. Kama v. Chuuk, 18 FSM R. 326, 331 (Chk. S. Ct. Tr. 2012).

The Chuuk Constitution provides that the trial division of the State Supreme Court has "concurrent

original jurisdiction with other courts to try all civil, criminal, probate, juvenile, traffic, and land cases." The word "concurrent" modifies the term "original jurisdiction" and when jurisdiction is concurrent, the appropriate court may be prescribed by statute. The appropriate court for land cases in declared land registration areas was prescribed by statute as an administrative agency, the Chuuk Land Commission. Aritos v. Muller, 19 FSM R. 574, 575 (Chk. S. Ct. App. 2014).

– Chuuk – Municipalities

The general grant of the taxing power to the state, which allows taxing power to be delegated to the municipalities, is not an exclusive grant preventing municipalities from levying taxes. Wainit v. Weno, 7 FSM R. 121, 123 (Chk. S. Ct. Tr. 1995).

A municipality in Chuuk has the power to tax so long as the state has not preempted the area. Wainit v. Weno, 7 FSM R. 121, 123 (Chk. S. Ct. Tr. 1995).

The power to tax is vested in the state which may delegate certain taxing powers to a municipality. Without such delegation a municipality has no power to tax. Stinnett v. Weno, 7 FSM R. 560, 561 (Chk. 1996).

The Chuuk Constitution provision that permits continued operation of existing municipalities pending the adoption of their own constitutions does not permit the continuation of functions outside "the limits prescribed by" the Chuuk Constitution. Stinnett v. Weno, 7 FSM R. 560, 562 (Chk. 1996).

A municipal ordinance levying taxes did not continue in effect after the effective date of the Chuuk Constitution because it is inconsistent with that Constitution. Stinnett v. Weno, 7 FSM R. 560, 562 (Chk. 1996).

Chuuk municipalities do not have the power to levy taxes until such time as that power has been delegated to them by statute. No such delegation has occurred. Stinnett v. Weno, 8 FSM R. 142, 147 (Chk. 1997).

The Chuuk Constitution provides for the creation of the state taxing power and its delegation, as the state government may elect, to the municipal governments. Article XIII, section 1 of the Chuuk Constitution provides that the two levels of government are state and municipal. As between these two levels of government the one holding the right to delegate is superior. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

Because the express provision for delegation of the taxing authority is inconsistent with the notion that municipalities already had this power, in the absence of specific legislative action authorizing a municipality to impose taxes, the municipality does not have the authority to impose business license fees. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

While under the Chuuk Constitution the "powers and functions of a municipality with respect to its local affairs and government are superior to statutory law," the key phrase in this constitutional provision is "local affairs." Gambling is of statewide concern and an area properly within the state legislative function and does not fall under the cloak of "local affairs." Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 546 (Chk. S. Ct. Tr. 2000).

The Chuuk Constitution provision granting municipalities "superior" powers is of such unique character that no similar constitutional provision has been found which gives municipalities such extensive control over legislative affairs. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 546 (Chk. S. Ct. Tr. 2000).

Because the Chuuk Constitution gives municipalities full power over local affairs and government the Governor cannot, by Executive Order, require municipalities to relinquish any control over municipal employees. Udot Municipality v. Chuuk, 9 FSM R. 586, 588 (Chk. S. Ct. Tr. 2000).

Each municipality in Chuuk must adopt its own constitution, which must be democratic and may be traditional. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 576 (Chk. S. Ct. Tr. 2003).

Chuuk municipalities must adopt their own constitutions within limits prescribed by the Chuuk Constitution and by general law, but a municipality's powers and functions with respect to its local affairs and government are superior to statutory law. Neither term "general law" or "statutory law" is defined. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 581 n.6 (Chk. S. Ct. Tr. 2003).

The Chuuk Constitution provides for each existing municipality to adopt a municipal constitution within three years of the Chuuk Constitution's effective date and for the state legislature to enact enabling legislation to carry that out. Buruta v. Walter, 12 FSM R. 289, 292 (Chk. 2004).

The Chuuk Constitution provides that a municipality existing on the effective date of the Chuuk Constitution will continue to exercise its powers and functions under existing law, pending adoption of its constitution. Buruta v. Walter, 12 FSM R. 289, 292 (Chk. 2004).

There is no provision in Chuuk law to classify a municipality under the Chuuk Constitution as a "quasi-municipality." Buruta v. Walter, 12 FSM R. 289, 293 (Chk. 2004).

Both the constitutional and statutory provisions providing for Chuuk municipalities to adopt their own constitutions within three years of the state constitution's effective date are directory, not mandatory because neither prescribes what result should follow if a municipality fails to adopt a constitution within the allotted time and since the Chuuk Constitution provides that a municipality will continue to exercise its powers and functions under existing law, pending its adoption of a constitution. Buruta v. Walter, 12 FSM R. 289, 294 (Chk. 2004).

Neither the constitutional nor the statutory provision directs the Governor to implement the provisions that each municipality adopt its own constitution. The direction is aimed at the others – the municipalities and the Legislature. Buruta v. Walter, 12 FSM R. 289, 294 (Chk. 2004).

The Chuuk Constitution provides that final decisions of municipal courts may be appealed to the Chuuk State Supreme Court appellate division, and, in addition, the Chuuk Legislature, by statute, has conferred jurisdiction upon the trial division to hear appeals from municipal court criminal decisions. Ceasar v. Uman Municipality, 12 FSM R. 354, 356 (Chk. S. Ct. Tr. 2004).

While the Chuuk Constitution expressly authorizes appeals of municipal court decisions to the Chuuk State Supreme Court appellate division, and does not specifically confer authority in the Legislature to permit appeals to the trial division but is silent on the issue and does not prohibit it, and since the Legislature is empowered to enact any and all laws not inconsistent with the state and national constitutions, the trial division thus has jurisdiction, by statute, over an appeal from a municipal court. Ceasar v. Uman Municipality, 12 FSM R. 354, 356-57 (Chk. S. Ct. Tr. 2004).

Chuuk municipalities are barred from imposing taxes except as specifically permitted by state statute. Municipalities have been delegated, by statute, the authority to require persons to obtain and pay for a business license before engaging or continuing in a business within the municipality in which the business is located. Ceasar v. Uman Municipality, 12 FSM R. 354, 358 (Chk. S. Ct. Tr. 2004).

– Chuuk – Taking of Property

To consider a lease valid when the lessee state government cannot be compelled to honor it would be unconstitutional taking of lessor's property. Billimon v. Chuuk, 5 FSM R. 130, 136 (Chk. S. Ct. Tr. 1991).

In an eminent domain case, just compensation must be fully tendered before a taking may occur and the Chuuk government must deposit in court, for the benefit of the landowners entitled thereto, the amount of just compensation stated in the declaration. In re Lot No. 029-A-47, 18 FSM R. 456, 458 (Chk. S. Ct. Tr.

2012).

Even if the Trust Territory statute requiring payment for the improvements on land taken by eminent domain, 67 TTC 453 and 454, has been repealed by implication (it was not expressly repealed), the constitutional provision requiring just compensation for property taken would require compensation for a permanent structure on the land at its fair market value. In re Lot No. 029-A-47, 18 FSM R. 456, 459 (Chk. S. Ct. Tr. 2012).

– Declaration of Rights

In developing the Constitution's Declaration of Rights, the Committee on Civil Rights, and subsequently the Constitutional Convention, drew almost exclusively upon constitutional principles under United States law. FSM v. Tipen, 1 FSM R. 79, 83 (Pon. 1982).

In interpreting the Declaration of Rights, courts should emphasize and carefully consider United States Supreme Court interpretations of the United States Constitution. FSM v. Tipen, 1 FSM R. 79, 85 (Pon. 1982).

The provisions in the Constitution's Declaration of Rights are to a substantial degree patterned upon comparable provisions in the United States Constitution; the FSM Supreme Court should consider carefully decisions of the United States courts interpreting the United States counterparts. Tosie v. Tosie, 1 FSM R. 149, 154 (Kos. 1982).

As the provisions set forth in the Constitution's Declaration of Rights are based on counterparts in the United States Constitution, it is appropriate to review decisions of United States courts, especially those in effect when the Constitution was approved and ratified, to determine the content of the words employed therein. In re Iriarte (I), 1 FSM R. 239, 249 (Pon. 1983).

Statutory provisions which carried over from the Trust Territory Code and were reproduced and referred to as a "Bill of Rights" in 1 F.S.M.C. 101-114, may retain some residual vitality in the unlikely event that they furnish protection beyond those available under the Constitution's Declaration of Rights. FSM v. George, 1 FSM R. 449, 454-55 (Kos. 1984).

The provisions in the Declaration of Rights in the FSM Constitution concerning due process and the right to be informed are traceable to the Bill of Rights of the United States Constitution. Engichy v. FSM, 1 FSM R. 532, 541 (App. 1984).

Because the Declaration of Rights is patterned after provisions of the United States Constitution, and United States cases were relied on to guide the constitutional convention, United States authority may be consulted to understand the meaning. Afituk v. FSM, 2 FSM R. 260, 263 (Truk 1986).

While the constitutional provision barring invasion of privacy only protects persons from governmental intrusion into their affairs, not from intrusions by private persons, it does indicate a policy preference in favor of protection of privacy. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 455 (Chk. 1994).

The Declaration of Rights expresses ideals held sacred by all who cherish freedom and is the essential core of the FSM Constitution. Louis v. Kutta, 8 FSM R. 208, 212 (Chk. 1997).

The Declaration of Rights protects persons from acts of the governments, and those acting under them, established or recognized by the Constitution. Pau v. Kansou, 8 FSM R. 524, 526 (Chk. 1998).

Because the Declaration of Rights is to a substantial degree patterned after provisions of the U.S. Constitution, and U.S. cases were relied on to guide the constitutional convention, U.S. authority may be consulted to understand its meaning. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

The FSM Constitution's Declaration of Rights is based on the United States Constitution's Bill of Rights, and a court may look to United States precedent in this regard. FSM v. Moses, 9 FSM R. 139, 146 (Pon. 1999).

The Declaration of Rights (article IV of the FSM Constitution) protects persons from acts of the governments, and those acting under them, established or recognized by the Constitution, and does not create causes of action against private parties. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM R. 155, 157 (App. 1999).

When a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, United States authority may be consulted to understand its meaning. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 412 n.2 (App. 2000).

When a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, United States authority may be consulted to understand its meaning. FSM v. Inek, 10 FSM R. 263, 265 (Chk. 2001).

When an FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning, and where the FSM Constitution's framers borrowed phrases from the U.S. Constitution, it may be presumed that those phrases were intended to have the same meaning given them by the U.S. Supreme Court. FSM v. Wainit, 12 FSM R. 405, 409 (Chk. 2004).

The protection offered by the FSM Constitution against compulsory self-incrimination is traceable to the U.S. Constitution's fifth amendment, and when a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, United States authority may be consulted to understand its meaning. FSM v. Kansou, 12 FSM R. 637, 643 (Chk. 2004).

The FSM Constitution's Declaration of Rights search and seizure provision, FSM Const. art. IV, § 5, is similar to and drawn from a provision in the U.S. Constitution's Bill of Rights, U.S. Const. amend. IV. When an FSM Declaration of Rights provision is patterned after a U.S. Constitution provision, U.S. authority may be consulted to understand its meaning. FSM v. Wainit, 13 FSM R. 433, 444 (Chk. 2005).

When a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, U.S. authority may be consulted to understand its meaning. FSM v. Kansou, 14 FSM R. 136, 138 (Chk. 2006).

Since the article IV, section 7 protection against self-incrimination was based upon the fifth amendment to the United States Constitution, FSM courts may look to United States decisions to assist in determining the meaning of article IV, section 7 because when an FSM Declaration of Rights provision is patterned after a U.S. Constitution provision, United States authority may be consulted to understand its meaning. FSM v. Kansou, 14 FSM R. 150, 151 n.1 (Chk. 2006).

The Constitution does not contain a right of privacy or financial or business privilege in bank records emanating from Article IV, Section 5 of the FSM Constitution. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247 (App. 2006).

The Declaration of Rights protects persons from acts of the governments, and those acting under them, established or recognized by the Constitution. The constitutional provision barring the invasion of a person's privacy only protects persons from governmental intrusion into their affairs, not from intrusions by private persons. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247 (App. 2006).

The Constitution's Declaration of Rights protects persons from acts of the governments, and those acting under them, established or recognized by the Constitution. Harper v. William, 14 FSM R. 279, 282 (Chk. 2006).

U.S. authority may be consulted to understand the meaning of a Declaration of Rights provision patterned after a U.S. Bill of Rights provision since the provisions in the Constitution's Declaration of Rights are traceable to the U.S. Constitution's Bill of Rights. Where the Constitution's framers drew upon the U.S. Constitution, it may be presumed that phrases so borrowed were intended to have the same meaning given to them by the U.S. Supreme Court. FSM v. Fritz, 14 FSM R. 548, 552 n.1 (Chk. 2007).

The provisions in the FSM Constitution's Declaration of Rights are traceable to the United States Constitution's Bill of Rights, and when a FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision, United States authority may be consulted to understand its meaning. The FSM speedy trial right is patterned after the United States Constitution. Chuuk v. William, 15 FSM R. 381, 387 n.1 (Chk. S. Ct. Tr. 2007).

Since the FSM Constitution's Declaration of Rights protection against unreasonable search and seizure is similar to and drawn from a provision in the U.S. Constitution's Bill of Rights, U.S. authority may be consulted to understand its meaning. FSM v. Aliven, 16 FSM R. 520, 527 n.2 (Chk. 2009).

Employment is not listed as a fundamental right in the Declaration of Rights and the court should be wary of requests that it identify as fundamental any rights beyond those specified in the Declaration of Rights. Berman v. Lambert, 17 FSM R. 442, 450 (App. 2011).

Although the court must first look to FSM sources of law to establish legal requirements in criminal cases rather than start with a review of other courts' cases, when an FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning since it may be presumed that the borrowed phrases were intended to have the same meaning given to them by the U.S. Supreme Court. FSM v. Kool, 18 FSM R. 291, 294 n.2 (Chk. 2012).

When an FSM Declaration of Rights provision is patterned after a U.S. Constitution provision (such as Section Five of the Declaration of Rights which is patterned after the U.S. Constitution's Fourth Amendment), U.S. authority may be consulted to understand its meaning. Alexander v. Pohnpei, 18 FSM R. 392, 398 n.4 (Pon. 2012).

While the court must first look to FSM sources of law to rather than begin with a review of other courts' decisions, when a FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision and when there is no FSM case law on point, United States authority may be consulted to understand its meaning. Kon v. Chuuk, 19 FSM R. 463, 466 n.1 (Chk. 2014).

The FSM Declaration of Rights was modeled after the U.S. Bill of Rights, and so the court may look to U.S. sources for guidance in interpreting similar Declaration of Rights provisions, such as the right to confrontation, found in the FSM Constitution's Declaration of Rights in Article IV, section 6, and in the U.S. Constitution in its Sixth Amendment. FSM v. Halbert, 20 FSM R. 42, 46 n.3 (Pon. 2015).

– Due Process

Due process may well require that, in a National Public Service System employment dispute, the ultimate decision-maker reviews the record of the ad hoc committee hearing, at least insofar as either party to the personnel dispute may rely upon some portion of the record. Suldan v. FSM (I), 1 FSM R. 201, 206 (Pon. 1982).

The words "due process of law" shall be viewed in the light of history and the accepted meaning of those words prior to and at the time the Constitution was written. Alaphonso v. FSM, 1 FSM R. 209, 216-17 (App. 1982).

The Constitution's Due Process Clause requires proof beyond a reasonable doubt as a condition for criminal conviction in the Federated States of Micronesia. Alaphonso v. FSM, 1 FSM R. 209, 217-23 (App. 1982).

As a matter of constitutional due process, a trial court presented with an alibi defense should consider evidence concerning the alibi along with all other evidence and shall not find the defendant guilty if after considering all of that evidence, the judge feels there is a reasonable doubt as to the defendant's guilt. Alaphonso v. FSM, 1 FSM R. 209, 223-25 (App. 1982).

Article XI, section 6(b) of the Federated States of Micronesia Constitution requires that the FSM Supreme Court consider a petition for writ of habeas corpus alleging imprisonment of a petitioner in violation of his rights of due process. In re Iriarte (I), 1 FSM R. 239, 243-44 (Pon. 1983).

Preservation of a fair decision-making process, and even the maintenance of a democratic system of government, requires that courts and individual judges be protected against unnecessary external pressures. In re Iriarte (I), 1 FSM R. 239, 247 (Pon. 1983).

Strict judicial observance of due process is necessary to insure respect for the law. In re Iriarte (I), 1 FSM R. 239, 248 (Pon. 1983).

In a habeas corpus proceeding, the court must apply due process standards to the actions of the courts which have issued orders of commitment. In re Iriarte (I), 1 FSM R. 239, 249 (Pon. 1983).

The Federated States of Micronesia Constitution does not contemplate that FSM citizens should be required to travel to Saipan or to petition anyone outside the FSM to realize rights guaranteed to them under the Constitution. In re Iriarte (I), 1 FSM R. 239, 253 (Pon. 1983).

The defendant of a criminal contempt charge is entitled to those procedural rights normally accorded other criminal defendants. In re Iriarte (II), 1 FSM R. 255, 260 (Pon. 1983).

The Constitution does not contemplate that FSM citizens must first petition any person or body outside the Federated States of Micronesia as a condition to consideration of their constitutional claims by courts established under this constitution. In re Iriarte (II), 1 FSM R. 255, 265 (Pon. 1983).

The FSM Supreme Court is entitled and required to assure that the Trust Territory High Court, exercising governmental powers within the Federated States of Micronesia, does not violate the constitutional rights of its citizens. In re Iriarte (II), 1 FSM R. 255, 268 (Pon. 1983).

A nahniken, just as any ordinary citizen, is entitled to bail and due process. In re Iriarte (II), 1 FSM R. 255, 272 (Pon. 1983).

Government employment that is "property" within the meaning of the Due Process Clause cannot be taken without due process. To be property protected under the Constitution, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Suldan v. FSM (II), 1 FSM R. 339, 351-52 (Pon. 1983).

The fundamental concept of procedural due process is that the government may not be permitted to strip citizens of life, liberty or property in an unfair, arbitrary manner. When such important individual interests are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision-making process. Suldan v. FSM (II), 1 FSM R. 339, 354-55 (Pon. 1983).

If, pursuant to section 156 of the National Public Service System Act, the highest management official declines to accept a finding of fact of the ad hoc committee, the official will be required by statutory as well as constitutional requirements to review those portions of the record bearing on the factual issues and to submit a reasoned statement demonstrating why the ad hoc committee's factual conclusion should be rejected. Suldan v. FSM (II), 1 FSM R. 339, 360-61 (Pon. 1983).

Due process demands impartiality on the part of adjudicators. Suldan v. FSM (II), 1 FSM R. 339, 362

(Pon. 1983).

There is a presumption that a judicial or quasi-judicial official is unbiased. The burden is placed on the party asserting the unconstitutional bias. The presumption of neutrality can be rebutted by a showing of conflict of interest or some other specific reason for disqualification. When disqualification occurs, it is usually because the adjudicator has a pecuniary interest in the outcome or has been the target of personal abuse or criticism from the party before him. Suldan v. FSM (II), 1 FSM R. 339, 362-63 (Pon. 1983).

The highest management officials cannot be said to be biased as a class and they cannot be disqualified, by virtue of their positions, from final decision-making as to a national government employee's termination under section 156 of the National Public Service System Act, without individual consideration. Suldan v. FSM (II), 1 FSM R. 339, 363 (Pon. 1983).

When there is reason to believe that provisions of a public land lease may have been violated by the lessee, and where another person has notified the Public Lands Authority of his claim of a right to have the land leased to him, the Public Lands Authority may not consider itself bound by the lease's renewal provision but is required to consider whether it has a right to cancel the lease and, if so, whether the right should be exercised. These are decisions to be made after a rational decision-making process in compliance with procedural due process requirements of article IV, section 3 of the FSM Constitution. Etpison v. Perman, 1 FSM R. 405, 421 (Pon. 1984).

Governmental bodies' adjudicatory decisions affecting property rights are subject to the procedural due process requirements of article IV, section 3 of the Constitution. Etpison v. Perman, 1 FSM R. 405, 422-23 (Pon. 1984).

The government in any criminal case is required, as a matter of due process, to prove all elements of the offense beyond a reasonable doubt. Ludwig v. FSM, 2 FSM R. 27, 35 (App. 1985).

The Due Process Clause, FSM Const. art. IV, § 3, is based upon the Due Process Clause of the United States Constitution and courts can look to interpretations under the United States Constitution for guidance. Ludwig v. FSM, 2 FSM R. 27, 35 (App. 1985).

A trial court may not simply presume that a person who possesses a firearm is not keeping it as a curio, ornament or for historical significance. This would be an irrational or arbitrary, hence unconstitutional, presumption or inference because one cannot determine from mere possession of a firearm alone the purpose or nature of that possession. Ludwig v. FSM, 2 FSM R. 27, 37 (App. 1985).

Where a seizure is for forfeiture rather than evidentiary purposes, the constitutional prohibitions against taking property without due process come into play. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

The Constitution's Due Process Clause is drawn from the United States Constitution and FSM courts may look to decisions under that Constitution for guidance in determining the meaning of this Due Process Clause. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

Any attempt to grant statutory authority to permit seizure of a fishing vessel upon a lesser standard than probable cause would raise serious questions of compatibility with article IV, sections 3 and 4 of the Constitution. Such an interpretation should be avoided unless clearly mandated by statute. Ishizawa v. Pohnpei, 2 FSM R. 67, 77 (Pon. 1985).

Due process does not require that a second judge decide motions for recusal where the trial judge accepts as true all of the factual allegations in the affidavit of the party seeking recusal, and must rule only on matters of law in making the decision to recuse or not recuse himself. Skilling v. FSM, 2 FSM R. 209, 213 (App. 1986).

The procedure for recusal provided in the FSM Code, whereby a party may file a motion for recusal

with an affidavit, and the judge must rule on the motion, stating his reasons for granting or denying the motion, before any further proceeding is taken, allows the moving party due process. Skilling v. FSM, 2 FSM R. 209, 214 (App. 1986).

Actions of a police officer in stripping a prisoner to punish and humiliate him, then beating him and damaging his pickup truck, constituted violation of the prisoner's constitutional rights to be free from cruel and unusual punishment and his due process rights. Tolenoa v. Alokoa, 2 FSM R. 247, 250 (Kos. 1986).

A claim that decision-makers in a land adjudication were biased raises serious statutory and constitutional due process issues and is entitled to careful consideration. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 92, 99 (Kos. S. Ct. Tr. 1987).

There is no deprivation of due process in a case in which the government at the trial elicited testimony revealing that it had custody of certain physical evidence but did not attempt to introduce it, and in which the defendant made no request that it be produced. Loney v. FSM, 3 FSM R. 151, 155 (App. 1987).

An expectation of being paid for work already performed is a property interest qualifying for protection under the Due Process Clause of the FSM Constitution. Falcam v. FSM, 3 FSM R. 194, 200 (Pon. 1987).

An expectation of continued government employment, subject only to removal by a supervisor, is a property interest qualifying for protection under the Due Process Clause of the FSM Constitution. Falcam v. FSM, 3 FSM R. 194, 200 (Pon. 1987).

The Due Process Clause of article VI, section 3 of the Constitution of the Federated States of Micronesia requires proof beyond a reasonable doubt as a condition for criminal convictions in the Federated States of Micronesia. Runmar v. FSM, 3 FSM R. 308, 311 (App. 1988).

Where purchasers at a judicial sale are not served by summons and complaint pursuant to FSM Civil Rule 3 but receive notice of a motion seeking confirmation of the sale and made by a creditor of the party whose property was sold, and where the purchasers do not object to the motion, confirmation of the sale is effective and binding on the purchasers and is not violative of their rights of due process. Sets v. Island Hardware, 3 FSM R. 365, 368 (Pon. 1988).

The National Public Service System Act and the FSM Public Service System Regulations establish an expectation of continued employment for nonprobationary national government employees by limiting the permissible grounds and specifying procedures necessary for their dismissal; this is sufficient protection of the right to continued national government employment to establish a property interest for nonprobationary employees which may not be taken without fair proceedings, or "due process." Semes v. FSM, 4 FSM R. 66, 73 (App. 1989).

Once it is determined that a statute establishes a property right subject to protection under the Due Process Clause of the FSM Constitution, constitutional principles determine what process is due as a minimum. Semes v. FSM, 4 FSM R. 66, 74 (App. 1989).

In the absence of statutory language to the contrary, the National Public Service System Act's mandate may be interpreted as assuming compliance with the constitutional requirements, because if it purported to preclude constitutionally required procedures, it must be set aside as unconstitutional. Semes v. FSM, 4 FSM R. 66, 74 (App. 1989).

In assessing the government's shorter term, preliminary deprivations of private property to determine what, if any procedures are constitutionally necessary in advance of the deprivation, the FSM Supreme Court will balance the degree of hardship to the person affected against the government interests at stake. Semes v. FSM, 4 FSM R. 66, 75 (App. 1989).

The Due Process Clause of the FSM Constitution's Declaration of Rights is based on the Due Process

Clause of the United States Constitution. Paul v. Celestine, 4 FSM R. 205, 208 (App. 1990).

In determining whether the constitutional line of due process has been crossed, a court must look to such factors as the need for application of force, the relationship between the need and the amount of force that was used, the extent of the injury inflicted, and whether the force was applied in a good faith effort to maintain and restore discipline or maliciously and sadistically for the very purpose of causing harm. Paul v. Celestine, 4 FSM R. 205, 208-09 (App. 1990).

To be property protected under the Federated States of Micronesia and Kosrae State Constitutions, the employment right must be based on governmental assurance of continual employment or dismissal for only specified reasons as stated in statute, regulation, formal contract or actions of a supervisory person with authority to establish terms of employment. Edwin v. Kosrae, 4 FSM R. 292, 302 (Kos. S. Ct. Tr. 1990).

Although neither the Environmental Protection Act nor the earthmoving regulations contain any absolute requirement that a public hearing be held before an earthmoving permit may be issued, the issuance by national government officials of a permit authorizing earthmoving by a state agency without holding a hearing and based simply upon the application filed by the state agency and the minutes prepared by the state officials, is arbitrary and capricious where the dredging activities have been long continued in the absence of a national earthmoving permit and where the parties directly affected by those activities have for several months been vigorously opposing continuation of the earthmoving activities at the dredging site. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 1, 8 (Pon. 1991).

If a judge has participated as an advocate in related litigation touching upon the same parties, and in the course of that previous activity has taken a position concerning the issue now before him as a judge, the appearance of justice, as guaranteed by Due Process Clause, requires recusal. Etscheit v. Santos, 5 FSM R. 35, 43 (App. 1991).

There are certain circumstances or relationships which, as a *per se* matter of due process, require almost automatic disqualification, and, if a judge has a direct, personal, substantial, pecuniary interest in the outcome of the case, recusal is constitutionally mandated. Etscheit v. Santos, 5 FSM R. 35, 43 (App. 1991).

To prevent the "probability of unfairness," a former trial counselor or attorney must refrain from presiding as a trial judge over litigation involving his former client, and many of the same issues, and the same interests and the same land, with which the trial judge has been intimately involved as a trial counselor or attorney. Etscheit v. Santos, 5 FSM R. 35, 45 (App. 1991).

A person's constitutional right to due process of law, and his right to be free from cruel and unusual punishment is violated when an officer instead of protecting the person from attack, threw him to the ground, and beat the person in the jail. Meitou v. Uwera, 5 FSM R. 139, 144 (Chk. S. Ct. Tr. 1991).

Plaintiff's due process rights were not violated where the government did not use condemnation procedures specified in 67 TTC 451, but followed land registration procedures to obtain title and treated the plaintiff fairly and in the same way it treated other landowners. Palik v. Kosrae, 5 FSM R. 147, 152-54 (Kos. S. Ct. Tr. 1991).

Constitutional provisions applicable to a prisoner may vary depending on his status. A pre-trial detainee has a stronger right to liberty, which right is protected by the Due Process Clause, FSM Const. art. IV, § 3. A convicted prisoner's claims upon liberty have been diminished through due process so that person must rely primarily on article IV, section 8 which protects him from cruel and unusual punishment. Plais v. Panuelo, 5 FSM R. 179, 190 (Pon. 1991).

When a panel hearing in a summary dismissal was closed to the public and the injured party and counsel were present to attend and participate in the hearing and the panel accepted and considered all

testimony and evidence offered by the parties, due process was not violated. Palsis v. Kosrae State Court, 5 FSM R. 214, 217 (Kos. S. Ct. Tr. 1991).

Variance between charge of striking police car windshield with fists and evidence adduced at trial of damaging headlights with a beer can is not so misleading and prejudicial that defendant was denied a fair trial or suffered from a lack of notice as to the evidence to be offered at trial on a charge of damaging the property of another. Otto v. Kosrae, 5 FSM R. 218, 222 (App. 1991).

The actions of a private corporation partly owned by a government should not be considered "state action" for the purposes of due process analysis. Alik v. Kosrae Hotel Corp., 5 FSM R. 294, 298 (Kos. 1992).

Under FSM law there is no property right to particular levels of tort compensation triggering due process protections. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 362-63 (Kos. 1992).

Aliens are persons protected by the due process and equal protection clause of the Constitution. Berman v. FSM Supreme Court (I), 5 FSM R. 364, 366 (Pon. 1992).

Employment opportunity is a liberty interest protected by due process. Berman v. FSM Supreme Court (I), 5 FSM R. 364, 366 (Pon. 1992).

When a landowner voluntarily signs a statement of intent for an easement for a road even though the state failed in is duty of care to inform him that he could refuse to sign, the state has not violated the landowner's due process rights. Nena v. Kosrae, 5 FSM R. 417, 424 (Kos. S. Ct. Tr. 1990).

When counsel is allowed such a short preparation time that counsel's effectiveness is impaired then the accused is deprived of due process and effective assistance of counsel. In re Extradition of Jano, 6 FSM R. 93, 101 (App. 1993).

Something more than a state merely misinterpreting its own law, such as that the state's interpretation was arbitrary, grossly incorrect, or motivated by improper purposes, is needed to raise a legitimate due process issue. Simon v. Pohnpei, 6 FSM R. 314, 316 (Pon. 1994).

The statutory ineligibility of persons convicted of Trust Territory felonies is a valid exercise of Congress's constitutional power to prescribe additional qualifications for election to Congress, and is not unconstitutional as a deprivation of a liberty interest without due process of law, or as an ex post facto law, or as a bill of attainder. Robert v. Mori, 6 FSM R. 394, 401 (App. 1994).

The constitutional guarantee of due process only protects persons from the governments, and those acting under them, established or recognized by the Constitution. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 113 (Chk. 1995).

A plaintiff's firing by a private employer does not state a cause of action for unconstitutional deprivation of due process because no governmental entity or official is a defendant; the defendant is not alleged to be performing an essential governmental function; and a government action is not at issue. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 113 (Chk. 1995).

Physical abuse committed by police officers may violate a prisoner's right to due process of law. Persons who are not suspects have no less protection from physical abuse and injury at the hands of the police. The right to due process of law is violated when a police officer batters a person instead of protecting her from harm because persons who are not in police custody have a due process interest in personal security that may be violated by the acts of police officers. Davis v. Kutta, 7 FSM R. 536, 547-48 (Chk. 1996).

The commission of the intentional tort of battery by police officers in the scope of their employment is a denial of due process of law. Davis v. Kutta, 7 FSM R. 536, 548 (Chk. 1996).

The failure of the state to adequately train police officers, and the excessive use of force used by officers is a violation of a victim's right to due process of law. Davis v. Kutta, 7 FSM R. 536, 548 (Chk. 1996).

An official state practice of allowing untrained and unqualified police officers to use deadly force may be shown from the chief of police's testimony that convicted felons were hired although regulations prohibited it and that requalification on firearms had been waived for at least three years although regulations required requalification when it is within his power to allow variation from written regulation, and from the lack of any internal discipline as the result of improper use of deadly force. If, as a result of this policy a person suffers serious bodily injury, it is a violation of her right to due process of law. Davis v. Kutta, 7 FSM R. 536, 548 (Chk. 1996).

The FSM Constitution due process provision is derived from the United States Constitution and thus United States cases may be consulted for guidance in interpretation, emphasizing cases in effect at the times of the framing (1975) and the ratification (1978) of the FSM Constitution. FSM v. Skico, Ltd. (II), 7 FSM R. 555, 556-57 (Chk. 1996).

Because a government employee's pay is a form of property a government cannot deprive the employee of without due process of law, a state's failure to pay to the allottees money withheld from employees' paychecks for allotments constitutes a government deprivation of the employees' property without due process. Oster v. Cholymay, 7 FSM R. 598, 599 (Chk. S. Ct. Tr. 1996).

A due process challenge to a criminal contempt charge on the ground of the court's or its personnel's actions may be resolved by the judge's recusal and reassignment of the case to a judge whose impartiality has not been questioned. FSM v. Cheida, 7 FSM R. 633, 638-39 (Chk. 1996).

The FSM Supreme Court appellate division has jurisdiction over an appeal where a motion to recuse filed by the appellant in the state court appellate division raised an issue of due process under the FSM Constitution. Damarlane v. Pohnpei Legislature, 8 FSM R. 23, 27 (App. 1997).

A justice whose extrajudicial statements exhibit a bias towards a party's counsel must disqualify himself under Pohnpei statute, and failure to do so is a denial of due process. Damarlane v. Pohnpei Legislature, 8 FSM R. 23, 27-28 (App. 1997).

A trial judge abuses his discretion when, without due process of law, he *sua sponte* imposes a Rule 11 sanction on an attorney. In re Sanction of Michelsen, 8 FSM R. 108, 111 (App. 1997).

State law specifically prohibits persons with an interest from being members of a land registration team, but no such statute specifically requires the disqualification of land commissioners with an interest from reviewing the registration team's determination. This brings constitutional due process concerns into play. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

Adjudicatory decisions affecting property rights are subject to the procedural due process requirements of article IV, section 3 of the Constitution. Due process demands impartiality on the part of adjudicators, including quasi-judicial officials, such as land commissioners. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

Grounds that require a person's recusal from the land registration team also require his disqualification as a land commissioner reviewing the land registration team's adjudication. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

The commission of the intentional tort of battery by the police officers in the scope of their employment is a denial of due process of law. Physical abuse committed by police officers may violate a prisoner's right to due process of law. The right to due process of law is violated when a police officer batters a person.

The public at large has the right to be free of invasions of their person and personal security by any government agent and suspects have the right to be free from the use of excessive force during their arrest. Conrad v. Kolonia Town, 8 FSM R. 183, 195 (Pon. 1997).

In order to assert due process, one must point to a property or liberty interest of one's own that is subject to due process. Louis v. Kutta, 8 FSM R. 228, 230 (Chk. 1998).

The Kosrae State Charter's due process clause, in effect in 1982, did not extend any greater protection than the FSM Constitution's. Taulung v. Kosrae, 8 FSM R. 270, 275 (App. 1998).

The essential features of procedural due process, or fairness, require notice and an opportunity to be heard. Taulung v. Kosrae, 8 FSM R. 270, 275 (App. 1998).

The procedural due process requirements of notice and an opportunity to be heard are met when Kosrae provides a limited-term employee being suspended for two weeks the notice mandated by 61 TTC 10(15)(a) and an opportunity to be heard by the official suspending him. Taulung v. Kosrae, 8 FSM R. 270, 275 (App. 1998).

The constitutional guarantees of due process and equal protection extend to aliens. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 295 n.8 (Pon. 1998).

It is a due process violation for a former trial counselor or attorney to preside as a trial judge over litigation involving the same issues and interests he had been intimately involved with as a trial counselor or attorney, particularly where he had represented one of the litigants. Bank of Guam v. O'Sonis, 8 FSM R. 301, 305 (Chk. 1998).

A party has a due process right to a hearing before an unbiased judge and a judge without an interest in the case's outcome. Bank of Guam v. O'Sonis, 8 FSM R. 301, 305 (Chk. 1998).

The fundamental concept of procedural due process is that the government may not be permitted to strip citizens of "life, liberty or property" in an unfair, arbitrary manner. Where such important individual interests are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision making process. Isaac v. Weilbacher, 8 FSM R. 326, 333 (Pon. 1998).

Title 52 F.S.M.C. 151-57 and PSS Regulation 18.4 establish an expectation of continuous employment for nonprobationary national government employees by limiting the permissible grounds, and specifying necessary procedures, for their dismissal. This is sufficient to establish a "property interest" for the nonprobationary employee which cannot be taken without fair proceedings, or "due process." Isaac v. Weilbacher, 8 FSM R. 326, 333 (Pon. 1998).

A permanent employee cannot be demoted to his former position based on a regulation which, by its terms, only applies to a temporary promotion. A permanent employee's constitutional right to due process is violated by the national government when it has thus demoted him. Isaac v. Weilbacher, 8 FSM R. 326, 335 (Pon. 1998).

In the vast majority of criminal contempt cases, the defendant is given substantially those procedural rights normally accorded to defendants in other criminal cases. In re Contempt of Skilling, 8 FSM R. 419, 424 (App. 1998).

Although the statutory time periods are directory and not mandatory, a significant delay in proceedings can deprive the Executive Service Appeals Board procedure of its meaningfulness, in violation of the due process rights protected by the Constitution. Langu v. Kosrae, 8 FSM R. 427, 435 (Kos. S. Ct. Tr. 1998).

It is a violation of a litigant's constitutional right to due process for a trial court to rely on evidence, not a

part of the record, without prior notice to the parties and an opportunity for the parties to comment on it. Thomson v. George, 8 FSM R. 517, 523 (App. 1998).

It is error for a trial court to rely on exhibits never identified, described, or marked at trial. Thomson v. George, 8 FSM R. 517, 523 (App. 1998).

A special master commits reversible error when its decision has relied on unidentified sketches not a part of the record and about which there was not extensive testimony and cross examination. Thomson v. George, 8 FSM R. 517, 523 (App. 1998).

An illegally-hired public employee has a constitutionally protected interest in employment because the Secretary of Finance must give notice and an opportunity to be heard after taking the action to withhold his pay, and the government must terminate his employment after it determines his hiring had violated public policy, giving him notice and an opportunity to be heard. Failure to take such steps violated the employee's due process rights. FSM v. Falcam, 9 FSM R. 1, 5 (App. 1999).

As a general proposition, a governmental entity's breach of a contract, without more, does not constitute a due process violation. Island Dev. Co. v. Yap, 9 FSM R. 18, 20 (Yap 1999).

Voters' due process and equal protection rights are not violated by regulation or restriction of voting by absentee ballots. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 48 (Chk. S. Ct. Tr. 1999).

From June 1997 when Kos. S.L. No. 6-131 became law to February 1998 when new PSS regulations were adopted, there was no administrative appeals process for grievances, which void raises substantial due process concerns under the FSM and Kosrae Constitutions. Abraham v. Kosrae, 9 FSM R. 57, 60 (Kos. S. Ct. Tr. 1999).

To obtain personal jurisdiction over a non-resident defendant in a diversity action, a plaintiff must show that jurisdiction is consistent with the "long arm" statute, 4 F.S.M.C. §§ 203-04, and that the exercise of jurisdiction does not deny the defendant due process of law as guaranteed by article IV, section 3 of the FSM Constitution. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 128 (Pon. 1999).

Because Article IV, section 3 is based on the Due Process Clause of the United States Constitution, FSM courts can look to interpretations of the United States Due Process Clause to determine the extent to which the FSM long-arm statute may be used consistently with due process to exert jurisdiction over a non-forum defendant. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 128-29 (Pon. 1999).

Under the doctrine of minimum contacts a defendant must have certain minimum contacts with a forum such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. The FSM Supreme Court applies a minimum contacts analysis to determine the extent to which the FSM long-arm statute may be used consistently with due process to exert jurisdiction over a non-forum defendant. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 129 (Pon. 1999).

The mere allegation that an out-of-state defendant has tortiously interfered with contractual rights or has committed other business torts that have allegedly injured a forum resident does not necessarily establish that the defendant possesses the constitutionally required minimum contacts. In order to resolve the jurisdictional question, a court must undertake a particularized inquiry as to the extent to which the defendant thus purposefully availed itself of the benefits of the forum's laws. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 129 (Pon. 1999).

Generalized legal conclusions in an affidavit have no bearing on the particularized inquiry, which a court must undertake in order to determine whether defendants have minimum contacts with the forum in order to make a prima facie case that the court has personal jurisdiction over the defendants. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 130 (Pon. 1999).

Two – possibly four – letters and unspecified phone calls sent into the FSM are insufficient in themselves to establish the minimum contacts necessary to establish personal jurisdiction. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 130 (Pon. 1999).

Personal jurisdiction is not established when the alleged tortious conduct resulted only in economic consequences in the FSM because mere economic injury suffered in the forum is not sufficient to establish the requisite minimum contacts so as to sustain long-arm jurisdiction. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 130 (Pon. 1999).

When the tortious conduct is not shown to have occurred in FSM, and the alleged harm flowing from the conduct cannot be said to have been "targeted" to the FSM, it does not persuade the court that the defendants have caused an "effect" in this forum sufficient to justify jurisdiction over them under the FSM long-arm statute. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 131 (Pon. 1999).

When the defendants are not parties to the contract they tortiously interfered with and have no meaningful presence in the FSM, although the economic harm was allegedly targeted to an FSM plaintiff, it is insufficient to establish personal jurisdiction over the defendants. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 132 (Pon. 1999).

Any reliance on the contents of a further investigation that have never been a part of the record is improper. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 172 (App. 1999).

A hearing cannot qualify as the full evidentiary hearing contemplated by Disciplinary Rule 5(b) when neither side had an opportunity to present evidence. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 174 (App. 1999).

A hearing cannot qualify as the full evidentiary hearing contemplated by Disciplinary Rule 5(b) when the decision finding the allegations of misconduct proven had been made and announced before the hearing was held. Such a hearing must take place before the decision is made. Otherwise it is a denial of due process. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 174 (App. 1999).

Since the Due Process Clause in the Declaration of Rights of the FSM Constitution is based on the Due Process Clause of the U.S. Constitution's Fourteenth Amendment, the FSM Supreme Court may properly consider U.S. cases in construing due process under the FSM Constitution. Weno v. Stinnett, 9 FSM R. 200, 213 (App. 1999).

Cases involving either prisoners or someone confronted with or being arrested by a police officer – someone in custody or being taken into custody – or cases involving intentional acts, are inapplicable to claims that other state actions that are either negligence, gross negligence or reckless disregard constitute a civil rights or due process violation. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 411-12 (App. 2000).

Historically, the guarantee of due process has been applied to deliberate decisions of government officials to deprive a person of life, liberty, or property. Mere negligence did not raise a constitutional violation. The Due Process Clause does not purport to supplant traditional tort law and does not transform every tort by a state actor into a constitutional violation. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 412 (App. 2000).

Neither the state defendants' alleged deliberate indifference to the dredging site's neighbors' safety nor their failure to warn those neighbors of any known risks can properly be characterized as a constitutional violation that would take the case out of the realm of ordinary tort law. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 412 (App. 2000).

When an amended complaint's deliberate indifference or negligence allegations do not rise to the level of a constitutional due process claim, it does not state a claim upon which the FSM Supreme Court can grant relief and the trial court's dismissal of the amended complaint will therefore be affirmed. Primo v.

Pohnpei Transp. Auth., 9 FSM R. 407, 412 (App. 2000).

Because conduct alone without regard to the doer's intent is often sufficient to convict someone of a crime, because there is wide latitude to declare an offense and to exclude elements of knowledge and diligence from its definition, and because the defendant knew, by his own admission, that he was not permitted to take a weapon on board the plane, the strict criminal liability imposed by 11 F.S.M.C. 1223(6) for boarding or attempting to board a commercial aircraft while carrying a firearm or dangerous device does not violate due process. Sander v. FSM, 9 FSM R. 442, 449-50 (App. 2000).

When the failure to refer a detainee for medical treatment is arbitrary and purposeless, it constitutes punishment of someone who has not been convicted of any crime. This punishment is a denial of the right to due process. Estate of Mori v. Chuuk, 10 FSM R. 6, 13 (Chk. 2001).

A court must exercise its inherent powers with caution, restraint, and discretion and must comply with the mandates of due process. In re Sanction of Woodruff, 10 FSM R. 79, 85 (App. 2001).

No one should ever be penalized or sanctioned by a court for successfully insisting upon those constitutional rights which are his due. In re Sanction of Woodruff, 10 FSM R. 79, 87 (App. 2001).

A judgment may not be rendered in favor of or against a person who was not made party to the action. A party to an action is a person whose name is designated on the record as a plaintiff or defendant. A person may not be made a party to a proceeding simply by including his name in the judgment. Hartman v. Bank of Guam, 10 FSM R. 89, 97 (App. 2001).

When someone is accorded none of these due process guarantees with respect to a "judgment" against it, the judgment and ensuing order in aid of judgment and writ of execution are void as a matter of law, and these procedural infirmities inherent in the judgment are subject to attack at any time, and thus are outside the adjudicative framework established by the rules of procedure. Hartman v. Bank of Guam, 10 FSM R. 89, 97 (App. 2001).

In land cases, statutory notice requirements must be followed. Personal service of the notice of hearing and the Determination of Ownership upon all parties shown by the preliminary inquiry to have an interest in the parcel is required. Failure to serve actual notice on a claimant is a denial of due process and violation of law, which will cause a Determination of Ownership to be set aside as void, and the case remanded to the Land Commission to hold the formal hearings and to issue the determination of ownership for that parcel. Kun v. Kilafwakun, 10 FSM R. 214, 216 (Kos. S. Ct. Tr. 2001).

To be property protected under the FSM and Kosrae Constitutions, the employment right must be based on governmental assurance of continual employment or dismissal for only specified reasons. A person who has been hired under an employment contract, for a specific length of time, with no provisions for renewal of the contract and no entitlement for renewal of the contract, does not have a property interest in his continued employment and is not entitled to a hearing before termination. Talley v. Lelu Town Council, 10 FSM R. 226, 237 (Kos. S. Ct. Tr. 2001).

A person who has been employed for twelve years under a series of one year contracts could prove that by that length of employment, there was unwritten claim to continued employment under tenure. Talley v. Lelu Town Council, 10 FSM R. 226, 237 (Kos. S. Ct. Tr. 2001).

As a general proposition, a governmental entity's breach of a contract, without more, does not constitute a due process violation. Talley v. Lelu Town Council, 10 FSM R. 226, 237 (Kos. S. Ct. Tr. 2001).

Adjudicatory decisions of governmental bodies affecting property rights are subject to the procedural due process requirements of the Constitution. Due process requirements are applicable to the proceedings of the Kosrae Land Commission. Ittu v. Heirs of Mongkeya, 10 FSM R. 446, 447 (Kos. S. Ct. Tr. 2001).

Due process demands impartiality on the part of adjudicators, such as land commissioners. Langu v. Heirs of Jonas, 10 FSM R. 547, 549 (Kos. S. Ct. Tr. 2002).

Due process generally requires some form of fair hearing and rational decision making process when an important interest is at stake. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 635 (Pon. 2002).

In evaluating an alleged due process violation, courts usually are looking at the procedure that was followed by the government when, for example, the government is denying a benefit or taking some property from a party. Three important elements in establishing a procedural due process claim are: 1) whether the government is involved; 2) whether there is a life, liberty or property interest at stake; and, if so, 3) whether adequate due process procedures are employed by the government before a party is deprived of such an interest. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 635 (Pon. 2002).

The constitutional guarantee of due process only protects parties from governments, and those acting under them. To establish a due process claim, a plaintiff must show that a government entity or official, or one acting at the direction of the government, is involved. When the defendants were merely acting as individuals and not as representatives of Congress, or at the direction of Congress, the plaintiff cannot demonstrate the requisite government involvement, and when there is no government action, there can be no due process violation. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 635 (Pon. 2002).

The wording of the due process provisions in both the FSM and Kosrae Constitutions are identical. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 665 (Kos. S. Ct. Tr. 2002).

Government employment that is "property" within the meaning of the due process clause cannot be taken without due process. To be property protected under the FSM and Kosrae Constitutions, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 665-66 (Kos. S. Ct. Tr. 2002).

The due process requirements applicable to employment that is a property interest are: to be property protected under the FSM and Kosrae Constitutions, the employment rights must be based on governmental assurance of continual employment or dismissal for only specified reasons as stated in statute, regulations, formal contract or actions of a supervisory person with authority to establish terms of employment. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 666 (Kos. S. Ct. Tr. 2002).

There is no assurance of continued employment given by statute when the statute provides that the Corporation may retain and terminate the services of employees, agents, attorneys, auditors, and independent contractors upon such terms and conditions as it deems appropriate, or given by regulation when no regulations exist. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 666 (Kos. S. Ct. Tr. 2002).

The due process clause prevents governmental authorities from depriving individuals of property interests without first giving an opportunity to be heard. The clause protects against governmental rather than private deprivations of property. The party alleging a due process violation has the burden of showing that the defendant is a state actor and that the conduct in question was a state action. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 666 (Kos. S. Ct. Tr. 2002).

The actions of a private corporation which is partly owned by a government are not "state action" for purposes of due process analysis. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 666 (Kos. S. Ct. Tr. 2002).

When the statutory provisions intend and ensure that an entity is run as a corporation with its own management and employees, and not as a Kosrae state government agency and when, although the state government remains its sole shareholder, the state government does not assume its debts, does not own its assets, and has no control over its day to day operations, it is not a "state actor," and its termination of an

employee is therefore not a "state action." Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 666-67 (Kos. S. Ct. Tr. 2002).

A party alleging a due process violation has the burden of showing that the defendant is a state actor and that the conduct in question was a state action. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 667 (Kos. S. Ct. Tr. 2002).

The defendant employer will be granted summary judgment on a plaintiff's due process claim when the plaintiff has not satisfied his burden showing that the employer is a state actor and that its termination of his employment was a state action because the due process clause may only be invoked through state action. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 667 (Kos. S. Ct. Tr. 2002).

A trespass action is one for violation of possession, not for challenge to title. It is therefore not a proper proceeding for the defendant to challenge title and allege due process violations in the proceedings that determined the plaintiff's title to the parcel. The defendant may challenge the title through separate proceedings as appropriate. Shrew v. Killin, 10 FSM R. 672, 674-75 (Kos. S. Ct. Tr. 2002).

The personal nature of constitutional rights, and prudential limitations on adjudicating constitutional questions, preclude a criminal defendant from challenging a law on the basis that it may be unconstitutionally applied to others in situations not before the court. FSM v. Anson, 11 FSM R. 69, 75 (Pon. 2002).

The twenty year statute of limitation does not apply to claims against the Land Commission for violation of due process, violation of statute and for failure to apply an earlier judgment as they are not claims for the recovery of land. These claims are subject to a limitations period of six years and are barred by the statute of limitations and will be dismissed when the Land Commission actions all occurred more than six years ago. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 175 (Kos. S. Ct. Tr. 2002).

A claim of taking of property without due process of law is effective only against governmental entities or officials. The constitutional guarantee of due process only protects persons from the governments, and those acting under them, established or recognized by the Constitution. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

The FSM Constitution's due process provision protects persons from the governments, and those acting under them, established or recognized by the Constitution, and does not create causes of action against private parties. The Chuuk Constitution due process provision functions in the same manner. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

Once the governmental defendants were dismissed there was no one against which to bring due process claims and civil rights taking claims so those claims were thus properly dismissed. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

A plaintiff's claims for damages resulting from violation of his due process rights depend upon whether the defendant's actions were "state action." Hauk v. Board of Dirs., 11 FSM R. 236, 240 (Chk. S. Ct. Tr. 2002).

If the court is unable to declare that the defendant authority is a quasi-governmental authority subject to the provisions of the due process clause of the Chuuk and FSM Constitutions, then the plaintiff's due process claims must fail. The plaintiff has the burden of proving that the defendant is a state actor. Hauk v. Board of Dirs., 11 FSM R. 236, 240 (Chk. S. Ct. Tr. 2002).

An Authority that has its own Board of Directors, is solely empowered to select its own officers, may sue and be sued in its own name and is responsible for its own debts, and owns its own assets is an autonomous agency that cannot be declared to be subject to the due process provisions of the FSM and state constitutions, and must be declared a private entity and not a "state actor" for due process purposes.

Hauk v. Board of Dirs., 11 FSM R. 236, 240-41 (Chk. S. Ct. Tr. 2002).

Except in extraordinary circumstances, due process requires that parties receive notice of motions because all parties must be served with all papers unless the party is in default, and the default is for a failure to ever appear at any stage of the proceeding. FSM Social Sec. Admin. v. David, 11 FSM R. 262j, 262L (Pon. 2002).

When testimony presented at the first formal hearing was not heard by the full panel of adjudicators due to a Land Commissioner's late disqualification and the addition of temporary adjudicators, only one person of the adjudication panel heard that testimony. This resulted in a due process violation because the testimony was not heard by the full adjudication panel when the acting replacement commissioners did not hear the testimony, yet they participated in the findings of fact, opinion and decision. The Land Commission exceeded it constitutional and statutory authority by the adjudication panel's failure to hear all the evidence presented at the hearings. Heirs of Henry v. Palik, 11 FSM R. 419, 422 (Kos. S. Ct. Tr. 2003).

When counsel, who now claims he was surprised and unprepared by the scheduling of oral argument, did not ask for a couple of days' (or even a few hours') continuance when the case was called, although such a continuance would have been possible and when counsel argued ably, it is not a ground to grant a rehearing. Rosokow v. Bob, 11 FSM R. 454, 456 (Chk. S. Ct. App. 2003).

When the Land Commission did not exceed its constitutional or statutory authority, and did conduct a fair proceeding for determination of title, there was no violation of state law and no violation of constitutional and statutory due process based upon the Land Commission's failure to notify the appellant in writing of the planting of monuments. Tulenkun v. Abraham, 12 FSM R. 13, 16 (Kos. S. Ct. Tr. 2003).

A mortgagee's due process rights are not violated by a statute making another lien superior to its mortgage when the statute was enacted prior to the mortgage's execution. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

The public entity responsible for public lands is required to make its decisions openly and after giving appropriate opportunity for participation by the public and interested parties. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 91 (Pon. 2003).

The fundamental concept of due process is that government may not take from a citizen his life, liberty, or property in an unfair or arbitrary fashion, but must follow procedures that ensure a fair and rational decision-making process. AHPW, Inc. v. FSM, 12 FSM R. 114, 118 (Pon. 2003).

To satisfy constitutional due process concerns, absent class members must be afforded adequate representation before entry of a judgment which binds them. Resolution of two questions determines legal adequacy: 1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and 2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class? The second part of this question may also be stated in the affirmative as that it must appear that the class representatives will vigorously prosecute the interests of the class through qualified counsel. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 199 (Yap 2003).

No court could grant as relief a sweeping request to nullify all certificates of title to all persons who are not heirs of legatees pursuant to a will when such a request would reverse long-settled, final cases not now before the court, with parties not now before the court, and award others title to land for which certificates of title have already been issued because that would have the court void certificates of title in a manner that would violate every notion of due process of law. Anton v. Heirs of Shrew, 12 FSM R. 274, 277 (App. 2003).

All co-tenants are indispensable parties to the litigation when someone else claims complete ownership of the land. Otherwise, the co-tenants would either be deprived of their property interest without due process of law or they would be forced to share their property with a hostile co-owner who believes he

should be the sole owner. Anton v. Heirs of Shrew, 12 FSM R. 274, 279 (App. 2003).

An appellate court will first consider an appellant's due process contentions, when, if the appellant were to prevail on these, the decision below would be vacated (without the appellate court considering its merits), and the matter remanded for new proceedings. Anton v. Cornelius, 12 FSM R. 280, 284 (App. 2003).

An assertion that a Land Commission decision was tainted and a party denied due process because various members of the Land Commission and Land Registration Team were close relatives of the appellee or the appellee's wife is a serious allegation that, if true, would usually be enough to vacate the decision and remand the case to the Land Court for new proceedings with a new determination to be made by impartial adjudicators. Anton v. Cornelius, 12 FSM R. 280, 284 (App. 2003).

When the appellant does not name the persons who he claims were the appellee's or the appellee's wife's "close relatives" or state how they are related, or what positions they held, or how they were involved in the Land Commission decision, the appellate court, without knowing the answers to these questions, cannot find plain error and conclude that, as a matter of law, the appellant's due process rights were violated and thereby vacate the determination and remand it for a new determination before other adjudicators. When the appellant did not raise this claim in the Land Commission or later in the Kosrae State Court, having failed to raise it earlier, the appellant cannot raise it now. Anton v. Cornelius, 12 FSM R. 280, 284-85 (App. 2003).

No court could grant as relief a far-reaching request to nullify all certificates of title to all persons who are not heirs of legatees pursuant to a will when such a request would reverse long-settled, final cases not now before the court, with parties not now before the court, and award others title to land for which certificates of title have already been issued because that would have the court void certificates of title in a manner that would violate every notion of due process of law. Anton v. Cornelius, 12 FSM R. 280, 288-89 (App. 2003).

The fundamental concept of procedural due process is that the government may not be permitted to strip citizens of "life, liberty or property" in an unfair, arbitrary manner. Before such important individual interests are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision making process. Panuelo v. Amayo, 12 FSM R. 365, 374 (App. 2004).

The omission of an adopted daughter's name from a verified probate petition, signed under oath by the petitioner, resulted in the failure to provide the adopted daughter her constitutional due process rights to be notified of the probate proceeding, have an opportunity to be heard and may have also affected her rights as an heir of the decedent. In re Skilling, 12 FSM R. 447, 449 (Kos. S. Ct. Tr. 2004).

When a plaintiff has a judgment based on a common law contract, and there is no FSM statute that affects ordinary contracts in a way that shows a substantial national interest in such matters, the law of contracts is generally one in which state law controls. A governmental entity's breach of a contract, without more, does not constitute a due process violation. Barrett v. Chuuk, 12 FSM R. 558, 561 (Chk. 2004).

Repeated, intentional instances of failure of a state to pay a judgment does not constitute a separate, constitutional claim for deprivation of property without due process where the original underlying claim is not constitutional in character, but is based on common law contract and when there is no constitutional claim that supports the judgment itself, nor a national statute applicable that implicates a "clear and substantial" national interest. Barrett v. Chuuk, 12 FSM R. 558, 561-62 (Chk. 2004).

A new law that results in a state employee's loss of his accumulated sick leave hours is not unconstitutional and a deprivation of property without due process because the right to take payment for sick leave to be taken in the future is a mere expectancy, and does not constitute a vested right entitling the employee to compensation. "Vested" means having the character or given the rights of absolute

ownership. Sam v. Chief of Police, 12 FSM R. 587, 589 (Kos. 2004).

When there are multiple dates upon which an election result was certified, the date of making the certification public and notifying the candidates would comport best with due process as the certification starting point for election contests. Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

If the court enters a default judgment different in kind from or exceeds in amount the relief that was prayed for in the demand for judgment, such a default judgment would be void and subject to collateral attack. Serious due process questions would be raised. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277 (Chk. 2005).

A default judgment that included damages for claims not raised in the complaint or sums not prayed for by the plaintiff and that was rendered against a defendant who never appeared would violate due process. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 278 (Chk. 2005).

In the case of an injunction, non-parties who are persons who are the defendant's "officers, agents, servants, employees and attorneys," or "persons in active concert or participation" with the defendant and successors to a party, are the only non-parties against whom judgments and orders may be lawfully enforced, that is, enforced without violating the non-party's constitutional right to due process and Rule 71. Ruben v. Petewon, 13 FSM R. 383, 389 (Chk. 2005).

The general rule is that orders cannot be enforced against non-parties without violating the non-parties' constitutional rights to due process, and if an order can lawfully be enforced against someone it is because either that person is a party or it is an injunction being enforced and that person is a party's "officers, agents, servants, employees and attorneys," or a person "in active concert or participation" with a party. Ruben v. Petewon, 13 FSM R. 383, 390 (Chk. 2005).

A defendant's statutory right to be brought before the court within the 24 hours period goes to the heart of the procedural due process guaranteed to FSM citizens. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 499 (Pon. 2005).

The FSM Constitution's due process provision protects persons from governments, and those acting under them, and does not create causes of action against private parties. The Kosrae Constitution due process provision functions in the same manner. A party alleging a due process violation has the burden of showing that the defendant is a state actor and that the conduct in question was a state action. Kinere v. Sigrah, 13 FSM R. 562, 569 (Kos. S. Ct. Tr. 2005).

The usual cause of action when a governmental entity has exercised its regulatory powers improperly is a constitutional due process claim. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 15 (App. 2006).

When the presiding Land Court justice was required to disqualify himself, his failure to recuse himself was a violation of due process making the Land Court's decision contrary to law because the Land Court proceeding's presiding justice failed to recuse himself, and the matter must be remanded to the Kosrae Land Court with instructions and guidance for re-hearing the matter. Isaac v. Saimon, 14 FSM R. 33, 36 (Kos. S. Ct. Tr. 2006).

In the FSM, claims of police brutality or excessive force generally implicate due process, rather than equal protection. Annes v. Primo, 14 FSM R. 196, 202 (Pon. 2006).

A public officer is not denied due process of law by the abolition of his office before his term expires or by his removal or suspension according to law. Esa v. Elimo, 14 FSM R. 216, 218 (Chk. 2006).

While procedural due process requires governmental decision-making to conform with the concept of what is fair and just, substantive due process, on the other hand, addresses the legislature's rationality. Substantive due process protects individual liberty interests against certain governmental actions

regardless of the fairness of the procedure used to implement them. FSM Dev. Bank v. Adams, 14 FSM R. 234, 248 n.6 (App. 2006).

It is error for a trial court to rely on exhibits never marked at trial. A justice commits reversible error when his decision has relied on a document that is not a part of the record. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 287, 289 (Kos. S. Ct. Tr. 2006).

In order to recover compensatory damages, the plaintiffs must prove actual injury from the civil rights deprivation. When, if proper procedure had been followed, the plaintiffs still would have been terminated from their positions, there is no actual injury to compensate with back pay or other benefits. Nominal damages may, however, be awarded for the deprivation of the important right to procedural due process. Robert v. Simina, 14 FSM R. 438, 444 (Chk. 2006).

Common-law courts traditionally have vindicated deprivations of certain "absolute" rights that are not shown to have caused actual injury through the award of a nominal sum of money. By making the deprivation of such rights actionable for nominal damages without proof of actual injury, the law recognizes the importance to organized society that those rights be scrupulously observed; but at the same time, it remains true to the principle that substantial damages should be awarded only to compensate actual injury or, in the case of exemplary or punitive damages, to deter or punish malicious deprivation of rights. Because the right to procedural due process is "absolute" in the sense that it does not depend upon the merits of a claimant's substantive assertions, and because of the importance to organized society that procedural due process be observed, the denial of due process should be actionable for nominal damages without proof of actual injury. Robert v. Simina, 14 FSM R. 438, 444 (Chk. 2006).

No court can grant as relief a request to set aside or nullify a certificate of title to a person who is not a party before the court and effectively award someone else ownership to some or all of the land for which the certificate of title was issued because that would have the court void a certificate of title in a manner that would violate every notion of due process of law. Dereas v. Eas, 14 FSM R. 446, 454 (Chk. S. Ct. Tr. 2006).

In any lawsuit to remove someone's name from a certificate of title, that is, to deprive a person of ownership of the registered land that the certificate represents, due process requires that that person is an indispensable party to the action. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

No court can set aside, void, nullify, invalidate, or alter a person's certificate of title to land without that person first having been made a party to the action before the court. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

One alleged due process violation does not justify an aggrieved party's retaliatory due process violations. Dereas v. Eas, 14 FSM R. 446, 455 n.4 (Chk. S. Ct. Tr. 2006).

When the parties received a Land Commission determination from the Land Court, which then granted the appellants' request for a continuance after issuing its decision and which agreed to consider the appellants' motion to vacate the determination, if it was filed in writing; when the appellants filed their appeal, the Kosrae State Court agreed to hear the matter; when the appellants had notice and an opportunity to be heard at the preliminary and formal hearings and they participated in both the preliminary and final hearings and presented evidence regarding the parcel's alleged transfer; and when they were not served with the Land Commission adjudication, the appeals period did not run, the Land Commission and Land Court complied with statutory requirements and conducted a fair proceeding. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 525 (Kos. S. Ct. Tr. 2007).

When no hearing was held before the court issued its December 14, 2001 order in aid of judgment and no finding was made on the debtor's ability to pay in December 2001, the December 14, 2001 order was issued in violation of the State's right to due process and the order constitutes an abuse of the trial court's discretion. Chuuk v. Andrew, 15 FSM R. 39, 42 (Chk. S. Ct. App. 2007).

It is error and a due process violation for a trial court to award attorney's fees without giving the opposing party (who will be paying the fee award) notice and an opportunity to challenge the proposed award's reasonableness. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 62 (Yap 2007).

By failing to refer motions to recuse and to disqualify the presiding justice to another justice, as required by the State Judiciary Act, the trial justice violated the movants' rights to due process of law. Ruben v. Hartman, 15 FSM R. 100, 108 (Chk. S. Ct. App. 2007).

In any lawsuit to, in effect, remove someone's name from a certificate of title, that is, to change the registered ownership of the land that the certificate represents and deprive the certificate titleholder of the titleholder's property interest, due process requires that that person is an indispensable party to the action. Any action that seeks to claim an interest in land for which a certificate of title or a determination of ownership has already been issued, must, at a minimum, name the registered titleholder as a party. Ruben v. Hartman, 15 FSM R. 100, 110 (Chk. S. Ct. App. 2007).

The fundamental concept of due process is that government may not take from a citizen his life, liberty, or property in an unfair or arbitrary fashion, but must follow procedures that ensure a fair and rational decision-making process. Siba v. Noah, 15 FSM R. 189, 194 (Kos. S. Ct. Tr. 2007).

It is generally considered violative of the constitutional right to due process to apply a law retroactively that would divest someone of a vested right or property interest. Esa v. Elimo, 15 FSM R. 198, 205 (Chk. 2007).

In an election dispute, the person whose right to the office is contested is the real party in interest. When a plaintiff is contesting the right of a candidate to participate in an election but fails to name the candidate as a party in the complaint, the court will deny injunctive relief because the real parties in interest are not parties to the action, since without naming the candidates as parties to this action, and giving them the benefit of due process of law, the court is unwilling and unable to adjudicate their rights in the proceeding. Bisaram v. Suta, 15 FSM R. 250, 255 (Chk. S. Ct. Tr. 2007).

An argument that the trial court denied a litigant due process by depriving her of her property without allowing her to be heard is without merit when the trial court decision being appealed was handed down in response to the litigant's own summary judgment motion, through which she is assumed to have stated her position, and when a hearing was held on the motion at which the litigant was represented by counsel. She was afforded full opportunity to be heard. Akinaga v. Heirs of Mike, 15 FSM R. 391, 398 (App. 2007).

Plaintiffs' due process civil rights were violated when police officers beat them without reason or justification. Further due process violations occurred when one of them was detained and arrested without being told the reason, and when he was held in police custody for six hours. Hauk v. Emilio, 15 FSM R. 476, 479 (Chk. 2008).

A person commits an offense if he willfully, whether or not acting under color of law, deprives another of, or injures, oppresses, threatens, or intimidates another in the free exercise or enjoyment of any right, privilege, or immunity secured to him by the FSM Constitution or laws and a private cause of action is provided for any such violation. Due process is a right secured by the FSM Constitution. Hauk v. Emilio, 15 FSM R. 476, 479 (Chk. 2008).

Due process issues are questions of law, and questions of law are reviewed *de novo*. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

There is no constitutional due process right to a trial if the matter may properly be resolved by summary judgment. Trial is a process used to resolve disputed issues of material fact. A court must deny a summary judgment motion unless, viewing the facts in the light most favorable to the party against whom judgment is sought, it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Thus a decision without trial would violate due process rights only if there

was a genuine issue of material fact that would preclude summary judgment because that issue would need to be tried. It is also an abuse of the trial court's discretion to grant summary judgment if a genuine issue of material fact is present. Albert v. George, 15 FSM R. 574, 579-80 (App. 2008).

The due process concerns in a Rule 11 plea hearing do not apply with equal force to the context of a revocation of probation or supervised release. FSM v. William, 16 FSM R. 4, 8 (Chk. 2008).

A single justice's reprimand of a legal services corporation law firm must be reversed where it was based on a factual error that the attorney appearing for the appellants was appearing as a member of the law firm when he was appearing only on his own behalf and his close relatives. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 106-07 (App. 2008).

The Constitution's due process protections do not require appellate oral argument. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 111 (App. 2008).

The Constitution's due process protections do not require appellate oral argument. Oral argument on appeal is not an essential ingredient of due process. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 127 (App. 2008).

It is essential that the trial court insure that its own notice procedures satisfy the requirements of due process. In order to comply with due process, Chuuk State Supreme Court Civil Procedure Rule 5(a) requires that service of all notices and other papers must be made upon each party affected. Under Rule 5(b), service must be made on a party's counsel, if represented, and may be effectuated either by "delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of court." Rule 5(b) further specifies that delivery of "a copy" means handing it to counsel; or leaving it at his office with his clerk of other person in charge thereof; or if there is no one in charge, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion residing therein. Service by placing a notice in a counsel's box in the clerk's office is not a method of service recognized by Rule 5(b). Farek v. Ruben, 16 FSM R. 154, 156-57 (Chk. S. Ct. App. 2008).

A variance is a discrepancy or disagreement between the allegations of the charging instrument and the proof adduced at trial. Kasmiro v. FSM, 16 FSM R. 243, 245 (App. 2009).

When considering whether a variance warrants relief, the court must examine whether the variance was material or prejudicial, that is, whether it affected the substantial rights of the accused. Any error, defect, irregularity or variance which does not affect substantial rights is disregarded. The issue is whether the accused is given sufficient notice of the charges against him so as to be able to present his defense and not be taken by surprise by the evidence offered at the trial and also to be protected against another prosecution for the same offense. Kasmiro v. FSM, 16 FSM R. 243, 245 (App. 2009).

When the prosecution failed to incorporate the accused's alleged possession of a rifle into its prosecution even after witness testimony, choosing instead to remain within the parameters of its original allegations all the way through closing argument, namely that the accused's presence in the boat alone supported conviction, it is reasonable to conclude that the accused was never given proper notice of his alleged conduct, and, even if the accused was given notice of the conduct underlying the violation after the witness testimony, such notice coming midway through the FSM's case-in-chief is not sufficient notice for the accused to prepare his defense against the factual allegations ultimately used to convict him. Kasmiro v. FSM, 16 FSM R. 243, 246 (App. 2009).

Allegations in the information alleging a criminal violation must be proven in order to obtain a conviction. It is not sufficient that the evidence show a violation of the statute specified in the information if the actual violation is different from the one alleged. Kasmiro v. FSM, 16 FSM R. 243, 247 (App. 2009).

The Constitutions of both Kosrae and the Federated States of Micronesia state, in identical wording,

that a person may not be deprived of life, liberty, or property without due process of law and these two clauses are treated as identical in meaning and in scope and may be analyzed together. Palsis v. Kosrae, 16 FSM R. 297, 306 (Kos. S. Ct. Tr. 2009).

For the due process clause to apply, a life, property, or liberty interest must be implicated. In an employment case, to be property protected under the Constitution, the employment right must be supported by more than merely the employee's own personal hope. There must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Palsis v. Kosrae, 16 FSM R. 297, 307 (Kos. S. Ct. Tr. 2009).

A government's breach of a contract, without more, does not violate due process rights. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 484 (Pon. 2009).

Although an employment opportunity is a liberty interest protected by due process, the right to governmental employment in Pohnpei is not a constitutionally-protected fundamental right, requiring invoking a strict scrutiny test. Berman v. Pohnpei Legislature, 16 FSM R. 492, 497 (Pon. 2009).

Government employment that is "property" within meaning of Due Process Clause cannot be taken without due process, but, in order for property to be protected under FSM Constitution, there must be claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons, and when the plaintiff does not allege that she was ever given an assurance of any kind of continual employment beyond the specific dates set forth in her short-term contract, her claim will be dismissed with prejudice. Berman v. Pohnpei Legislature, 16 FSM R. 492, 497 (Pon. 2009).

A distinction exists between a mere opportunity for employment and employment itself. When a plaintiff was not denied any employment opportunity by the defendant and she was not guaranteed employment but was allowed to apply – on two separate occasions – for the position and interviewed after each such job application and was granted employment after the first job announcement but was not selected for employment after the second job announcement because the defendant deemed another the most qualified, the plaintiff's claim that she was denied, without due process, any opportunity to be employed by the defendant is without merit and will be dismissed with prejudice. Berman v. Pohnpei Legislature, 16 FSM R. 492, 497-98 (Pon. 2009).

An election contest petitioners' failure to name all real parties in interest in their pleadings can subject the court's rulings to being later challenged by the real parties in interest as a violation of their due process rights to defend their interest in the action. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 516 n.1, 517 (Chk. S. Ct. App. 2009).

It is constitutional error for a trial court to rely on exhibits never identified, described, or marked at trial, but the trial court does not commit reversible error when there was extensive testimony and cross-examination of witnesses concerning the exhibits' contents. In such an instance, it is the witness testimony that is the evidence before the court. George v. George, 17 FSM R. 8, 10 (App. 2010).

When the trial court did not rely on unadmitted evidence to reach its decision and when there was substantial trial testimony from which the trial court could reasonably find that the defendant owed the plaintiff $6,220.52, the trial court decision did not violate the defendant's due process rights and its factual finding that $6,220.52 was the amount owed was not clearly erroneous. George v. George, 17 FSM R. 8, 10 (App. 2010).

A litigant's constitutional right to due process is violated when a trial court relies on evidence, not a part of the record, without prior notice to the parties or without an opportunity for the parties to comment on it, and it is constitutional error for the court to rely on exhibits never identified, described or marked at trial. George v. Albert, 17 FSM R. 25, 32 (App. 2010).

Trial court judgments that were, in part, based on documents that were never authenticated by affidavit

or by testimony and their accuracy was never vouched for by affidavit, or testimony, or other evidence will be vacated. George v. Albert, 17 FSM R. 25, 32 (App. 2010).

When the receipts relied upon by the trial court were never identified, marked, described, or admitted at trial or evidentiary hearing; when those receipts were provided to the court post-trial and were never authenticated, introduced, or admitted into evidence; and when neither side had the opportunity to examine witnesses, or to produce witnesses to testify, on the accuracy, meaning, or completeness of the receipts or about the receipts that the trial court disallowed because someone else had signed them, the documents supplied to the court after trial were not evidence that was properly before that court and thus were not evidence in the record and the trial court's use of these documents violated due process. There is therefore no substantial evidence in the record to support the judgment amount. The judgment amount finding is thus clearly erroneous, and the judgment will be vacated since that figure is not supported by substantial evidence in the record, and, in fact, is not supported by any evidence in the record. George v. Albert, 17 FSM R. 25, 32-33 (App. 2010).

It is inconceivable that a party could be made to suffer criminal or civil penalties for the failure to collect a tax but would not have standing to challenge the tax's constitutionality (and thus the requirement that the party must collect it). The inability of a party required by law to collect a tax to challenge that tax's validity would deprive that party of its property (compliance costs, tax collection costs, remittance costs, etc.) without any due process of law. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 158-59 (Chk. 2010).

The fundamental concept of procedural due process is that the government may not strip citizens of life, liberty, or property in an unfair, arbitrary manner. When such important individual rights are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision-making process. FSM v. Andrew, 17 FSM R. 213, 215 (Pon. 2010).

When a defendant has submitted no evidence showing that the government's failure to inform him of the state correctional facility's rules, procedures, and schedules unconstitutionally deprived him of a life, liberty, or property interest and when, since such an admonition is unnecessary, the "Prisoner Rights and Responsibilities" document which the defendant cites does not inform inmates that they have a responsibility to not commit unlawful acts while incarcerated, the defendant cannot claim that he did not know he was not permitted to leave the correctional facility premises without a court order or police escort while incarcerated and a motion for dismissal on that ground will be denied. FSM v. Andrew, 17 FSM R. 213, 215 (Pon. 2010).

Both the FSM and Kosrae Constitutions provide that "a person may not be deprived of life, liberty, or property without due process of law." The wording of each of these clauses is identical in meaning and scope. Palsis v. Kosrae, 17 FSM R. 236, 240 (App. 2010).

The fundamental concept of procedural due process is that the government may not deprive citizens of life, liberty or property in an unfair, arbitrary manner. A taking occurs whenever a public entity substantially deprives a private party of the beneficial use of his property for a public purpose. Ladore v. Panuel, 17 FSM R. 271, 275 (Pon. 2010).

In any lawsuit that, in effect, seeks to change the registered ownership of the land that a certificate of title represents and deprive the certificate titleholder of the titleholder's property interest, due process would require that that person be an indispensable party to the action. Any action that seeks to claim an interest in land for which a certificate of title or a determination of ownership has been issued, must, at a minimum, name the registered titleholder as a party. Setik v. Pacific Int'l, Inc., 17 FSM R. 304, 306 (Chk. 2010).

An arrestee's right to be informed of her right to counsel when arrested is a due process right. Berman v. Pohnpei, 17 FSM R. 360, 371 (App. 2011).

Due process demands impartiality on the part of the adjudicators, including Kosrae Land Court judges. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503 (App. 2011).

If a presiding Land Court judge fails to recuse himself when he is required to, it is a due process violation and the matter must be remanded to the Kosrae Land Court with instructions and guidance for re-hearing the matter. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503-04 (App. 2011).

It generally violates the constitutional right to due process to apply a law retroactively that would divest someone of a vested right or property interest. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 592 (Pon. 2011).

As a general proposition, a governmental entity's breach of a contract, without more, does not constitute a civil rights or due process violation. Stephen v. Chuuk, 18 FSM R. 22, 25 (Chk. 2011).

Government inaction, or even deliberate indifference, is not a due process violation. Berman v. Pohnpei, 18 FSM R. 67, 73 (Pon. 2011).

The fundamental concept of procedural due process proscribes the government from stripping its citizens of property in an unfair or arbitrary manner. Kallop v. Pohnpei, 18 FSM R. 130, 134 (Pon. 2011).

A statute that restricts the sale of alcohol during the Christmas and New Year's holidays serves legitimate governmental purposes in the areas of the public health and welfare and the allowance of on-sale alcohol purchases during these holidays also support the operations of the hotels and cabarets who have a demand for such sales from its customers during the holidays. This legislation carries out the purposes for which the statute was amended by further regulating the sale of alcohol in a manner which promotes the State's legitimate governmental objectives. This statute regulating and restricting alcohol is within the scope of legislative authority, has a reasonable purpose, is not arbitrary, and carries out the purposes prescribed and is thus not unconstitutional. Kallop v. Pohnpei, 18 FSM R. 130, 135-36 (Pon. 2011).

Since property may not be taken by the government, even in aid of a judgment, without due process of law, due process of law in executing the writ may be assured by directing the executing officer to strictly comply with the statutory provisions for levying a writ of execution. Saimon v. Wainit, 18 FSM R. 211, 215 (Chk. 2012).

A pretrial detainee has a stronger right than a convicted prisoner to liberty, and that right is protected by the Due Process Clause while a convicted prisoner's claims upon liberty have been diminished through due process so the convicted prisoner must rely primarily on the protections from cruel and unusual punishment. Jacob v. Johnny, 18 FSM R. 226, 231 (Pon. 2012).

The fundamental concept of procedural due process is that the government may not strip a citizen of life, liberty, or property in an unfair, arbitrary manner. Before such important individual interests are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision making process. Poll v. Victor, 18 FSM R. 235, 245 (Pon. 2012).

When an impeached U official was arrested on the U Impeachment Panel's bench warrant and brought within 24 hours before the only court competent to try him for the contempt charge, the U Impeachment Panel, where he was heard and then convicted of contempt, he received the process of law due him. Helgenberger v. U Mun. Court, 18 FSM R. 274, 281 (Pon. 2012).

In order to prevail on a claim of deprivation of liberty or property without due process of law, a plaintiff must: 1) identify a liberty or property right which implicates the Due Process Clause; 2) identify a governmental action which amounts to a deprivation of that liberty or property right; and 3) demonstrate that the deprivation occurred without due process of law. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

When no property right can be ascribed to the judgment at issue; the due process standard is not applicable. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

The police, as state officers, have no constitutional duty to rescue persons because due process considerations are not implicated when the state fails to help someone already in danger. Ruben v. Chuuk, 18 FSM R. 425, 429 (Chk. 2012).

A police officer's threat of arrest does not constitute a violation of constitutional rights, and merely investigating a suspicious occurrence or merely patrolling the area where someone fled is not a violation of any clearly established constitutional right. Ruben v. Chuuk, 18 FSM R. 425, 429 (Chk. 2012).

Although there was no Kosrae or FSM Constitution in 1960 and constitutional rights are generally prospective, not retroactive, the Trust Territory Bill of Rights, whose due process clause was presumed to have the same meaning as in the United States, was in effect then. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (App. 2014).

Due process issues are generally questions of law that are reviewed de novo. In re Sanction of Sigrah, 19 FSM R. 305, 309 (App. 2014).

For either a trespass cause of action or a cause of action against a municipal government for due process violations, the plaintiffs did not have to prove title or ownership, just a greater right to possession. Andrew v. Heirs of Seymour, 19 FSM R. 331, 338 (App. 2014).

The fundamental concept of procedural due process is that the government may not strip a citizen of life, liberty, or property in an unfair, arbitrary manner. Before such important individual interests are exposed to possible governmental taking or deprivation the Constitution requires that the government follow procedures calculated to ensure a fair and rational decision making process. Manuel v. FSM, 19 FSM R. 382, 390-91 (Pon. 2014).

A prisoner's unlawful 161-day detention after the end of his sentence meant that he was deprived of his constitutional right not to be deprived of his liberty without due process of law. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

Generally, the alleged mistreatment of pre-trial arrestees is subject to a due process analysis while that of convicted prisoners is analyzed under the cruel and unusual punishment standard. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

A convicted prisoner whose sentence had already ended but who was still kept imprisoned for 161 more days can assert a procedural due process claim – he was denied his liberty without due process when, without a hearing or an opportunity to be heard, his prison term was effectively extended and his release date bypassed. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

The constitutional guarantee of due process only protects persons from the governments, and those acting under them, established or recognized by the Constitution. Thus, a person's termination by a non-governmental employer does not state a cause of action for unconstitutional deprivation of due process because no governmental entity or official is a defendant; the defendant is not alleged to be performing an essential governmental function; and a government action is not at issue. George v. Palsis, 19 FSM R. 558, 569 (Kos. 2014).

An employer is not a governmental entity when it was not created by the FSM national government nor by any government established or recognized (national, state, or local) by the FSM Constitution; when it is merely funded, in part, by the FSM national and four state governments; when it is incorporated in the United States Commonwealth of the Northern Marianas and its parent corporation was created by the act of the United States Congress so that even if it were a governmental entity, it would be an entity of a government to which the FSM Constitution's due process clause does not apply. It will therefore be

entitled to summary judgment on a former employee's wrongful termination in violation of constitutional due process cause of action. George v. Palsis, 19 FSM R. 558, 569 (Kos. 2014).

There is no due process violation from the different composition of the two appellate panels when the first appellate panel had before it an interlocutory appeal and the later appeal was from a final judgment on the merits. There is no due process reason why a different panel could not be constituted for the second appeal case when the first panel had completed its work on the appeal case before it and then, after a new and final trial division decision, a different group of three judges was empaneled to hear the new appeal case. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 603, 607 (App. 2014).

In order to assert due process, one must point to a property or liberty interest of one's own that is subject to due process. Panuelo v. FSM, 20 FSM R. 62, 68 (Pon. 2015).

Government employment that is "property" within the meaning of the Due Process Clause cannot be taken without due process. To be property protected under the Constitution, the employment right must be supported by more than merely the employee's own personal hope. There must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Panuelo v. FSM, 20 FSM R. 62, 68 (Pon. 2015).

Since the full rights of continued employment only vest upon appointment, when an applicant was not selected from the certified list, was never appointed to the position he applied for, and no agreement for employment was entered into between the parties, he was never a public employee, and therefore his due process rights never vested. Panuelo v. FSM, 20 FSM R. 62, 68 (Pon. 2015).

An arrest based upon probable cause does not violate the constitutional right to due process. Palasko v. Pohnpei, 20 FSM R. 90, 96 (Pon. 2015).

Due process requires that for a warrant to issue, the report must demonstrate "probable cause" and this determination must be made by a judicial officer before jurisdiction is extended. Thus, the sentencing court takes primary responsibility for initiating probation revocation proceedings. To delegate that authority would be tantamount to abdicating the judiciary's sentencing responsibility to the executive. Ultimately, the court retains the discretion to reject or accept the probation officer's recommendations. FSM v. Edward, 20 FSM R. 335, 339 (Pon. 2016).

Regardless of the lesser standards that apply in revocation proceedings, due process is required. FSM v. Edward, 20 FSM R. 335, 340 (Pon. 2016).

A money judgment against the state is not a property interest but an existing, continuing liability against the state, and a failure to timely satisfy that judgment does not constitute a taking in violation of due process or equal protection. Kama v. Chuuk, 20 FSM R. 522, 534 (Chk. S. Ct. App. 2016).

The fundamental concept of due process is that the government may not be permitted to strip citizens of life, liberty or property in an unfair or arbitrary manner. When such interests are subject to possible government taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision-making process. Linter v. FSM, 20 FSM R. 553, 557 (Pon. 2016).

In order to prevail on a claim of deprivation of liberty or property without due process of law, a plaintiff must: 1) identify a liberty or property right which implicates the due process clause; 2) identify a governmental action which amounts to deprivation of that liberty or property right; and 3) demonstrate that the deprivation occurred without due process of law. Linter v. FSM, 20 FSM R. 553, 557 (Pon. 2016).

When no property right can be ascribed to the alleged property at issue, the due process standard does not apply. Linter v. FSM, 20 FSM R. 553, 557 (Pon. 2016).

Government employment that is property within the meaning of the due process clause cannot be

taken without due process. To be property protected under the FSM Constitution, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. These assurances may come from various sources, such as statute, formal contract, or actions of a supervisory person with authority to establish terms of employment. Linter v. FSM, 20 FSM R. 553, 558 (Pon. 2016).

Although a governmental entity's breach of contract, without more, does not constitute a civil rights or due process violation, a person who has been employed for twelve years under a series of one year contracts could prove that by that length of employment, there was an unwritten claim to continued employment. Linter v. FSM, 20 FSM R. 553, 558 (Pon. 2016).

When no one ever notified the plaintiffs that they must stop working in their respective positions or that they would not be paid for the work done from October 2014 to April 2015; when the government continued to assign them projects and retained the benefits conferred by their work, but did not compensate them for the work; when the plaintiffs never received notification from the government that their contracts had not or would not be renewed although the plaintiffs eventually became aware that the Project Control Documents that controlled their contracts were unsigned; when the government's consistent delay in renewing the contracts and disbursing wages was a common occurrence experienced by the plaintiffs during their previous years' contracts; and when the government continued to accept, approve, sign, and maintain the plaintiffs' submitted time sheets thereby implying assurances of forthcoming wages, the evidence, viewed in its entirety, presents a situation whereby the plaintiffs had a reasonable justified expectation to continued employment and, therefore, payment for those services rendered to the government's benefit between October 2014 and April 2015. Linter v. FSM, 20 FSM R. 553, 558 (Pon. 2016).

A government employee's pay is a form of property that a government cannot deprive the employee of without due process. Linter v. FSM, 20 FSM R. 553, 559 (Pon. 2016).

When the government has willingly deprived the plaintiffs of wages that they are entitled to without due process of law, it is civilly liable under 11 F.S.M.C. 701(3) for violating the plaintiffs' civil rights. Linter v. FSM, 20 FSM R. 553, 559 (Pon. 2016).

When the trial court clearly considered the petition for a writ of mandamus, it did not deprive the petitioner of his procedural due process by denying the writ without first having a hearing. Tilfas v. Kosrae, 21 FSM R. 81, 93 (App. 2016).

When the appellant's designated family representatives acted on her behalf and were her agents for the Land Court proceedings, she cannot aver that she was unaware of the proceeding and her due process deprivation claims are wanting. Lonno v. Heirs of Palik, 21 FSM R. 103, 108 (App. 2016).

Litigants cannot argue that, in their view, they were deprived of due process because the Pohnpei Supreme Court appellate division wrongly decided a matter of state law. A Pohnpei Supreme Court appellate division decision on Pohnpei state law is always correct. It is not correct because the Pohnpei Supreme Court appellate division is infallible. It is correct because, until the Pohnpei Supreme Court appellate division reverses or overrules its prior decision, it is final. Edwin v. Kohler, 21 FSM R. 133, 137 (App. 2017).

– Due Process – Notice and Hearing

In criminal contempt proceedings, reasonable notice of a charge and an opportunity to be heard are basic in our system of jurisprudence; these rights include a right to examine witnesses against one, to offer testimony, and to be represented by counsel. In re Iriarte (I), 1 FSM R. 239, 250 (Pon. 1983).

A hearing on a charge of contempt is less critical to fairness where the events occur before the judge's own eyes and a reporter's transcript is available. In re Iriarte (I), 1 FSM R. 239, 250 (Pon. 1984).

A summary punishment always, and rightly, is regarded with disfavor. When conviction and punishment is delayed it is much more difficult to argue that action without notice or hearing of any kind is necessary to preserve order and enable the court to proceed with its business. In re Iriarte (I), 1 FSM R. 239, 251 (Pon. 1983).

Once a contemner has left the courtroom, there presumably is no immediate necessity to act without a normal hearing to preserve the integrity of the court proceedings. In re Iriarte (I), 1 FSM R. 239, 251 (Pon. 1983).

When the accused disrupts courtroom proceedings and the judge must act immediately to restore order, a trial judge may immediately convict a defendant (the accused) through a "summary contempt" procedure, that is, without prior notice or hearing. In re Iriarte (II), 1 FSM R. 255, 260 (Pon. 1983).

The Constitution secures to the criminal defendant, as a minimum, the right to receive reasonable notice of the charges against the defendant, right to examine any witnesses against the defendant, and the right to offer testimony and be represented by counsel. In re Iriarte (II), 1 FSM R. 255, 260 (Pon. 1983).

No judge should mete out criminal punishment except upon notice and due hearing, unless overriding necessity precludes such indispensable safeguards for assuring fairness. In re Iriarte (II), 1 FSM R. 255, 262 (Pon. 1983).

Failure to proceed with a contempt hearing offered by the court without prior notice cannot be deemed a loss or waiver of the hearing right itself when no clear and unmistakable warning is issued that a failure to proceed immediately with the hearing will constitute a loss or waiver of that right. In re Iriarte (II), 1 FSM R. 255, 264-65 (Pon. 1983).

When the plaintiff has been given reasonable notice of his trial and he and his attorney failed to appear to adduce evidence and prosecute the claim, his inactivity amounts to abandonment of his claim and it is subject to dismissal under FSM Civil Rule 41(b). Etpison v. Perman, 1 FSM R. 405, 414-15 (Pon. 1984).

Basic notions of fair play, as well as the Constitution, require that Public Lands Authority decisions be made openly and after giving appropriate opportunity for participation by the public and interested parties. Etpison v. Perman, 1 FSM R. 405, 420-21 (Pon. 1984).

A fundamental requisite of due process of law is the opportunity to be heard. Etpison v. Perman, 1 FSM R. 405, 423 (Pon. 1984).

Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must be notified. Etpison v. Perman, 1 FSM R. 405, 423 (Pon. 1984).

Radio announcement is a common and generally effective method of notice. Yet radio notice alone of a proposed hearing to determine rights to future use of public lands is not constitutionally sufficient to a person who: 1) asserts a direct and serious claim based on his activities on, and actual possession of, the land; 2) had given written notice to the decision-maker of his wish to assert the claim; 3) lives relatively near the decision-maker's office; and 4) had a work location where telephone or written messages to him could have been received during the day. Etpison v. Perman, 1 FSM R. 405, 427 (Pon. 1984).

It is normally required that a hearing be held prior to seizure of a property. In extraordinary situations a seizure may take place prior to hearing, but the owner must be afforded a prompt post-seizure hearing at which the person seizing the property must at least make a showing of probable cause. Unreasonable delay in providing a post-seizure hearing may require that an otherwise valid seizure be set aside. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

The Due Process Clause prevents governmental authorities from depriving an individual of property interests, without first according an opportunity to be heard as to whether the proposed deprivation is

permissible. Falcam v. FSM, 3 FSM R. 194, 200 (Pon. 1987).

Only in extraordinary circumstances, where immediate action is essential to protect crucially important public interests, may private property be seized without a hearing. Falcam v. FSM, 3 FSM R. 194, 200 (Pon. 1987).

Any withholding of private property, such as a government employee's paycheck, without a hearing can be justified only so long as it takes the authorized payor to obtain a judicial determination as to the legality of the payment being withheld. Falcam v. FSM, 3 FSM R. 194, 200 (Pon. 1987).

A party is not deprived of due process of law in a case in which a judgment is entered against it on a cause of action raised by the trial court, where the party had notice and an opportunity to be heard, even though the cause of action does not appear in the pleadings and no amendment of the pleadings was made. United Church of Christ v. Hamo, 3 FSM R. 445, 453 (Truk 1988).

Only in extraordinary circumstances where immediate action is essential to protect crucially important public interests, may private property be seized without a prior hearing of some kind. Semes v. FSM, 4 FSM R. 66, 74 (App. 1989).

Constitutional due process requires that a nonprobationary employee of the national government be given some opportunity to respond to the charges against him before his dismissal may be implemented; including oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. Semes v. FSM, 4 FSM R. 66, 76 (App. 1989).

Implementation of the constitutional requirement that a government employee be given an opportunity to respond before dismissal is consistent with the statutory scheme of the National Public Service System Act, therefore the Act need not be set aside as contrary to due process. Semes v. FSM, 4 FSM R. 66, 77 (App. 1989).

A prisoner's rights to procedural due process have been violated when he received neither notice of the charges against him nor an opportunity to respond to those charges before or during confinement. Plais v. Panuelo, 5 FSM R. 179, 212 (Pon. 1991).

A person for whom extradition is sought must be brought before a justice that evidence of his criminality may be heard and considered so that he may be certified as extraditable. Such a person is entitled to notice of the hearing and an opportunity to be heard and to effective assistance of counsel. In re Extradition of Jano, 6 FSM R. 93, 99 (App. 1993).

Where a party attended the meeting at which the common boundary was set and thus had actual notice, and filed no adverse claim to the boundary location that would trigger the statutory right to notice, but claimed he was not aware of the adverse boundary until eight years later, and waited another four years before filing suit, the claimant's repeated failure to timely assert his rights does not demonstrate a due process violation. Setik v. Sana, 6 FSM R. 549, 553 (Chk. S. Ct. App. 1994).

One who receives actual notice cannot assert a constitutional claim that the method of notice was not calculated to reach him. Setik v. Sana, 6 FSM R. 549, 553 (Chk. S. Ct. App. 1994).

Where parties had no claims to the land at the time the title was determined they were not entitled to notice. The lack of notice to them does not raise a genuine issue of material fact as to the validity of a Certificate of Title. Where a court proceeding determined title, the lack of a record of notice in the Land Commission files does not raise a genuine issue of material fact as to the validity of the Certificate of Title because the Land Commission did not conduct the hearing on title and so would not have any record of notice. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 49 (App. 1995).

Where a vessel has been arrested pursuant to a warrant, a post-seizure hearing is required by the constitutional guarantee of due process. FSM v. M.T. HL Achiever (II), 7 FSM R. 256, 257 (Chk. 1995).

An owner of seized property cannot challenge the statute it was seized under as unconstitutional because the statute fails to provide for notice and a hearing, if procedural due process, notice and a right to a hearing, are provided. FSM v. M.T. HL Achiever (II), 7 FSM R. 256, 258 (Chk. 1995).

The Due Process Clause does not require an immediate post-seizure probable cause hearing in advance of a civil forfeiture trial. It only requires that the government begin the forfeiture action within a reasonable time of the seizure. FSM v. Skico, Ltd. (II), 7 FSM R. 555, 557 (Chk. 1996).

A civil forfeiture statute is not unconstitutional in failing to set out a requirement for a post-seizure hearing and a notice of that right; nor is the government constitutionally required to inform the defendant of such notice and a right to a hearing. FSM v. Skico, Ltd. (II), 7 FSM R. 555, 557 (Chk. 1996).

It is constitutional error for the trial court to rely on a special master's report, not a part of the record, without prior notice to the parties and an opportunity for the parties to comment on it. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 669 (App. 1996).

Notice and an opportunity to be heard are the essence of due process of law. In re Sanction of Michelsen, 8 FSM R. 108, 110 (App. 1997).

The manner in which Rule 11 sanctions are imposed must comport with due process requirements. At a minimum, notice and an opportunity to be heard are required. In re Sanction of Michelsen, 8 FSM R. 108, 110 (App. 1997).

A court's failure to provide adequate notice and the opportunity to be heard when imposing sanctions *sua sponte* in itself provides the ground for reversal of an order imposing sanctions. In re Sanction of Michelsen, 8 FSM R. 108, 110 (App. 1997).

Normally, notice and an opportunity to be heard is given prior to governmental deprivation of property, but governments need not follow this in the case of taxes. Governments must, however, provide a post-deprivation opportunity to challenge the tax and a clear and certain remedy. Chuuk Chamber of Commerce v. Weno, 8 FSM R. 122, 126 (Chk. 1997).

Persons entitled to notice of a proceeding generally are those who are to be affected by a judgment or order therein and the requirement of notice applies only to those whose substantial interests are affected by the proceeding in question. Louis v. Kutta, 8 FSM R. 228, 230 (Chk. 1998).

When a party's possession of land was not hostile so as to give rise to an adverse possession or to a prescriptive *profit à prendre* claim, failure to give the party notice is not a violation of the party's due process rights. Iriarte v. Etscheit, 8 FSM R. 231, 240 (App. 1998).

When an appellant has failed to comply with the appellate rules' timing requirements for filing its opening brief, a single article XI, section 3 justice may, on his own motion, dismiss the appeal after the appellant has been afforded its constitutional due process right to notice and an opportunity to be heard. Ting Hong Oceanic Enterprises v. FSM, 8 FSM R. 264, 265 (App. 1998).

A non-party is deprived of due process of law when a case is started against it without notice or it having been made a party, when an order in aid of judgment has been issued against the non-party without a judgment and a hearing held following notice, and when a writ of execution has been issued against a non-party and without notice or hearing to determine the amount to be executed upon. Bank of Guam v. O'Sonis, 8 FSM R. 301, 304 (Chk. 1998).

Due process requires that the parties be given the opportunity to comment upon evidence. A fundamental requisite of due process of law is the opportunity to be heard. Notice and an opportunity to be heard are the essence of due process of law. Langu v. Kosrae, 8 FSM R. 455, 458 (Kos. S. Ct. Tr. 1998).

When a person, who has applied for registration of land included within the boundaries of an area on which hearings are held and who, based upon his application, was, as required by 67 TTC 110, entitled to be served notice of the hearings, was not served notice of the hearings and was also not served a copy of the Determination of Ownership, there was no substantial compliance with the notice requirements specified by law. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 93 (Kos. S. Ct. Tr. 1999).

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties, and is required to post notice on the land, at the municipal office and principal meeting place at least thirty days in advance of the hearing. Failure to provide notice to an interested party is violation of due process. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 93 (Kos. S. Ct. Tr. 1999).

In land cases, notice requirements must be followed. Failure to serve actual notice is a violation of due process of law and contrary to law. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 94 (Kos. S. Ct. Tr. 1999).

The policy reasons supporting actual notice of hearings to land claimants, as required by law, are very important. There is a substantial interest in assuring that land disputes are decided fairly because of the fundamental role that land plays in Kosrae and throughout Micronesia. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 94-95 (Kos. S. Ct. Tr. 1999).

In land cases, notice requirements shall be followed. Failure to serve actual notice on a claimant is a denial of due process and violation of law. Due to the violations of the statutory notice requirement, Determinations of Ownership and Certificates of Title will be set aside as void. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 95 (Kos. S. Ct. Tr. 1999).

When a person appeared as a witness at the formal hearing for a parcel and testified in support of another's claim to that parcel and did not make her own claim to the land, she was not entitled to notice of the Determination of Ownership for the parcel because she was not an "interested party." Jonas v. Paulino, 9 FSM R. 513, 516 (Kos. S. Ct. Tr. 2000).

When parties had no claims to the land at the time the title was determined they were not entitled to notice. Without a claim to the land in question there is no right to notice of a land commission proceeding or finding. Jonas v. Paulino, 9 FSM R. 513, 516 (Kos. S. Ct. Tr. 2000).

When a party had no claim to the land at the time ownership was determined, that party was not entitled to statutory notice of the determination of ownership for a parcel and she does not have standing to appeal the Land Commission's decision and the court does not have jurisdiction over her appeal claims. Jonas v. Paulino, 9 FSM R. 519, 521 (Kos. S. Ct. Tr. 2000).

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties. Failure to provide notice to an interested party is violation of due process. Nena v. Heirs of Melander, 9 FSM R. 523, 525 (Kos. S. Ct. Tr. 2000).

When a person, entitled to be served notice of the hearing, was not served notice of the hearing and was also not served a copy of the Determination of Ownership, there was no substantial compliance with the notice requirements specified by law, and the Determination of Ownership will be set aside as void and remanded to the Land Commission to hold formal hearings. Nena v. Heirs of Melander, 9 FSM R. 523, 525 (Kos. S. Ct. Tr. 2000).

In land cases, statutory notice requirements must be followed. Failure to serve actual notice on a claimant is a denial of due process and violation of law. Due to the violations of the statutory notice requirement, Determinations of Ownership and Certificates of Title will be set aside as void. Nena v. Heirs of Nena, 9 FSM R. 528, 530 (Kos. S. Ct. Tr. 2000).

Personal service of the Determination of Ownership is required upon all parties shown by the preliminary inquiry to have an interest in the parcel. Nena v. Heirs of Nena, 9 FSM R. 528, 530 (Kos. S. Ct. Tr. 2000).

When a party, who had shown an interest in the parcel, was not served the Determination of Ownership as required by law, the parcel's Determination of Ownership and the Certificate of Title will, due to the violations of the statutory notice requirement, be vacated and set aside as void and remanded to the Land Commission to again issue and serve the Determination of Ownership for the parcel in accordance with statutory requirements. Nena v. Heirs of Nena, 9 FSM R. 528, 530 (Kos. S. Ct. Tr. 2000).

When the land commission voids one person's certificate of title and issues a new certificate of title covering the same land to another person without notice to the first person and affording the first person an opportunity to be heard, it is a denial of due process and the certificates of title will be vacated and the case remanded to the land commission to conduct the statutorily-required hearings. Enlet v. Chee Young Family Store, 9 FSM R. 563, 564-65 (Chk. S. Ct. Tr. 2000).

Notice that the court has been requested to issue an order affecting a litigant's rights and an opportunity for that party to be heard are constitutionally mandated by the due process clause. O'Sullivan v. Panuelo, 9 FSM R. 589, 595 (Pon. 2000).

An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on him, whether that sanction is imposed on him under the civil procedure rules, the criminal contempt statute, or some other court power. In re Sanction of Woodruff, 10 FSM R. 79, 84 (App. 2001).

A court hears before it condemns, and that while a court that has announced a decision without notice and an opportunity to be heard can always be asked to recall its decision and listen to argument this opportunity, as every lawyer knows, is a poor substitute for the right to be heard before the decision is announced. In re Sanction of Woodruff, 10 FSM R. 79, 89 (App. 2001).

The basic tenets of due process of law are notice and an opportunity to be heard. As applied to judgments, this means that a judgment may not be rendered in violation of these constitutional limitations and guaranties. An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated to apprise interested parties of the pendency of the action, which is itself a corollary to another requisite of due process, the right to be heard. Hartman v. Bank of Guam, 10 FSM R. 89, 96-97 (App. 2001).

A judgment entered against a party without notice or an opportunity to be heard is void and is subject to direct or collateral attack at any time. Hartman v. Bank of Guam, 10 FSM R. 89, 97 (App. 2001).

The Land Commission does not conduct a fair proceeding when it issues a determination of ownership without compliance with statutory notice requirements. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties. Failure to provide notice to an interested party is violation of due process. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

The registration team is required to service actual notice of the hearing, either by personal service or registered air mail, upon all parties shown by the preliminary inquiry to have an interest in the parcel, and is also required to serve actual notice of a determination of ownership upon all persons shown to have an interest in the parcel. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

When the land registration team was informed at the preliminary inquiry that someone was an interested party due to his boundary dispute, but the land registration team failed to serve him actual notice of the formal hearing and the determination of ownership issued for the parcel, there was no substantial compliance with the notice requirements specified by law, and due to the violations of the statutory notice

requirement, the determinations of ownership for both adjoining parcels must be set aside as void and remanded to the Land Commission. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

Notice and an opportunity to be heard is the essence of due process. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

When the trial court *sua sponte* set aside a judgment without notice and an opportunity to be heard, it set aside the judgment without due process of law. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

A trial court abuses its discretion when it sua sponte sets aside a judgment because the court, and not a party or his legal representative made the motion; when the judgment holder was denied due process because he was not given notice and an opportunity to be heard before the decision against him was announced; and when the decision was based upon an erroneous conclusion of law that a trial court Rule 68(b) hearing was an absolute necessity before this judgment could be entered. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

When a court makes a motion sua sponte, it generally gives the parties notice and an opportunity to respond before it decides; just as when a party makes a motion the other party is generally given an opportunity to respond before the court rules. Notice and an opportunity to be heard is the essence of due process. Wainit v. Weno, 10 FSM R. 601, 606 (Chk. S. Ct. App. 2002).

When an appellant had no notice of the court's sua sponte motion to dismiss the appeal before the dismissal order was entered, the dismissal was a violation of the appellant's right to due process because of the lack of notice and an opportunity to be heard. Wainit v. Weno, 10 FSM R. 601, 606 (Chk. S. Ct. App. 2002).

A court hears before it condemns, and that while a court that has announced a decision without notice and an opportunity to be heard can always be asked to recall its decision and listen to argument this opportunity is a poor substitute for the right to be heard before the decision is announced. Wainit v. Weno, 10 FSM R. 601, 606 (Chk. S. Ct. App. 2002).

Due process generally requires that the government provide an individual with notice and an opportunity to be heard before taking away that person's liberty. A person has a liberty interest in not being criminally prosecuted without notice of what conduct is prohibited. A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law, as it fails to give people notice of what conduct is prohibited. FSM v. Anson, 11 FSM R. 69, 75 (Pon. 2002).

It would seem that due process would require that in any lawsuit to remove someone's name from a certificate of title that that person would be an indispensable party to the action. Marcus v. Truk Trading Corp., 11 FSM R. 152, 158 n.4 (Chk. 2002).

A judgment entered against a party without notice or an opportunity to be heard is void and subject to direct or collateral attack. Pastor v. Ngusun, 11 FSM R. 281, 285 (Chk. S. Ct. Tr. 2002).

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties. Failure to provide notice as required by law to an interested party is violation of due process. Albert v. Jim, 11 FSM R. 487, 490 (Kos. S. Ct. Tr. 2003).

The registration team is required to serve actual notice of the hearing upon all parties shown to have an interest in the parcel either by personal service or registered air mail. Albert v. Jim, 11 FSM R. 487, 490 (Kos. S. Ct. Tr. 2003).

When a person, entitled to be served notice of the hearing, was not served actual notice of the hearing

by personal service, there was no substantial compliance with the notice requirements specified by law and when there was no substantial compliance with the notice requirements specified by law, the Certificate of Title and the Determination of Ownership will be vacated and set aside as void, and the matter remanded to Kosrae Land Court for further proceedings. Albert v. Jim, 11 FSM R. 487, 490 (Kos. S. Ct. Tr. 2003).

When the two issues a party seeks reconsideration of were raised in the other parties' filings and at the scheduled conference (which it declined to attend), the party thus had the opportunity to (and did) respond to other parties' claims, then the party was given the process that was due it. In re Engichy, 12 FSM R. 58, 66 (Chk. 2003).

When the plaintiff received notice of the hearing and had an opportunity to present its arguments to the agency, when, although the agency would have done well to explain its reasons for rejecting plaintiff's arguments, it was not legally required to do so, and when the record shows that a hearing was held, a rehearing was held, the parties were allowed to have their attorneys present, the parties were given the opportunity to file written briefs and did so, and the agency thereafter issued a 13-page written decision, the plaintiff's claim that its due process rights were violated will be dismissed for failure to state a claim, as will a civil rights claim inextricably tied to the due process claim. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 91-92 (Pon. 2003).

A court cannot order a stay in cases in another court with parties not before it and who have had no notice and opportunity to be heard; nor should it prevent other, unknown persons from seeking future court relief. Even for cases where the parties are the same, there is no authority for such extraordinary relief. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

It violates due process for the Land Commission to hold a hearing and adjudicate ownership of a parcel of land without giving notice to a party with a demonstrated interest in that land. George v. Nena, 12 FSM R. 310, 316 (App. 2004).

The trial court has an obligation to insure that a defendant was served with the notice of trial issued by the trial court, and on that basis an appellate court will reverse the trial court judgment and remand the case for a new trial. Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004).

When the fundamental tenets of due process are violated by the trial court's failure to provide notice of the trial to a *pro se* litigant, the trial court's later denial of his motion for relief from judgment under Rule 60 is an abuse of discretion. Panuelo v. Amayo, 12 FSM R. 365, 374 (App. 2004).

Notice and an opportunity to be heard are the essence of due process of law. Panuelo v. Amayo, 12 FSM R. 365, 374 (App. 2004).

Specific requirements of due process may vary depending on the nature of decisions to be made and the circumstances. At the core however is the right to be heard. Panuelo v. Amayo, 12 FSM R. 365, 374 (App. 2004).

Even when a litigant was provided with a subpoena by opposing counsel, which accurately stated the trial date, it is essential that the trial court insure that its own notice procedures satisfy the requirements of due process, especially where *pro se* litigants are involved. When unrepresented parties are deluged with legal documents drafted by attorneys on the opposing side, it is conceivable that confusion will result. Panuelo v. Amayo, 12 FSM R. 365, 374 (App. 2004).

When the trial court easily could have concluded a trial on the full merits of the case by extending or delaying the proceedings for a few extra hours, but chose instead to base its determination of liability upon evidence that a litigant did not have an opportunity to oppose because of lack of court-issued notice of trial, and when the law favors the disposition of cases on their merits, the trial court's error in failing to insure that it provided the litigant with notice of the trial date and time brings into question the fairness, integrity, and public reputation of judicial proceedings. Panuelo v. Amayo, 12 FSM R. 365, 375 (App. 2004).

The procedural due process guarantee of notice protects not only the parties involved but upholds the court's integrity as well. Panuelo v. Amayo, 12 FSM R. 365, 375 (App. 2004).

A trial court commits plain error, and violates the litigant's right to due process, when it fails to serve notice of a trial date and time on a *pro se* litigant. It therefore abuses its discretion when it denied the litigant's motion for a new trial. Panuelo v. Amayo, 12 FSM R. 365, 375 (App. 2004).

A sua sponte summary judgment motion is proper so long as the court provides adequate notice to the parties and adequate opportunity to respond to the court's motion. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 173 (Kos. 2005).

It is a violation of due process for the Land Commission to hold a hearing and adjudicate ownership of a parcel of land without giving notice to a party with a demonstrated interest in that land. Heirs of Wakap v. Heirs of Obet, 13 FSM R. 418, 420 (Kos. S. Ct. Tr. 2005).

When the Land Commission has not followed statutory notice requirements for the formal hearings and there was no substantial compliance with the requirements specified by law, the Kosrae State Court must set aside the determination of ownership as void and remand to Kosrae Land Court for further proceedings. Heirs of Wakap v. Heirs of Obet, 13 FSM R. 418, 420 (Kos. S. Ct. Tr. 2005).

That the Kosrae Land Court went beyond the statutory requirements for notice, and provided too many notices to persons who were not entitled to personal notice by law and that this "extra" notice created a dispute, does not result in or cause a violation of the appellant's constitutional due process protections. Kun v. Heirs of Abraham, 13 FSM R. 558, 560-61 (Kos. S. Ct. Tr. 2005).

When a party had at least six days notice that it might be found in contempt and that Rule 37(b)(2)(A) sanctions might be imposed and those six days should have been sufficient and when the party took the opportunity to file various papers concerning the issues raised but did not directly address the prospect of contempt or of Rule 11 or Rule 37(b)(2)(A) sanctions although it was on notice they would be considered at the hearing, thus if the party was not heard on the Rule 37(b) sanctions, it was not because it did not have an opportunity to be heard after it was on notice that Rule 37(b)(2) sanctions would be considered. FSM Dev. Bank v. Adams, 14 FSM R. 234, 250-51 (App. 2006).

Rule 11 sanctions may be imposed on a party or his attorney or both. Since the constitutional guarantee of due process requires that the person, upon whom a sanction might be imposed, must be given notice of that possibility and the opportunity to be heard before any sanction can be imposed, before the court could consider the sanctions motion as a whole, the party's former counsel, who had withdrawn before the sanctions motions were filed, had to be given notice that Rule 11 sanctions might be imposed and an opportunity to be heard on the issue as it might relate to him. The court therefore ordered that the motion be served on former counsel, and that the clerk serve a copy of the court order on him. Amayo v. MJ Co., 14 FSM R. 355, 359 (Pon. 2006).

The essence of due process is notice and an opportunity to be heard. Dereas v. Eas, 14 FSM R. 446, 454 (Chk. S. Ct. Tr. 2006).

A judgment (or final order) entered against a person without notice or an opportunity to be heard is void and is subject to direct or collateral attack at any time, and a court that lacks personal jurisdiction over a person cannot enter a valid judgment against that person. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

When the Board of Trustees gave a party a lease to Lot No. 014-A-08 (which was duly recorded at the State Land Registry) and took its lease payments for years up to and including the January, 2005 lease payment, even assuming that the Board's later ruling that the party's lease is invalid is correct, the Board is estopped from asserting that the party had no rights in Lot No. 14-A-08 in January 2005 and the party had a right to, at a minimum, notice and an opportunity to be heard when the Board was determining whether

there was a valid lease to the lot or should it be advertised for lease. Carlos Etscheit Soap Co. v. McVey, 14 FSM R. 458, 461-62 (Pon. 2006).

When a party had some right to a lot, it was, at a minimum, entitled to notice that the Board of Trustees believed the party's lease was invalid and that the Board intended to revoke the lease and put that lot up for public bid. The party was also entitled to notice and an opportunity to be heard on the issue of the lease's validity before the Board revoked the lease. When the Board did not give the party any notice and revoked its lease and issued a lease to another, this lack of notice to the party would thus make the later issuance of a lease invalid. Carlos Etscheit Soap Co. v. McVey, 14 FSM R. 458, 462 (Pon. 2006).

Actual notice as required by statute must be given for preliminary and formal hearings at the Land Commission. Notice is required because it gives a chance to be heard. However, the consequences for failing to give notice of decisions are different. The party has had a chance to be heard and to present evidence. Serving notice of an adjudication, or decision, is required in order to give the party a chance to appeal. If a party is not properly served notice of a determination of ownership, the statutory appeals period that an appeal shall be made within sixty days of the written decision's service upon the party, does not run. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 525 (Kos. S. Ct. Tr. 2007).

If a party was not served notice and was then denied the right to appeal, his due process rights are violated. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 525 (Kos. S. Ct. Tr. 2007).

The issuance of an order against the State without permitting the State both notice and an opportunity to be heard, either orally at a hearing or by giving sufficient time to submit a written response, violates the State's right to due process. Chuuk v. Andrew, 15 FSM R. 39, 42 (Chk. S. Ct. App. 2007).

Since, in any lawsuit that would remove someone's name from a certificate of title or that would deprive a person of ownership of the registered land that the certificate or determination represents, the constitutional right to due process requires that that person is an indispensable party to the action, an August 20, 1998 judgment that was rendered without either titleholder having been made a party to the case and having had an opportunity to be heard is thus void, and could be collaterally attacked by later civil actions. Ruben v. Hartman, 15 FSM R. 100, 110 (Chk. S. Ct. App. 2007).

Civil Rule 71 does not (and cannot) overthrow the due process clauses of the Chuuk and FSM Constitutions. Notice and an opportunity to be heard is the essence of due process of law. No court can grant as relief a request that would nullify a certificate of title to a person who is not before the court and award different person with the title to land for which a certificate of title had already been issued because that would have the court void certificates of title in a manner that would violate every notion of due process of law. Ruben v. Hartman, 15 FSM R. 100, 111 (Chk. S. Ct. App. 2007).

When the appellants' counsel was given notice of the hearing and chose not to appear, request a continuance, or take any other action, the appellants' due process rights were not violated because due process requires notice and an opportunity to be heard and this was provided. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 144 (Kos. S. Ct. Tr. 2007).

When, before issuing title to someone else, the Land Court never gave the plaintiff notice or an opportunity to be heard on his claim of ownership based on a subdivision and since having notice and an opportunity to be heard are the core requirements of due process and fundamental fairness, the Land Commission and Land Court deprived the plaintiff of his right to due process when title was issued in 2002 without giving the plaintiff notice or an opportunity to be heard on his claim of ownership filed with the Land Commission in 1987, and therefore, the 2002 title is not valid as to the plaintiff. Siba v. Noah, 15 FSM R. 189, 194-95 (Kos. S. Ct. Tr. 2007).

When no court notice of the case's hearing on the merits was ever served on the defendants, the defendants' and the real party in interest's rights to due process of law under the Chuuk and FSM constitutions were violated because a trial court commits plain error, and violates a litigant's right to due process, when the court fails to serve the notice of a trial date and time on that litigant. Murilo Election

Comm'r v. Marcus, 15 FSM R. 220, 224 (Chk. S. Ct. App. 2007).

Any order in aid of judgment may be modified by the court as justice may require, at any time, upon application of either party and notice to the other, or on the court's own motion. But a court cannot decide its own motion without first giving either party notice or an opportunity to be heard because that would violate a litigant's due process rights guaranteed by both the Chuuk and FSM Constitutions since notice and an opportunity to be heard is the essence of due process. Albert v. O'Sonis, 15 FSM R. 226, 234 (Chk. S. Ct. App. 2007).

When a court makes a motion sua sponte, it must give the parties notice and an opportunity to respond before it decides; just as when a party makes a motion, the other party generally must be given an opportunity to respond before the court rules. Albert v. O'Sonis, 15 FSM R. 226, 234 (Chk. S. Ct. App. 2007).

Since a suit maintained as a class action under Rule 23 has res judicata effect on all class members, due process requires that notice of a proposed settlement be given to the class. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 443, 445 (Yap 2007).

The statute requires that a notice of a land registration hearing be given to all interested parties and claimants, and to the public. "Interested parties" is not defined. Claimants are presumably those persons who are known to have filed a claim to register the land. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

In a Torrens land registration system, it is in the land owner's interest for notice to be given as broadly as possible since the certificate of title the landowner gets at the end of the process is conclusive upon any person who had notice of the proceedings and all those claiming under that person, but only prima facie evidence of ownership against all others. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

Adjoining landowners, even if not claimants, would, because of their common boundaries, be interested parties, along with anyone else who holds some interest in the land, such as a mortgagee, an easement holder, or a holder of a covenant running with the land. But even if the adjoining landowners were not interested parties, Land Court notice to them is not contrary to law. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

Notice of land registration hearings must be given to the public in general. The hearings are public, and anyone may attend. Land Court proceedings are not ones which only the known claimants may attend. One purpose of public notice at various stages of the registration process is to reach as many persons as possible so that, at the end, the certificate of title will be conclusive against as many persons as possible, which is to the certificate holder's considerable benefit. The statute requiring that actual notice be given to claimants, is a minimum requirement, not the maximum permissible. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 572 (App. 2008).

Once a new claim arose, the other claimants were entitled to notice of it and to have a preliminary map showing the claims in dispute posted during a formal hearing. Due process requires that the new claim be surveyed, a new preliminary map prepared showing the overlapping claims, and a new, or second, formal hearing held with the new preliminary map posted. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 572 (App. 2008).

It is a due process violation and constitutional error for a court to base its decision, in whole or in part, on evidence of which a party has not had both notice and the opportunity to be heard. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 573 (App. 2008).

The process due to land claimants under the Kosrae Land Court Rules requires that a preliminary map showing all claims be posted at a formal hearing so that the presiding judge and the witnesses can view it

and the claimants have an opportunity to be heard on any disputes. When the Land Court based its decision on a map prepared long after the formal hearing and on which the appellants had no opportunity to comment and no map showing the overlapping claims was available at the hearing, a second formal hearing should have been held once the new (second) preliminary map was prepared showing both sides' claims. The matter will therefore be remanded to the Land Court for that court to hold another formal hearing at which a map showing all the claimed boundaries must be posted and at which the parties will have the opportunity to be heard on the matter of the overlapping claims and the two preliminary maps and for which the Land Court will give actual notice to all claimants and to all interested parties. Interested parties shall be interpreted to include the adjoining landowners. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 573 (App. 2008).

Imposition of Rule 46(c) disciplinary sanctions is subject to due-process scrutiny. Adequate notice and an opportunity to be heard are the essence of due process. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 107 (App. 2008).

When, although the notice did not cite any of the Rules of Professional Conduct that the reprimand found that the attorney violated, it was adequate notice because it did state what act or omission of counsel may lead to discipline and cited the relevant appellate rule. The attorney ought to have been aware that he was facing some sort of sanction for not timely filing a brief and that the sanction would be imposed under Rule 46(c). Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 108 (App. 2008).

Motions may be decided without oral argument. Where argument would not be helpful to the decisional process, it will not be required on a dismissal issue when the appellants have had, and have taken, their opportunity to be heard by filing written submissions. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 111 (App. 2008).

When the court, through a single justice, has made its own motion to dismiss as a matter of docket management, it cannot decide its own motion without first giving the parties notice and an opportunity to be heard because that would violate a litigant's due process rights guaranteed by the FSM Constitution since notice and an opportunity to be heard is the essence of due process. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 113 (App. 2008).

When an order constituted the *sua sponte* motion to dismiss and the notice to the appellants of the motion to dismiss and when, although it did not cite Rule 27(c), the order did give notice that the appeal was subject to dismissal and the factual basis (failure to file a brief and thus failure to comply with Rule 31) for the possible dismissal, the appellants had notice of the facts they had to respond to and the probable result if they were unable to show cause. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 113 (App. 2008).

Imposition of Appellate Rule 46(c) disciplinary sanctions is subject to due-process scrutiny. Adequate notice and an opportunity to be heard is therefore required. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 123 (App. 2008).

An order that never mentions the legal services corporation law firm was inadequate on its face to serve as notice to sanction the firm, and when it was not served separately on the firm so that the firm could respond, the firm thus had no notice of any possible sanction. Although the firm is definitely responsible for supervising its attorneys, its reprimand, no matter how deserving, must be reversed because of the complete absence of any separate notice to it. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 123 (App. 2008).

Although the notice provided to an attorney in an order did not cite any of the Rules of Professional Conduct that the later reprimand found that the attorney violated, when it was notice that, if the attorney could not show good cause why no opening brief had been filed, he would then be subject to disciplinary action under Rule 46(c). Since it stated what act or omission of counsel may lead to discipline and cited Rule 46(c), the notice given was adequate for the attorney to have understood that he was facing a possible sanction for not timely filing a brief, and that, if it were imposed, the sanction would be imposed under

Appellate Rule 46(c). Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 123 (App. 2008).

Motions may be decided without oral argument. When it does not appear that argument would help the decisional process, oral argument is not required on a dismissal issue, when the appellant has had, and has taken, his opportunity to be heard by filing written submissions. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 127 (App. 2008).

The court may, through a single justice, make its own motion to dismiss as a matter of appellate docket management. A court cannot decide its own motion without first giving the parties notice and an opportunity to be heard because that would violate a litigant's due process rights guaranteed by the FSM Constitution since notice and an opportunity to be heard is the essence of due process. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 128-29 (App. 2008).

Service of a notice of trial by placing the notice in a counsel's box in the clerk's office is deficient service and tantamount to non-service when it results in a party's failure to be informed of the noticed trial date. When a court's notice of trial on the merits is not served on a party, that party's rights to due process of law under the Chuuk and FSM constitutions are violated, and the trial court's failure to serve notice of a trial date and time is plain error. Farek v. Ruben, 16 FSM R. 154, 157 (Chk. S. Ct. App. 2008).

A judgment or final order entered against a person without notice or an opportunity to be heard is void and is subject to direct or collateral attack at any time. Farek v. Ruben, 16 FSM R. 154, 157 (Chk. S. Ct. App. 2008).

A trial court's failure to notify the appellants of trial was plain error and the judgment that was entered is therefore void. Farek v. Ruben, 16 FSM R. 154, 157 (Chk. S. Ct. App. 2008).

Although appellants could have addressed the issue of deficient notice of trial with an appropriate filing in the trial court, they were not required to before filing an appeal since a trial court may not shirk its responsibility to provide notice in compliance with due process merely because a party has a measure of recourse when notice is deficient. Farek v. Ruben, 16 FSM R. 154, 157 (Chk. S. Ct. App. 2008).

Where a plain error is involved that is obvious and substantial and that seriously affects the fairness, integrity, or public reputation of judicial proceedings, a party will not be deemed to have waived the right to challenge the issue on appeal. In such cases, where the court's integrity is brought into question because the court did not follow its own procedures for providing notice of trial, the only remedy is to permit a new trial where adequate notice is given. Farek v. Ruben, 16 FSM R. 154, 157-58 (Chk. S. Ct. App. 2008).

Although Kosrae statutes do not specifically state that a pre-dismissal hearing is required, constitutional due process in the FSM does require that a governmental, non-probationary employee be given some opportunity to respond to the charges against him before his dismissal may be implemented, which includes: oral or written notice of the charges against him, an explanation of the employer's evidence and an opportunity to present his side of the story. Palsis v. Kosrae, 16 FSM R. 297, 306 (Kos. S. Ct. Tr. 2009).

Although Kosrae statutes do not specifically state that a pre-dismissal hearing is required, once it is determined that the statute establishes a property right subject to protection under the due process clause, constitutional principles determine what process is due as a minimum. Palsis v. Kosrae, 16 FSM R. 297, 306 (Kos. S. Ct. Tr. 2009).

The constitution is consistent with the Kosrae State Code and the Public Service System statutes which will not be set aside as contrary to due process since, in the absence of statutory language to the contrary, the statutory mandate may be interpreted as assuming compliance with the constitutional requirements. Thus, when the Kosrae State Code states that written notice setting forth the specific reasons for the dismissal or demotion and the employee's rights of appeal must be transmitted to the employee but is silent as to whether a dismissal may be implemented before some kind of hearing is

provided, this is not read as an attempt to authorize immediate dismissal for all purposes without giving the employee a right to respond but instead as an indication of solicitude, demonstrating the intention to assure that employees' rights be observed. Palsis v. Kosrae, 16 FSM R. 297, 306-07 (Kos. S. Ct. Tr. 2009).

When, at the time of her termination, the plaintiff was a permanent state employee and since a "regular employee" or "permanent employee" means an employee who has been appointed to a position in the public service and who has successfully completed a probation period, the plaintiff's claim to employment was supported by more than her mere personal hope of employment and the state had a legal obligation to employ the plaintiff. Thus, the plaintiff had a property right which was protected by the due process clause. Procedural due process requires notice and an opportunity to be heard, so as to protect the employee's rights and insure that discipline is not enforced in an arbitrary manner. Palsis v. Kosrae, 16 FSM R. 297, 307 (Kos. S. Ct. Tr. 2009).

A state employee with a property right is entitled to a pre-termination hearing that includes notice and an opportunity to be heard. The employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. Palsis v. Kosrae, 16 FSM R. 297, 307 (Kos. S. Ct. Tr. 2009).

An essential principle of due process is that a deprivation of life, liberty, or property be preceded by notice and an opportunity for hearing appropriate to the nature of the case. This requires some type of hearing prior to the discharge of an employee who has a constitutionally-protected interest in his or her employment. The pre-termination hearing, though necessary, need not be elaborate. The formality and procedural requisites for the hearing can vary, depending upon the importance of the interest involved and the nature of the subsequent proceedings that are available. In general, something less than a full evidentiary hearing is sufficient prior to adverse administrative action. The pre-termination hearing does not definitively resolve the propriety of discharge, but is an initial check against mistaken decisions. The essential requirements are notice and an opportunity to respond. The state employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story and to require more than this prior to termination would intrude to an unwarranted extent on the government's interest in quickly removing an unsatisfactory employee. Palsis v. Kosrae, 16 FSM R. 297, 309 (Kos. S. Ct. Tr. 2009).

Since a state employee's pre-termination hearing need not be elaborate and since a notice of a hearing can be oral and is highly informal, given that the employee is given the opportunity for a post-deprivation hearing, where the employee was given notice on August 7, 2007 when she received a notice-of-dismissal letter and the dismissal did not become effective until August 30, 2007 and thus she was not deprived of benefits until then, an August 7, 2007 meeting constituted a pre-termination hearing as did a later August 15, 2007 meeting because, at both meetings, she was given an opportunity to respond to the charges against her and she had not yet been deprived of benefits and because the meetings served as an initial check of the charges since she was given an opportunity to explain her side of the story and the Director discussed the evidence for dismissal as stated in the termination letter and was open to questions regarding the reasons for dismissal. Also, when, at the August 15, 2007 meeting, her representative took the opportunity to be heard on her behalf, asked questions to the Director; tried to negotiate a settlement; and presented her side of the story, the requirements of notice and an opportunity to respond were met. Because she had notice and an opportunity to be heard prior to dismissal, her due process rights were not violated as a pre-termination hearing was held. Palsis v. Kosrae, 16 FSM R. 297, 311 (Kos. S. Ct. Tr. 2009).

There was no reversible error when the parties certainly had adequate notice of a "subdivision" before the October 18, 2005 Land Court hearing since they knew of it before the 2003 appeal and the 2005 remand and hearing; when one side's assertion that they were not "given the chance to stake out their claims" before the land was subdivided would be a cause of concern if they had claimed less than the entire land, but they claimed the whole unsurveyed land, as did the other side; and since, if the Land Commission erred, it was harmless error because neither side can show that they were prejudiced by this "subdivision" and both sides had the opportunity to assert and to prove their respective claims to both parcels and because

the "subdivision" did not prevent or hinder either side from claiming, and trying to prove, that they had title to both parcels. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 376 (Kos. S. Ct. Tr. 2009).

Even if the Land Commission thinks it is only correcting its own error, due process still requires that it give notice and an opportunity to be heard to any party which the "correction" might appear to adversely affect. Although the Land Commission may think it is only correcting its own error, it is always possible that its "correction" could be an error. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 554 (Chk. S. Ct. App. 2009).

When a plaintiff has alleged violation of her due process rights, but it is proven otherwise, the plaintiff cannot recover under the civil rights statute. When, at trial, the plaintiff did not present evidence that she was treated differently than any other person in the same class and did not present evidence that she was denied notice and an opportunity to be heard, the state is not liable to her on the claims of denial of equal protection of the laws, violation of due process, and violation of her civil rights. Berman v. Pohnpei, 16 FSM R. 567, 577 (Pon. 2009).

When the plaintiff's lease had not been voided after notice and an opportunity to be heard before its leased lot was advertised for immediate commercial lease, the Board violated the plaintiff's civil rights because it denied the plaintiff the due process of law when it did not give the plaintiff prior notice and an opportunity to be heard on the validity of its lease. This is because notice and an opportunity to be heard are the essence of due process of law. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 110 (Pon. 2010).

Defendants did not violate the plaintiff's civil rights when neither defendant was a government agency or was claiming to act under color of law or injured, oppressed, threatened, or intimidated the plaintiff's exercise or enjoyment of its civil rights and when neither was responsible for giving the plaintiff notice and an opportunity to be heard; neither prevented the plaintiff from being given notice; and neither injured, oppressed, threatened, or intimidated the plaintiff to prevent it from having an opportunity to be heard. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 110 (Pon. 2010).

Determination of a land's exact boundaries, certification of a survey map for the area, and the issuance of a certificate of title for the land, are all acts that a court is legally unable to do when the court would need before it all the current owners of the part of the land not claimed by the plaintiff, all owners of all property abutting the land's purported boundaries, and any other landowners in the vicinity whose property or property lines would have to appear on a certified survey map for the land and when none of these necessary parties, with the exception of the defendant are before the court and because the court cannot make rulings that would affect or determine their rights without their presence or participation. Church of the Latter Day Saints v. Esiron, 17 FSM R. 229, 233 (Chk. 2010).

A court does not need the presence of all owners of all property abutting the land's purported boundaries, and any other landowners in the vicinity whose property or property lines would have to appear on a certified survey map to decide the limited issue raised by a plaintiff's cause of action for trespass, that is, to decide whether the defendant is trespassing or occupying land to which the plaintiff church has a better right to possess or occupy. The court does not need to (and without the other necessary parties cannot) determine where all of the other boundaries lie because the only issue properly before the court, and the only issue the court may rule upon without violating the due process rights of non-parties, is whether it is more likely than not that the land the plaintiff leased was owned by the lessor and because the determination of boundaries of any other parts of the land which the plaintiff does not claim a leasehold or of the boundaries of any other parcels of land in the area is not before the court. Church of the Latter Day Saints v. Esiron, 17 FSM R. 229, 233-34 (Chk. 2010).

Procedural due process, or fairness, requires notice and an opportunity to be heard. Fundamentally, the government may not strip its citizens of property in an unfair or arbitrary manner; the Constitution requires the government to follow procedures calculated to assure a fair and rational decision-making process. Palsis v. Kosrae, 17 FSM R. 236, 240 (App. 2010).

The essential features of procedural due process require notice and opportunity to be heard. Palsis v. Kosrae, 17 FSM R. 236, 241 (App. 2010).

When a terminated state employee, since she was given an immediate opportunity to respond and another opportunity to respond one week later, had two opportunities to be heard after being informed of the reasons for her dismissal, and when after these two opportunities, she had two full post-termination evidentiary hearings that analyzed the Hospital's decision to terminate her employment, her procedural due process rights were not violated. Palsis v. Kosrae, 17 FSM R. 236, 242 (App. 2010).

Before a land registration team commences hearing with respect to any claim, the Land Commission must provide notice at least thirty (30) days in advance. Specific notice must be served upon all parties shown by the preliminary inquiry to be interested. Setik v. Ruben, 17 FSM R. 465, 473 (App. 2011).

In failing to make a reasonable inquiry as to the Setiks' occupation of the land, in failing to provide notice to the Setiks of the determination of ownership hearing, and in issuing the determination of ownership to another without an application by her, the Land Commission deprived the Setiks of due process. The determination of ownership was thus not valid, and the matter must be remanded to the Land Commission for a new determination. Setik v. Ruben, 17 FSM R. 465, 474 (App. 2011).

A court hears before it condemns, and that while a court that has announced a decision without notice and an opportunity to be heard can always be asked to recall its decision and listen to argument this opportunity, as every lawyer knows, is a poor substitute for the right to be heard before the decision is announced. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 629 (App. 2011).

When the court is considering revision of a partial summary judgment, it must provide the parties with notice adequate to give them an opportunity to present evidence relating to any revived issues at trial. FSM v. Shun Tien 606, 18 FSM R. 79, 82 (Pon. 2011).

The National Public Service System Act and the Public Service System Regulations establish continued employment for non-probationary national government employees by limiting the permissible grounds and specifying the necessary procedures for their dismissal. This is sufficient protection of the right to continued national government employment to establish a non-probationary employee's property interest which may not be taken without due process, including notice and an opportunity to be heard. Poll v. Victor, 18 FSM R. 235, 244 (Pon. 2012).

When a court's notice of trial on the merits is not served on a party, that party's rights to due process of law under the Chuuk and FSM Constitutions are violated, and the failure to serve notice of a trial date and time is plain error. Phillip v. Moses, 18 FSM R. 247, 250 (Chk. S. Ct. App. 2012).

Notice and an opportunity to be heard is the essence of due process as guaranteed by both the Chuuk and FSM Constitutions. Phillip v. Moses, 18 FSM R. 247, 250 (Chk. S. Ct. App. 2012).

Since any application to the court for an order is a motion, when a shipowner filed an application for the limitation of its liability in a pending case, it is a motion, which, unless lengthened or shortened by court order or rule, a party has ten days to respond to. Thus, when the other parties were not allowed the ten days to respond to shipowner's limitation motion because the court granted the motion and issued the orders after only five or six days, they were not given the procedural due process afforded them by the civil procedure rules and for that reason alone, the orders should be considered voidable and vacated. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 313 (Yap 2012).

A party's written Rule 11 motion constituted notice that it was seeking sanctions in the form of attorney's fees and the adverse parties' written opposition was their opportunity to be heard and they were heard on the papers. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 376 (App. 2012).

When a sanction is the result of the court's own motion, it must be vacated if the trial court did not give

notice that it was making a motion because a trial judge abuses his discretion when, without prior notice and an opportunity to be heard, the court sua sponte imposes a Rule 11 sanction on an attorney. The manner in which Rule 11 sanctions are imposed must comport with due process requirements, and, at a minimum, notice and an opportunity to be heard are required. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 376 (App. 2012).

Since a defendant must receive notice of all claims for relief on which the court might find him liable and enter judgment against him, a default judgment that was rendered against a defendant who never appeared and that included damages for claims not raised in the complaint served on him or sums not prayed for by the plaintiff would violate due process. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 416 (Yap 2012).

It is a due process violation and constitutional error for a court to base its decision, in whole or in part, on evidence of which a party has not had both notice and the opportunity to be heard, but when the defendants were served with all documents since the beginning of the matter and had the opportunity to respond but failed to do so, their claim for a violation of due process has no merit. Helgenberger v. FSM Dev. Bank, 18 FSM R. 498, 501 (App. 2013).

A plaintiff, who challenges another's right to an interest in land and seeks to exercise an interest in land that excludes that other's supposed rights to the land, ought to, as a matter of due process, name that other as a party defendant. Otherwise that other party will be deprived of its interest without notice and an opportunity to be heard. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 573, 575 (Pon. 2013).

Notice and an opportunity to be heard are the essence of due process of law. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 155 (Chk. 2013).

Due process would seem to require a prompt post-seizure hearing before the administrative agency that has administratively levied execution of unpaid taxes. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 155 (Chk. 2013).

A statute that permits a taxpayer to file an action in court to recover any challenged taxes is likely an inadequate substitute for a prompt post-seizure hearing before the tax authorities that might resolve the matter without the need for court proceedings and from which a still aggrieved taxpayer may then resort to a court suit. It may be that such an administrative hearing is available through the statute governing administrative hearings although that is not entirely clear. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 155 (Chk. 2013).

The imposition of disciplinary sanctions is subject to due-process scrutiny. Adequate notice and an opportunity to be heard are the essence of due process. In re Sanction of Sigrah, 19 FSM R. 305, 309 (App. 2014).

When the notice of the hearing did not mention that the subject of the hearing was the plaintiffs' request for a temporary restraining order and a preliminary injunction, the defendant's opportunity to be heard at the hearing was rather meaningless, especially when shortly into the hearing the trial judge stated that he had enough in the file to issue a temporary restraining order preventing the defendant from entering the land. Since the defendant had inadequate notice of the hearing and its subject matter, he did not have an adequate opportunity to be heard before the decision to grant a temporary restraining order was announced during the hearing or before the preliminary injunction entered the next day. Nena v. Saimon, 19 FSM R. 317, 326 (App. 2014).

The National Public Service System Act and the Public Service System Regulations establish continued employment for non-probationary national government employees by limiting the permissible grounds, and specifying the necessary procedures for their dismissal. This is sufficient protection of the right to continued employment to establish a property interest for non-probationary employees which may not be taken without due process, including notice and an opportunity to be heard. Manuel v. FSM, 19 FSM R. 382, 390 (Pon. 2014).

The Chuuk State Supreme Court trial division certainly has jurisdiction to consider an attack on a Land Commission determination of ownership as void due to the lack of notice of the formal hearings and lack of notice of the issuance of the determination of ownership because the Chuuk State Supreme Court has jurisdiction to review administrative agency decisions as provided by law, its trial division can exercise appellate review of Land Commission decisions. Aritos v. Muller, 19 FSM R. 533, 537 (Chk. S. Ct. App. 2014).

When at a minimum, the Education Director should have been given notice of the allegations and evidence on which the Board based its resolution to terminate her, and she should have been given an opportunity to respond or to explain her actions or omissions and to rebut any false allegations but was not, her likelihood of success on her due process claim seems almost certain because this is the essence of due process – notice and an opportunity to be heard. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 649 (Chk. S. Ct. Tr. 2015).

A customer of a government-owned utility does have a due process right to proper notice before the utility is disconnected. Wainit v. Chuuk Public Utility Corp., 20 FSM R. 135, 137 (Chk. 2015).

Notice and an opportunity to be heard constitute the core requirements of due process and fundamental fairness. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

It is a due process violation and constitutional error for a court to base its decision, in whole or in part, on evidence to which a party has not been provided both notice and an opportunity to be heard. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

A land claimant was dutifully allowed to be heard on his claim, when he actively participated in the proceedings, when during the Land Court hearing, he proceeded to "open the door," in terms of an attempt to transform the complexion of the relief sought from a boundary dispute into a claim encompassing an entire parcel; when it was undisputed between the parties, that he owned land situated on a plat, which lies adjacent to the parcel; and when the Land Court received testimony regarding that adjacent plat in order to determine the exact location of the respective properties. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

When the right of way determination was part of the 1997 remand and therefore cannot be characterized as a surprise to the appellant; when he was provided ample opportunity to be heard and present evidence, with respect to where the boundary between land he owned and that of the appellee was located; when he took the opportunity to claim a boundary that would award him the entire parcel; and when there was zealous participation on his part during the relevant proceedings, he received both notice and an opportunity to be heard. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

A party's assertion, sounding in a deprivation of an individual's unassailable right to be afforded both notice and an opportunity to be heard, is refuted by the fact that he actively participated in the subject proceedings. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

An allegation of a procedural due process violation, that takes issue with a purported lack of notice, strains credulity when it is belied by previously-filed, repeatedly unsuccessful motions to stave off the transfer of ownership that show that, not only were the claimants provided adequate notice, but they were also afforded ample opportunity to be heard and took full advantage of such participation. Setik v. Perman, 21 FSM R. 31, 38-39 (Pon. 2016).

When raising res judicata *sua sponte*, due process requires that the court give the opposing party notice and an opportunity to respond. Waguk v. Waguk, 21 FSM R. 60, 68 (App. 2016).

When service of the Land Court decision was made on someone who did not reside with the appellant, that service was insufficient, and the fact that the appellant became aware of the Land Court's decision later is not equivalent to being properly served to safeguard her due process rights. If a party was not served notice and was then denied the right to appeal, his or her due process rights are violated. Esau v.

Penrose, 21 FSM R. 75, 80-81 (App. 2016).

It is well established, that when a judgment has been entered against a party without notice or an opportunity to be heard, it is void and subject to direct or collateral attack at any time. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 121 (App. 2017).

– Due Process – Substantive

Because there is a rational basis, linked to legitimate government purposes of increasing the availability of health care services, for providing immunity from patient suits to U.S. Public Health Service physicians, the Federal Programs and Services Agreement's immunity provisions are not in violation of a plaintiff's due process rights. Samuel v. Pryor, 5 FSM R. 91, 106 (Pon. 1991).

Among the rational bases supporting the constitutionality of a state statute capping wrongful death recovery are a desire to create foreseeable limits on government liability; to promote insurance; to encourage settlement of claims; and to ease the burden on courts and families of valuing losses incurred through the death of a family member. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 363 (Kos. 1992).

A Governor's proclamation that continues municipal officials in office indefinitely, violates the people's rights to substantive due process, in that they have no say in their municipal government since all of its officials are now appointed by and now hold office due to the Governor; and to equal protection of the laws, in that the municipal citizens are treated differently based on their ancestry (they and their ancestors are from Romalum) from citizens of other Chuuk municipalities in not being allowed an elected municipal government. Buruta v. Walter, 12 FSM R. 289, 295 (Chk. 2004).

While procedural due process requires governmental decision-making to conform with the concept of what is fair and just, substantive due process, on the other hand, addresses the legislature's rationality. Substantive due process protects individual liberty interests against certain governmental actions regardless of the fairness of the procedure used to implement them. FSM Dev. Bank v. Adams, 14 FSM R. 234, 248 n.6 (App. 2006).

With substantive due process, the court looks at the rationale or legitimacy of the governmental interest. In subjecting a statute or court rule to the requirement of substantive due process, the court asks: 1) Does the government have power to regulate the subject matter? If the statute or rule is not within the power of the government, such statute or rule will be struck down. 2) If the government has the power to regulate, the court next asks if what the statute or rule proposes to do bears a rational relationship to the implementation of the legislative goal. 3) Finally, where the statute or rule involved arguably infringes upon individuals' fundamental rights, the court must ask how important is the legislative objective. The court must ask if there is a compelling governmental interest to justify holding the statute or rule valid, even though the statute might limit fundamental rights. FSM Dev. Bank v. Adams, 14 FSM R. 234, 248 n.6 (App. 2006).

When the plaintiff's reasoning neglects to cite what constituted an alleged illegal termination since the only factual averments which depict allegedly untoward conduct on the defendants' part, albeit nebulous, only apply to one defendant, the requisite nexus to support a substantive due process violation is wanting. Solomon v. FSM, 20 FSM R. 396, 402 (Pon. 2016).

– Due Process – Vagueness

A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. FSM v. Nota, 1 FSM R. 299, 304 (Truk 1983).

A criminal statute must not be so vague and indefinite as to fail to give fair notice of what acts will be

punished but the right to be informed of the nature of the accusation does not require absolute precision or perfection of criminal statutory language. Laion v. FSM, 1 FSM R. 503, 507 (App. 1984).

The right to be informed of the nature of the accusation requires that a statute be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that persons of common intelligence must necessarily guess at its meaning. Laion v. FSM, 1 FSM R. 503, 507 (App. 1984).

The required degree of precision under the right to be informed of the nature of the accusation may be affected by considerations such as limits upon the capacity for human expression and difficulties inherent in attempts to employ alternative methods of stating the concept. Laion v. FSM, 1 FSM R. 503, 508 (App. 1984).

Some generality may be inescapable in proscribing conduct but the standard of precision required under the right to be informed of the nature of the accusation is greater in criminal statutes than in civil statutes. Laion v. FSM, 1 FSM R. 503, 508 (App. 1984).

Courts are far more inclined to set aside as unconstitutionally vague statutes or ordinances reaching into marginal areas of human conduct such as prohibitions against loitering or vagrancy aimed at conduct often thought of as offensive or undesirable, but not directly dangerous to others. Laion v. FSM, 1 FSM R. 503, 509 (App. 1984).

Prohibitions against assaults with dangerous weapons fall within the more traditional realm of criminal law and therefore are entitled to greater deference by courts in determining whether they are unconstitutionally vague. Laion v. FSM, 1 FSM R. 503, 509 (App. 1984).

Commonly accepted meanings arising out of prior court interpretations in the jurisdictions from which statutes are borrowed may be considered in testing a claim that the statute is unconstitutionally vague. Laion v. FSM, 1 FSM R. 503, 509-10 (App. 1984).

There is no suggestion in the Constitutional Convention Journal that the framers of the FSM Constitution wanted to depart from or expand upon United States constitutional principles concerning particularity and definitions in criminal statutes. Reliance in the Report of the Committee on Civil Liberties upon United States court decisions in explaining the words confirms that the intent was to adopt the American approach concerning the statutory specificity needed so as not to be unconstitutionally vague. Laion v. FSM, 1 FSM R. 503, 513 (App. 1984).

In considering whether the term "dangerous weapon" is so vague as to render 11 F.S.M.C. 919 unconstitutional, it is relevant that a court in the United States has held that term sufficiently definite to meet United States constitutional standards. Laion v. FSM, 1 FSM R. 503, 513 (App. 1984).

"Dangerous device" as defined under the Weapons Control Act is not unconstitutionally vague. The language, properly interpreted, affords sufficient notice so that conscientious citizens may avoid inadvertent violations, and constructs sufficiently definite standards to prevent arbitrary law enforcement. Joker v. FSM, 2 FSM R. 38, 45 (App. 1985).

When an information alleges violation of a statute, that statute must be drawn so as to give a person of ordinary intelligence fair notice that the contemplated conduct was forbidden. Laws must provide explicit standards for those who apply them. FSM v. Moses, 9 FSM R. 139, 145 (Pon. 1999).

When a vague statute abuts upon sensitive areas of basic freedoms, it operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked. FSM v. Moses, 9 FSM R. 139, 146 (Pon. 1999).

Congress did not exceed its constitutional authority when it defined a national crime as one committed "against a national public servant in the course of, in connection with, or as a result of that person's

employment or service;" nor was this definition so vague that it does not give reasonable notice of what conduct is prohibited, or encourages arbitrary and discriminatory enforcement. FSM v. Anson, 11 FSM R. 69, 73 (Pon. 2002).

Due process generally requires that the government provide an individual with notice and an opportunity to be heard before taking away that person's liberty. A person has a liberty interest in not being criminally prosecuted without notice of what conduct is prohibited. A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law, as it fails to give people notice of what conduct is prohibited. FSM v. Anson, 11 FSM R. 69, 75 (Pon. 2002).

The right to be informed of the nature of the accusation requires that a statute be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that persons of common intelligence must necessarily guess at its meaning. Some generality may be inescapable in proscribing conduct, but the standard of precision required under the right to be informed of the nature of the accusation is greater in criminal statutes than in civil statutes. FSM v. Anson, 11 FSM R. 69, 75 (Pon. 2002).

Certain types of criminal prohibitions are subject to greater scrutiny on grounds of vagueness. Courts are far more inclined to set aside as unconstitutionally vague statutes or ordinances reaching into marginal areas of human conduct such as prohibitions against loitering or vagrancy aimed at conduct often thought of as offensive or undesirable, but not directly dangerous to others, but prohibitions against assaults with dangerous weapons, for example, fall within the more traditional realm of criminal law and are therefore entitled to greater deference by courts in determining whether they are unconstitutionally vague. FSM v. Anson, 11 FSM R. 69, 75 (Pon. 2002).

There are two aspects to consider in determining whether a criminal statute is unconstitutionally vague. First, the statute must ensure fair notice to the citizenry, and second it must provide standards for enforcement by the police, judges and juries. FSM v. Anson, 11 FSM R. 69, 75 (Pon. 2002).

Because it is assumed that people are free to steer between lawful and unlawful conduct, it is necessary that laws give the people of ordinary intelligence a reasonable opportunity to know what is prohibited, so that they may act accordingly. Vague laws may trap the innocent by not providing fair warning. FSM v. Anson, 11 FSM R. 69, 75-76 (Pon. 2002).

If arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application. FSM v. Anson, 11 FSM R. 69, 76 (Pon. 2002).

A statute that provides clear notice and fair warning that an assault on a national public servant while she is working in her national government office is conduct prohibited by national law. FSM v. Anson, 11 FSM R. 69, 76 (Pon. 2002).

Laws cannot define the boundaries of impermissible conduct with mathematical certainty. Whenever the law draws a line there will be cases very near to each other on the opposite side. The precise course of the line may be uncertain, but no one can come near it without knowing that he does so. FSM v. Anson, 11 FSM R. 69, 76 (Pon. 2002).

When the purpose, intent and meaning of the Act can be ascertained by reading the disjunctive provisions of the statute together, and it is clear that Congress intended that conduct like that charged in this case be prohibited under national law the law is not unconstitutionally vague. FSM v. Anson, 11 FSM R. 69, 76 (Pon. 2002).

The definition of the offense of "defamation" does not provide detailed warning of what type of speech is regulated whereas in other criminal offenses where speech is regulated, the specified words constituting

the offense are listed. Kosrae v. Waguk, 11 FSM R. 388, 391 (Kos. S. Ct. Tr. 2003).

The offense of defamation does not provide adequate notice of what speech is regulated. A statute, properly interpreted, must give sufficient notice so that conscientious citizens may avoid inadvertent violations. The statute must also provide sufficiently definite standards to prevent arbitrary law enforcement. Kosrae v. Waguk, 11 FSM R. 388, 391 (Kos. S. Ct. Tr. 2003).

When an information alleges violation of a statute, that statute must be drawn so as to give a person of ordinary intelligence fair notice that the contemplated conduct is forbidden. Laws must provide explicit standards for those who apply them. Kosrae v. Waguk, 11 FSM R. 388, 391-92 (Kos. S. Ct. Tr. 2003).

The Kosrae criminal offense of "defamation" does not contain specific language defining the conduct or speech which forms the offense. There are no specific words or conduct listed in the offense which forms the basis for the defamatory conduct. Kosrae v. Waguk, 11 FSM R. 388, 392 (Kos. S. Ct. Tr. 2003).

Since the Kosrae criminal defamation statute does not protect tradition, it may not impair a defendant's fundamental right of freedom of expression. The defamation statute impairs the fundamental right of freedom of expression because it fails to provide a specific standard of criminal conduct, thereby persons would not have adequate notice of what type of speech was regulated under it. Kosrae v. Waguk, 11 FSM R. 388, 392 (Kos. S. Ct. Tr. 2003).

The standard for consideration whether a statute is unconstitutionally vague is that a criminal statute must give fair notice of what acts are criminal conduct and subject to punishment; and the statute must be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that person of common intelligence must necessarily guess at its meaning. However, it is accepted that some generality may be necessary in describing the prohibited conduct. Kosrae v. Phillip, 13 FSM R. 285, 289 (Kos. S. Ct. Tr. 2005).

The criminal offense of driving under the influence, as defined in Kosrae State Code, Section 13.710, is not unconstitutionally vague. The term "under the influence" does give people of ordinary intelligence a reasonable opportunity to know and understand what conduct is prohibited and how to avoid violation. Kosrae v. Phillip, 13 FSM R. 285, 291 (Kos. S. Ct. Tr. 2005).

A criminal statute must not be so vague and indefinite as to fail to give fair notice of what acts will be punished but the right to be informed of the nature of the accusation does not require absolute precision or perfection of criminal statutory language. When the statute complained of, while not mathematically precise, gives fair notice of the acts that will be punished, payment for expenses other than expenses incurred in the course of official public relations, entertainment activities or constituent services necessary to advance the national government's purposes and goals, the prosecution will not be dismissed on the ground that the statute was unconstitutionally vague. FSM v. Kansou, 14 FSM R. 128, 130 (Chk. 2006).

Kosrae State Code § 13.313 is unconstitutionally vague because it fails to provide a specific standard of criminal conduct and therefore does not give adequate notice of what type of speech is being regulated since a statute must be drawn so as to give a person of ordinary intelligence fair notice that the contemplated conduct is forbidden and Kosrae State Code § 13.313 does not. Kosrae v. Taulung, 14 FSM R. 578, 580-81 (Kos. S. Ct. Tr. 2007).

Since statutory vagueness is a due process concept and since the wording of the Due Process Clauses of the Kosrae Constitution and of the FSM Constitution is identical, these two constitutional provisions may be treated as identical in meaning and in scope. The appellate court will proceed as if the statute is challenged under both. Phillip v. Kosrae, 15 FSM R. 116, 119 (App. 2007).

Whether a challenged statute is unconstitutionally vague is a two-part analysis. The statute must provide fair notice to members of the public, and it must also furnish police and judges with adequate enforcement standards. Fair notice means that the law gives an individual of ordinary intelligence a

reasonable opportunity to understand the proscribed activity, and to conform his conduct to the law's requirements. A law permits arbitrary and discriminatory enforcement if it does not provide explicit enforcement standards, and a vague law's defect is that it allows law officers and judges to subjectively determine basic policy questions on a case-by-case basis. Phillip v. Kosrae, 15 FSM R. 116, 119 (App. 2007).

Cases upholding the constitutionality of statutes criminalizing driving "under the influence" reflect the fact that alcohol, its consumption, and effects have long been a part of human experience. DUI statutes enacted with the arrival of the motor vehicle take that experience into account. Phillip v. Kosrae, 15 FSM R. 116, 120 (App. 2007).

The Kosrae DUI statute does not violate the vagueness doctrine because it employs the phrase "under the influence." It provides both law enforcement officers and judges with the necessary enforcement standards. "Driving under the influence" is commonly understood to mean driving in a state of intoxication that lessens a person's normal ability for clarity and control. A police officer will know that he may take enforcement action where he observes an individual exhibiting this commonly understood behavior. That a police officer must exercise his judgment in evaluating this behavior does not render the statute vague. Phillip v. Kosrae, 15 FSM R. 116, 120 (App. 2007).

"Driving under the influence" provides a judge with a sufficient enforcement standard. Based upon the evidence that a judge hears and is entitled to consider, he may determine whether a defendant was "under the influence" such that he was driving in a state of intoxication that lessened his normal ability for clarity and control. The statute thus passes constitutional muster. Phillip v. Kosrae, 15 FSM R. 116, 120-21 (App. 2007).

When the accused either was or was not driving "under the influence," and it was the arresting officer's job to exercise his judgment to determine whether there was probable cause to believe the accused's ability for clarity and control had been lessened by his consumption of alcohol, or in other words, whether the accused was driving "under the influence," and when Kosrae's statute did not require the accused to offer an explanation for his conduct and any such exculpatory explanation would have been immaterial to his objective state of sobriety or lack thereof, the Kosrae DUI statute is not void for vagueness and does not violate the Due Process Clause of either the Kosrae Constitution or the FSM Constitution. Phillip v. Kosrae, 15 FSM R. 116, 121 (App. 2007).

A defendant's right to be informed of the nature of the accusations against him requires that a statute be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that persons of common intelligence must necessarily guess at its meaning. Chuuk v. Menisio, 15 FSM R. 276, 281 (Chk. S. Ct. Tr. 2007).

A criminal statute must not be so vague and indefinite as to fail to give fair notice of what acts will be punished but the right to be informed of the nature of the accusation does not require absolute precision or perfection of criminal statutory language, but the statute must be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that persons of common intelligence must necessarily guess at its meaning. Although some generality may be inescapable in proscribing conduct, the standard of precision required under the right to be informed of the nature of the accusation is greater in criminal statutes than in civil statutes. FSM v. Aiken, 16 FSM R. 178, 182 (Chk. 2008).

When an information alleges violation of a statute, that statute must be drawn so as to give a person of ordinary intelligence fair notice that the contemplated conduct was forbidden. Laws must also provide explicit standards for those who apply them. When the statute complained of, even though not mathematically precise, gives fair notice of the acts that will be punished, the prosecution will not be dismissed on the ground that the statute was unconstitutionally vague. FSM v. Aiken, 16 FSM R. 178, 182 (Chk. 2008).

There are two aspects to consider in determining whether a criminal statute is unconstitutionally vague

– first, the statute must ensure fair notice to the citizenry, and second it must provide standards for enforcement by the police and judges. FSM v. Aiken, 16 FSM R. 178, 182 (Chk. 2008).

A criminal statute's use of the term "under the influence of alcohol" does not render that statute void for vagueness and does not violate the FSM Constitution's Due Process Clause. FSM v. Aiken, 16 FSM R. 178, 182-83 (Chk. 2008).

When criminal liability is explicitly imposed for the use of a firearm "in connection with or in aid of the commission of any crime against the laws of the Federated States of Micronesia," the use of the term "laws of the Federated States of Micronesia" does not make the statute unconstitutionally vague. This term refers to any or all criminal laws in the Federated States of Micronesia, national, state, or local because if it were otherwise, it would not be possible for the statute to have its obviously intended purpose and effect – to discourage the use of, and to punish the use of, firearms during the commission of other crimes. The plural form of the word "laws" further compels this conclusion. FSM v. Aiken, 16 FSM R. 178, 183 (Chk. 2008).

When the defendants asked the plaintiffs' counsel to withdraw the offending motion or it would seek Rule 11 sanctions and their later Rule 11 motion was precise about what it sought sanctions for, the plaintiffs had the appropriate notice. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 377 (App. 2012).

As for the plaintiffs avoiding future sanctions, the order cannot be too vague since they are barred from filing any papers in Civil Action No. 1990-075 without first obtaining leave of court and have been since December 1995. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 377 (App. 2012).

– Equal Protection

Under the equal protection clause of the Declaration of Rights in the FSM Constitution, indigency alone should not disadvantage an accused in our system of criminal justice. Gilmete v. FSM, 4 FSM R. 165, 169 (App. 1989).

A patient's equal protection rights were not violated when there was no showing that the patient was treated differently from any other patient on the basis of her sex, ancestry, national origin, or social status. Samuel v. Pryor, 5 FSM R. 91, 106 (Pon. 1991).

Families of wrongful death victims do not constitute a suspect class for purposes of equal protection analysis. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 362 (Kos. 1992).

Among the rational bases supporting the constitutionality of a state statute capping wrongful death recovery are a desire to create foreseeable limits on government liability; to promote insurance; to encourage settlement of claims; and to ease the burden on courts and families of valuing losses incurred through the death of a family member. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 363 (Kos. 1992).

Aliens are persons protected by the due process and equal protection clauses of the Constitution. Berman v. FSM Supreme Court (I), 5 FSM R. 364, 366 (Pon. 1992).

Congress and the President respectively have the power to regulate immigration and conduct foreign affairs while the Chief Justice may make rules governing the admission of attorneys. Therefore a rule of admission that treats aliens unequally, promulgated by the Chief Justice, implicates powers expressly delegated to other branches. Berman v. FSM Supreme Court (I), 5 FSM R. 364, 366 (Pon. 1992).

Without a rational valid basis for the rule limiting the number of times an alien may take the bar exam it will be held unconstitutional even if it would be constitutional if the regulation were made by Congress or the President. Berman v. FSM Supreme Court (I), 5 FSM R. 364, 367 (Pon. 1992).

The constitutional guarantees of equal protection apply if the discrimination is based on the individual's membership in one of the classes enumerated in article IV, section 4, or if the discrimination affects a "fundamental right." The law is then subject to a strict scrutiny review, under which it will be upheld only if the government can demonstrate that the classification upon which that law is based bears a close rational relationship to some compelling governmental interest. But if the law does not concern an enumerated class or a fundamental right, the question becomes whether the classification is rationally related to a legitimate governmental purpose. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 137, 146 (Pon. 1995).

The equal protection analysis and standards that apply to a discriminatory law also apply to a neutral and non-discriminatory law when it is being applied in a discriminatory fashion. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 137, 146 (Pon. 1995).

Because the equal protection clause is designed to guarantee that similarly situated individuals are not treated differently due to some sort of invidious discrimination a victim of a stray police bullet who cannot show any evidence of discrimination has no equal protection claim. Davis v. Kutta, 7 FSM R. 536, 547 (Chk. 1996).

The constitutional guarantees of due process and equal protection extend to aliens. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 295 n.8 (Pon. 1998).

Article IV, section 4 is designed to guarantee that similarly situated individuals are not treated differently due to some sort of invidious discrimination, but where there is no admissible competent evidence of any such intentional discrimination, a court will grant summary judgment against an equal protection claim. Isaac v. Weilbacher, 8 FSM R. 326, 336 (Pon. 1998).

Voters' due process and equal protection rights are not violated by regulation or restriction of voting by absentee ballots. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 48 (Chk. S. Ct. Tr. 1999).

The FSM Constitution provides that equal protection under the laws may not be denied or impaired on account of sex, race, ancestry, national origin, language or social status. This provision is designed to guarantee that similarly situated individuals are not treated differently due to some sort of invidious discrimination. Youp v. Pingelap, 9 FSM R. 215, 217 (Pon. 1999).

When the plaintiff has not alleged that he was battered based upon his sex, race, ancestry, national origin, language or social status, but has merely alleged that the police, in battering him violated his equal protection rights, The plaintiff's equal protection claim will be dismissed. Youp v. Pingelap, 9 FSM R. 215, 217 (Pon. 1999).

Unlawfully added education qualifications for mayor and assistant mayor improperly deprive candidates and those similarly situated of the equal protection of the law as guaranteed by the FSM Constitution. Chipen v. Election Comm'r of Losap, 10 FSM R. 15, 18 (Chk. 2001).

The equal protection provisions of the FSM Constitution are in large part derived from those in the U.S. Constitution. FSM v. Wainit, 11 FSM R. 1, 7 (Chk. 2002).

The elements of an equal protection claim of discriminatory or selective enforcement are: other similarly situated persons who generally have not been prosecuted; the defendant was intentionally or purposefully singled out for prosecution; and the prosecution was based on an arbitrary or invidious classification. FSM v. Wainit, 11 FSM R. 1, 7 (Chk. 2002).

If a criminal defendant is to make out a selective prosecution equal protection claim, he must identify any persons similarly situated to him that the government could have prosecuted, but has failed to, and he must show that his prosecution is based on an invidious classification such as sex, race, ancestry, national origin, language, or social status. FSM v. Wainit, 11 FSM R. 1, 8 (Chk. 2002).

To overcome the presumption that a decision to prosecute a particular person is motivated solely by proper considerations, a criminal defendant has a heavy burden to establish *prima facie* the elements of an impermissible selective prosecution so as to shift the burden to the government to demonstrate that the prosecution was not premised on an invidious objective. FSM v. Wainit, 11 FSM R. 1, 8 (Chk. 2002).

A criminal defendant who presents clear evidence that shows that his prosecution violates his right to equal protection (is impermissible discrimination) would be entitled to a dismissal. FSM v. Wainit, 11 FSM R. 1, 8-9 (Chk. 2002).

When in an equal protection claim, the record contains a document in which the defendant agency expressly referred to the claimants' race, the defendants have not met their burden under the applicable standard of review for dismissal for failure to state a claim because the question is not whether the plaintiff has proven its claim, but whether under any set of facts it could do so. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 91 (Pon. 2003).

Article IV, section 4 of the FSM Constitution guarantees that similarly situated individuals are not treated differently due to invidious discrimination. AHPW, Inc. v. FSM, 12 FSM R. 114, 118 (Pon. 2003).

A Governor's proclamation that continues municipal officials in office indefinitely, violates the people's rights to substantive due process, in that they have no say in their municipal government since all of its officials are now appointed by and now hold office due to the Governor; and to equal protection of the laws, in that the municipal citizens are treated differently based on their ancestry (they and their ancestors are from Romalum) from citizens of other Chuuk municipalities in not being allowed an elected municipal government. Buruta v. Walter, 12 FSM R. 289, 295 (Chk. 2004).

When a plaintiff complained of a series of acts by various defendants that he felt were discriminatory, that is, that did not treat him in the manner to which he thought he was entitled, but he did not allege, nor did he put on any evidence, that he was discriminated against on the basis of sex, race, ancestry, national origin, language, or social status and no evidence was adduced that any of the acts complained of caused the plaintiff any damages, the court therefore dismissed this cause of action. Hauk v. Lokopwe, 14 FSM R. 61, 65 (Chk. 2006).

Equal protection of the law means the protection of equal laws. The clause requires that those similarly situated must be similarly treated. Equal protection forbids only invidious discrimination. Annes v. Primo, 14 FSM R. 196, 202 (Pon. 2006).

Both sections 3 and 4 of Article IV are designed to protect individuals from discrimination based on their membership in a class. A plaintiff's failure to allege intent to discriminate based on his membership in a particular class is fatal to his equal protection claim. Annes v. Primo, 14 FSM R. 196, 202 (Pon. 2006).

The failure to allege class-based discrimination may be fatal only to strict scrutiny analysis, that is, a plaintiff who fails to allege class-based discrimination is not dismissed but receives only rational basis review, but when the plaintiff is not challenging any particular law, the case is not susceptible to rational basis review. Annes v. Primo, 14 FSM R. 196, 202 n.1 (Pon. 2006).

In the FSM, claims of police brutality or excessive force generally implicate due process, rather than equal protection. Annes v. Primo, 14 FSM R. 196, 202 (Pon. 2006).

A selective-prosecution claim is not a defense on the merits to the criminal charge itself, but an independent assertion that the prosecutor has brought the charge for reasons forbidden by the Constitution. FSM v. Fritz, 14 FSM R. 548, 552 (Chk. 2007).

The elements of an equal protection claim of discriminatory or selective enforcement are: other similarly situated persons who generally have not been prosecuted; the defendant was intentionally or purposefully singled out for prosecution; and the prosecution was based on an arbitrary or invidious

classification. FSM v. Fritz, 14 FSM R. 548, 552 (Chk. 2007).

To make out a selective prosecution equal protection claim, an accused must identify any persons similarly situated to him that the government could have prosecuted, but has failed to, and he must show that his prosecution is based on an invidious classification of either sex, race, ancestry, national origin, language, or social status. FSM v. Fritz, 14 FSM R. 548, 552 (Chk. 2007).

When the defendants do not claim that they were singled out for prosecution based upon their sex, race, ancestry, national origin, or language, but assert that they are being arbitrarily prosecuted based upon their "social status," and when they do not clearly state what their social status is that is the basis of the prosecution's alleged invidious classification and discrimination, it cannot be their status as high government officials (congressmen or former congressmen) because that is the same status as one (ex-president) who was not prosecuted and who the defendants claim was similarly situated so they cannot have been prosecuted based on the membership in that "classification." Furthermore, the choice to prosecute someone because of his or her status as a high government official is not an invidious classification because of the deterrent effect of such prosecutions and because of such prosecutions' effect to maintain the public confidence that public officials are not above the law. FSM v. Fritz, 14 FSM R. 548, 553 (Chk. 2007).

A person's position in government does not constitute "social status." The term "social status" refers to a person's rank or place in society. In traditional Micronesian societies, this could include a person's place or rank within his or her lineage, what caste he or she is a part of, whether and what traditional title the person might hold, or whether the person has chiefly [social] status. FSM v. Fritz, 14 FSM R. 548, 553 (Chk. 2007).

When the defendants cannot identify an invidious classification (which they assert is their "social status"), they cannot make out that element of a selective prosecution claim, especially when the court has doubts whether the purported examples of persons similarly situated are actually that. FSM v. Fritz, 14 FSM R. 548, 553 (Chk. 2007).

A person who, whether under the color of law or not, violates another's equal protection rights as guaranteed by sections 3 or 4 of Article 4 of the FSM Constitution would be civilly liable to the injured party. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 80 (Pon. 2007).

FSM Constitution Article IV, section 4 guarantees that similarly situated individuals not be treated differently due to some sort of invidious discrimination. When a plaintiff comes forward with no admissible, competent evidence to show invidious discrimination, summary judgment is then appropriate. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 80 (Pon. 2007).

For equal protection purposes, a comparison between the pay of part-time college teachers and full-time teachers is not valid when the equal protection claim rests on the difference in the pay scales for part-time and full-time teachers because the part-time and full-time teachers are not similarly situated and the FSM Constitution equal protection guarantee requires a showing that individuals subject to the alleged discrimination be similarly situated. Nor are part-time teachers an enumerated class in Article IV, section 4 and that classification does not concern a fundamental right. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 81-82 (Pon. 2007).

When no Article IV, section 4 class is at issue and no fundamental right is involved, the question is whether the classification bears a rational relationship to a legitimate governmental purpose. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 82 (Pon. 2007).

Paying full-time and part-time teachers at different rates per credit-hour bears a rational relationship to a legitimate governmental purpose because it allows the college flexibility with respect to its need to provide teachers on an ad hoc basis for over-enrolled classes and with its costs. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 82 (Pon. 2007).

Even assuming that the Pohnpei Wage and Hour Law applies to a governmental organization employer and assuming that a claim under the statute was pled although the statute was not mentioned in the complaint, the claim is without merit when the court has determined that the positions of full-time and part-time teachers are different and the college may maintain different pay scales for them. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 82 (Pon. 2007).

When the college's part-time and full-time teachers are not similarly situated for equal protection analysis, and when, to the extent that the part-time and full-time teachers can be viewed as engaging in similar activities, the college's practice of paying its full-time and part-time teachers according to different pay scales for each credit-hour taught is rationally related to a legitimate government purpose, the college is entitled to summary judgment on a part-time teacher's equal protection claim. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 82 (Pon. 2007).

The Equal Protection Clause protects a person against discrimination based on account of sex, race, ancestry, national origin, language or social status, but a person's position in government employment does not constitute "social status." The term "social status" refers to a person's rank or place in society, not to his position in government. In traditional Micronesian societies, social status could include a person's place or rank within his or her lineage, what caste he or she is part of, whether and what traditional title the person might hold, or whether the person has chiefly (social) status. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 314-15 (App. 2007).

A selective prosecution claim does not provide a basis for dismissal of the information because it is not a defense to the merits to the criminal charge itself, but an independent claim. Chuuk v. Robert, 15 FSM R. 419, 425 (Chk. S. Ct. Tr. 2007).

The Constitution's Declaration of Rights has two equal protection guarantees. Section 3 provides that a person may not be denied the equal protection of the laws and section 4 provides that equal protection of the laws may not be denied or impaired on account of sex, race, ancestry, national origin, language, or social status. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 591 (App. 2008).

If the discrimination is based on the individual's membership in one of the Article IV, section 4 enumerated classes, or if the discrimination affects a "fundamental right," the law or regulation is subject to strict scrutiny review. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 591 (App. 2008).

"Heightened scrutiny" is a level of scrutiny below strict scrutiny but above the rational relationship test that U.S. courts use in sex discrimination cases since sex is not an enumerated class in the U.S. Constitution's equal protection clause. In the FSM, sex is an enumerated class and the higher strict scrutiny analysis is applied. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 591 n.2 (App. 2008).

Since Article IV, section 4 prohibits discrimination based on sex, race, ancestry, national origin, language, or social status, any governmental action that classifies according to sex, race, ancestry, national origin, language, or social status constitutes an inherently suspect criteria. As such, the government must prove a compelling governmental interest in the classification. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 591 (App. 2008).

When the appellant compares herself to two different male teachers with the same level of education, who were paid more than she because they were full-time teachers; when the only apparent reason for the pay difference is that they were full-time, not part-time, teachers; when no part-time teacher was paid more than the appellant was so that no male part-time teachers with the same level of education were paid more than she was and no FSM-citizen part-time teachers were paid more than she was; when the appellant does not claim that her status as a part-time teacher instead of being a full-time teacher was based on discrimination on the basis of sex or national origin, she has not made out a *prima facie* case of discrimination based on either sex or national origin and the trial court thus properly granted summary judgment in the College's favor on her sex and national origin discrimination claims. Berman v. College of

Micronesia-FSM, 15 FSM R. 582, 591-92 (App. 2008).

Equal protection of the law means the protection of equal laws. The clause requires that those similarly situated must be similarly treated. It seems also that application of the law must be equal. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 592 (App. 2008).

Equal protection requires that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; and that no greater burdens should be laid upon one than are laid upon others in the same calling and condition. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 592 (App. 2008).

Equal protection forbids only invidious discrimination. Where relevant differences exist between classes, different treatment by the state is permissible. However, any statute that classifies and affords different treatment is subject to the same tests as those under substantive due process: 1) Does the legislature have power to enact the statute that classifies? 2) Does the classification bear a rational relationship to the legislative goal? The classification is presumed to be valid and the burden of proving that the statute is without a rational relationship to the legislative objective is on the challenger of the classification. 3) Where fundamental rights are involved, the classification constitutes a suspect criteria. As such, the burden of proving that the classification bears a close rational relationship to some compelling governmental interests shifts to the government. Fundamental rights are presumed to be absolute until the government proves a compelling governmental interest to curtail or restrain them. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 592 (App. 2008).

Employment is not listed as a fundamental right in the Declaration of Rights although a case has referred to "employment opportunity" as a "liberty interest." But when the interest in contention is employment pay not the opportunity for employment, being paid a lower rate than another involves a fundamental right if the reason for the lower pay is the employee's sex, race, ancestry, national origin, language, or social status. Being paid at a lower rate for some other reason does not involve a fundamental right. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 592 (App. 2008).

If the law does not concern an enumerated class or a fundamental right, the question becomes whether the classification is rationally related to a legitimate governmental purpose. The rational relationship test examines whether there is a reasonable justification for permitting a law or regulation that discriminates against certain classes or groups. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 592-93 (App. 2008).

A full-time teacher's added duties, the need to forgo other employment, and the long-term commitment (three years as opposed to one semester) to teaching at the College, makes a full-time teaching position a substantially different job from a part-time teaching position. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 593 (App. 2008).

Regardless of the applicability of a U.S. case, the appeal of the denial of the plaintiff's equal pay claim turns on whether full-time teaching positions and part-time teaching positions are similar positions and on whether there is a rational relationship between a full-time teacher's pay and a part-time teacher's pay. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 593-94 (App. 2008).

A full-time teacher's added duties, the need to forgo other employment, and long-term commitment (three years as opposed to one semester) to teaching at the College – are legitimate factors from which the court may conclude that full-time and part-time teachers are not similarly situated even though both are paid depending on their education and experience. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 594 (App. 2008).

The appellant's assertion that she has made out a *prima facie* case of sex discrimination would hold water only if part-time and full-time teachers were similarly situated, thus allowing her to compare herself to

a full-time teacher. It did not because, contrary to her assertions, full-time and part-time teachers are not similarly situated; because she has not claimed that she was paid less than a similarly-situated (part-time) male teacher; and because she was, in fact, the highest paid part-time teacher. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 594 (App. 2008).

The pay difference between full-time and part-time teachers passes the rational relationship test because the full-time teacher's added duties, the need to forgo other employment, and the long-term commitment (three years as opposed to one semester) to teaching at the College are all rational and legitimate reasons for the College to pay full-time teachers at a higher rate than part-time teachers and because it is undisputed that the College had legitimate and rational reasons to employ part-time teachers, as and when needed, rather than hiring just full-time teachers. The payment of full-time teachers at the part-time rate for excess and summer classes does not change the analysis because those classes are beyond the duties that full-time teachers are obligated to perform. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 594 (App. 2008).

A plaintiff cannot show any discrimination for summer classes pay when, for summer classes, her pay was equal or higher than any other summer instructor including those classified as full-time teachers. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 594 (App. 2008).

For a part-time teacher to make out a *prima facie* case of sex discrimination she would have had to have shown that she was paid less than a male part-time teacher with the same level of education. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 595 (App. 2008).

When full-time teachers and part-time teachers are not similarly situated, a plaintiff does not have a factual basis for relief under the Pohnpei Wage and Hour Law when the claim is that she was paid less than male full-time teachers because she did not perform the same work as a full-time teacher. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 595 (App. 2008).

The College is an instrumentality of the national government in the same way that the FSM Development Bank is even though its employees are not considered government employees. The College was created by Congress and is subject to suit only in the manner provided for and to the extent that suits may be brought against the National Government. So, since the national government is not subject to suit under the Pohnpei Wage and Hour Law, neither is the College. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 596 (App. 2008).

The FSM Constitution's Declaration of Rights has two equal protection guarantees. Section 3 provides that a person may not be denied the equal protection of the laws, and section 4 provides that equal protection of the laws may not be denied or impaired on account of sex, race, ancestry, national origin, language, or social status. This is a constitutional guarantee that similarly situated individuals not be treated differently due to some sort of invidious discrimination. Berman v. Pohnpei Legislature, 16 FSM R. 492, 496 (Pon. 2009).

When a plaintiff comes forward with no admissible, competent evidence to show invidious discrimination, then summary judgment is appropriate. Berman v. Pohnpei Legislature, 16 FSM R. 492, 496 (Pon. 2009).

In order to establish a prima facie claim of sex discrimination in the hiring process, a plaintiff must establish that 1) she is a member of a protected class; 2) she applied for and was qualified for a position for which her employer was seeking applicants; 3) despite her qualifications she was rejected; and 4) thereafter the position remained open and the employer continued to seek applicants with plaintiff's qualifications. If the plaintiff establishes the existence of these four elements, the burden shifts to defendant to articulate some legitimate, nondiscriminatory reason for the employee's rejection. Berman v. Pohnpei Legislature, 16 FSM R. 492, 496 (Pon. 2009).

A plaintiff has failed to establish a prima facie case of sex discrimination in the hiring process when she

was not rejected for the job, but was interviewed for the position and then hired. Berman v. Pohnpei Legislature, 16 FSM R. 492, 496 (Pon. 2009).

The plaintiff's claim of invidious discrimination and that the defendant violated the FSM Constitution because the plaintiff had to fill out an employment application to be hired and while she was working for the defendant another was rehired and not required to resubmit a new job application since his resignation paperwork had not been processed, is not supported by the law and will be dismissed with prejudice. Berman v. Pohnpei Legislature, 16 FSM R. 492, 497 (Pon. 2009).

An employment applicant was not discriminated against when the employer chose an applicant more qualified than she. Berman v. Pohnpei Legislature, 16 FSM R. 492, 497 (Pon. 2009).

When a complaint alleges that the plaintiff was denied equal protection of the laws, the suit will be deemed a private cause of action under 11 F.S.M.C. 701 for violation of civil rights guaranteed under the FSM Constitution even though the statute is not expressly cited in the complaint. Berman v. Pohnpei, 16 FSM R. 567, 577 (Pon. 2009).

The FSM Constitution at Article IV, Section 4, guarantees that similarly situated individuals not be treated differently due to some sort of invidious discrimination. Berman v. Pohnpei, 16 FSM R. 567, 577 (Pon. 2009).

When a plaintiff has alleged violation of her due process rights, but it is proven otherwise, the plaintiff cannot recover under the civil rights statute. When, at trial, the plaintiff did not present evidence that she was treated differently than any other person in the same class and did not present evidence that she was denied notice and an opportunity to be heard, the state is not liable to her on the claims of denial of equal protection of the laws, violation of due process, and violation of her civil rights. Berman v. Pohnpei, 16 FSM R. 567, 577 (Pon. 2009).

When the plaintiff and her co-worker were not similarly situated because she had no prior legislative counsel experience and he did and when she was hired for and given lesser job responsibilities and assignments, she was thus not entitled to the same wages and benefits as the other. Berman v. Pohnpei Legislature, 17 FSM R. 339, 348 (App. 2011).

When the plaintiff was not equally qualified and had a lower level of responsibility than the other counsel, her lower pay did not violate the Legislature Manual's equal pay provisions since she had neither equal qualifications nor levels of responsibility. Berman v. Pohnpei Legislature, 17 FSM R. 339, 349 (App. 2011).

Equal protection of the law means the protection of equal laws and requires that those similarly situated must be similarly treated. Berman v. Pohnpei Legislature, 17 FSM R. 339, 349 (App. 2011).

When the trial court found as fact, which fact remains on appeal, that the plaintiff was not similarly situated to the Legislature's other attorneys because they had prior experience doing legal work for legislative bodies and she had none, she cannot prevail on an equal protection claim based on being hired as a temporary employee on short-term contracts although a permanent long-term position had been advertised. Berman v. Pohnpei Legislature, 17 FSM R. 339, 349 (App. 2011).

In order to establish a prima facie claim of sex discrimination in the hiring process, a plaintiff must establish that: 1) she is a member of a protected class; 2) she applied for and was qualified for a position for which her employer was seeking applicants; 3) despite her qualifications she was rejected; and 4) thereafter the position remained open and the employer continued to seek applicants with plaintiff's qualifications. If the plaintiff establishes the existence of these four elements, the burden shifts to the defendant to articulate some legitimate, nondiscriminatory reason for the employee's rejection. Berman v. Pohnpei Legislature, 17 FSM R. 339, 349 (App. 2011).

When the trial court found as fact that the defendant Legislature did meet its burden when it articulated

legitimate, non-discriminatory reasons for the plaintiff's rejection – she was not similarly qualified since she did not have any prior experience as counsel to a legislative body and all the other male attorneys who were hired did, as well as a female attorney who was offered, but declined, employment, the plaintiff's equal protection contention is without merit. Berman v. Pohnpei Legislature, 17 FSM R. 339, 349 (App. 2011).

Aliens are persons protected by the equal protection clause of the FSM Constitution. Berman v. Lambert, 17 FSM R. 442, 449-50 (App. 2011).

Equal protection analysis within the FSM has adopted a two-tiered test. The first tier is a rational basis test. Under this test a law will be upheld if it is rationally related to a state interest. Under the second tier, laws that involve a "suspect" class of persons or touch on a "fundamental interest" are subject to strict scrutiny and are struck down unless justified by a compelling state interest. Berman v. Lambert, 17 FSM R. 442, 450 (App. 2011).

Non-citizen does not equate to "national origin" in the Equal Protection Clause and allow non-citizens suspect class status. Berman v. Lambert, 17 FSM R. 442, 450 (App. 2011).

A statute establishing a hiring and promotion preference for legal residents of Pohnpei and FSM citizens, which bears a rational relationship to legitimate governmental purposes of encouraging and preserving job opportunities for legal residents, of the establishment and growth of the local work force, of combating unemployment in Pohnpei, and of training its citizens to work towards self-government, does not violate the FSM Constitution's equal protection clause. Berman v. Lambert, 17 FSM R. 442, 450 (App. 2011).

Since selective prosecution is a defense in a criminal case, when a civil defendant asserts that it was singled out for enforcement and was the only employer being sued for unpaid health insurance premiums, the court will read this as an equal protection claim. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 538-39 (Chk. 2011).

The Constitution's Declaration of Rights contains two equal protection guarantees. Section 3 provides that a person may not be denied the equal protection of the laws and section 4 provides that equal protection of the laws may not be denied or impaired on account of sex, race, ancestry, national origin, language, or social status. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 539 (Chk. 2011).

When no Article IV, section 4 class is at issue and no fundamental right is involved, the question is whether the classification is rationally related to a legitimate governmental purpose. The rational relationship test examines whether there is a reasonable justification for permitting the discrimination. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 539 (Chk. 2011).

It is entirely rational that the Chuuk Health Care Plan first sue the largest non-complying employer before suing other non-compliant employers, especially when the others are trying to bring themselves into compliance. Someone must be first. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 539 (Chk. 2011).

The FSM Constitutional guarantees of equal protection apply if the discrimination is based on the individual's membership in one of the classes enumerated in the FSM Const. art. IV, § 4, or if the discrimination affects a "fundamental right." The law is then subject to a strict scrutiny review, under which it will be upheld only if the government can demonstrate that the classification upon which that law is based bears a close rational relationship to some compelling governmental interest. But if the law does not concern an enumerated class or a fundamental right, the question becomes whether the classification is rationally related to a legitimate governmental purpose. Kallop v. Pohnpei, 18 FSM R. 130, 134 (Pon. 2011).

The rational basis standard will be applied to an analysis of a plaintiff's equal protection claims about the regulation of alcohol sales. A rational basis analysis requires statutes restricting alcohol to have a

legitimate, reasonable purpose, to not be arbitrary, and the legislation carries out the purposes prescribed. Kallop v. Pohnpei, 18 FSM R. 130, 134 (Pon. 2011).

A statute that restricts the sale of alcohol during the Christmas and New Year's holidays serves legitimate governmental purposes in the areas of the public health and welfare and the allowance of on-sale alcohol purchases during these holidays also support the operations of the hotels and cabarets who have a demand for such sales from its customers during the holidays. This legislation carries out the purposes for which the statute was amended by further regulating the sale of alcohol in a manner which promotes the State's legitimate governmental objectives. This statute regulating and restricting alcohol is within the scope of legislative authority, has a reasonable purpose, is not arbitrary, and carries out the purposes prescribed and is thus not unconstitutional. Kallop v. Pohnpei, 18 FSM R. 130, 135-36 (Pon. 2011).

A complaint alleging that a public utility tortiously breached its duty to him and violated his due process civil rights when its linemen disconnected his electrical power without notice, causing food spoilage and personal hardship and inconvenience, and that when its linemen, without warning, eventually reconnected his electrical power, it tortiously caused a sudden power surge resulting in damaged equipment, does not state a claim for an equal protection civil rights cause of action. Wainit v. Chuuk Public Utility Corp., 20 FSM R. 135, 137 (Chk. 2015).

A state court litigant's right to equal protection is not violated because he can only get a judgment in the state court and cannot get a judgment in the FSM Supreme Court. Kama v. Chuuk, 20 FSM R. 522, 533 (Chk. S. Ct. App. 2016).

Each court system, national and state, treats all persons before it equally under the law and the difference in each court system's jurisdictional requirements is not unequal treatment under the laws. Kama v. Chuuk, 20 FSM R. 522, 533 (Chk. S. Ct. App. 2016).

A money judgment against the state is not a property interest but an existing, continuing liability against the state, and a failure to timely satisfy that judgment does not constitute a taking in violation of due process or equal protection. Kama v. Chuuk, 20 FSM R. 522, 534 (Chk. S. Ct. App. 2016).

– Excessive Fines

It is premature to challenge a statute as unconstitutional for imposing excessive fines until a fine has been imposed. FSM v. Cheng Chia-W (I), 7 FSM R. 124, 126 (Pon. 1995).

– Ex Post Facto Laws

While every ex post facto law must necessarily be retrospective not every retrospective law is an ex post facto law. An ex post facto law is one which imposes punishment for past conduct, lawful at the time it was engaged in. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 266-67 (Chk. S. Ct. Tr. 1993).

Legislation is not an ex post facto law where the source of the legislative concern can be thought to be the activity or status from which the individual is barred, even though it may bear harshly upon one affected, but the contrary is the case where the statute in question is evidently aimed at the person or class of persons disqualified. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 268-69 (Chk. S. Ct. Tr. 1993).

A provision barring those convicted of a felony, even if pardoned, from membership in the legislature is concerned with the qualifications of legislative membership, and is not just for the purpose of punishing felons and those pardoned of a felony which would violate the constitutional ban on ex post facto laws. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 269-71 (Chk. S. Ct. Tr. 1993).

Regulations imposing civil disqualifications for past criminal conduct are not punishment barred by the

constitutional ban against ex post facto laws. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 270-71 (Chk. S. Ct. Tr. 1993).

Since retrospective application of a constitutional provision barring persons convicted of felonies, even if pardoned, from holding legislative office is not an invalid ex post facto law, retrospective application of the provision is also not invalid as a bill of attainder or a denial of due process. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 271-72 (Chk. S. Ct. Tr. 1993).

The concept of ex post facto laws is limited to legislation which does any of the following: 1) makes criminal and punishable an act innocent when done; 2) aggravates a crime, or makes it greater than it was when committed; 3) increases the punishment for a crime and applies the increase to crimes committed before the enactment of the laws; or 4) alters the legal rules of evidence so that testimony insufficient to convict for the offense when committed would be sufficient as to that particular offense and accused person. The ban on ex post facto law applies to criminal acts only. This means retroactive noncriminal laws may be valid. Robert v. Mori, 6 FSM R. 394, 400 (App. 1994).

The mark of an ex post facto law is the imposition of punishment for past acts. The question is whether the legislative aim was to punish that individual for past activity, or whether the restriction of the individual comes about as a relevant incident to a regulation of a present situation, such as the proper qualifications for a profession. Robert v. Mori, 6 FSM R. 394, 401 (App. 1994).

Since the legislative aim of a statute making ineligible for election to Congress those persons convicted of a felony in a Trust Territory court was not to punish persons for their past conduct it is a regulation of a present situation concerned solely with the proper qualifications for members of Congress. As such it is a reasonable means for achieving a legitimate governmental purpose. It is therefore not unconstitutional as an ex post facto law. Robert v. Mori, 6 FSM R. 394, 401 (App. 1994).

The statutory ineligibility of persons convicted of Trust Territory felonies is a valid exercise of Congress's constitutional power to prescribe additional qualifications for election to Congress, and is not unconstitutional as a deprivation of a liberty interest without due process of law, or as an ex post facto law, or as a bill of attainder. Robert v. Mori, 6 FSM R. 394, 401 (App. 1994).

An ex post facto decision is one that imposes punishment for past conduct, lawful at the time it was engaged in. The concept of ex post facto laws is limited to the following: 1) making criminal and punishable an act innocent when done; 2) aggravating a crime, or making it greater than it was when committed; 3) increasing the punishment for a crime and applying the increase to crimes committed before the enactment of the laws; or 4) altering the legal rules of evidence so that testimony insufficient to convict for the offense when committed would be sufficient as to that particular offense and accused person. Engichy v. FSM, 15 FSM R. 546, 555 (App. 2008).

There was no ex post facto violation in the appellants' conviction for conspiring to violate Section 529 (2001) when the conduct underlying violation of Section 529 was unlawful as of 1982 under the substantively identical Section 548 which was made law then, the appellants cannot maintain that their conduct in the late 1990's underlying the Section 529 conspiracy charge was lawful when they engaged in it; when, since Section 529's punishment provisions are identical to those of Section 548, conviction under Section 529 does not aggravate the crime to make it greater than it was when committed and does not increase the punishment; and when, since the statutes are substantively identical, the same evidence would be sufficient for conviction under both. Engichy v. FSM, 15 FSM R. 546, 555 (App. 2008).

Ex post facto laws are laws passed after the occurrence of a fact or the commission of an act, which thereby changes the legal consequences of the fact or act. An *ex post facto* law seeks to impose punishment on individuals for past acts. Kallop v. Pohnpei, 18 FSM R. 130, 133 (Pon. 2011).

– Foreign and Interstate Commerce

Although foreign and interstate commerce and shipping involve profound national interests, where Congress has not seen fit to assert those interests and there is no national regulation or law to enforce, the fact that a case affects interstate and foreign commerce and shipping is not sufficient to deny abstention if other strong grounds for abstention exist. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 47 (Pon. 1989).

Questions regarding the validity of the provisions of promissory notes for personal loans, executed with a national bank operating in each state of the FSM and having in part foreign ownership, are closely connected to the powers of the national legislature to regulate banking, foreign and interstate commerce, and bankruptcy, and to establish usury limits, and they have a distinctly national character. The FSM Supreme Court therefore will formulate and apply rules of national law in assessing such issues. Bank of Hawaii v. Jack, 4 FSM R. 216, 218 (Pon. 1990).

Power to regulate the incorporation and operation of corporations falls within the constitutional power of the national government to regulate foreign and interstate commerce. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 380 (Pon. 1990).

The Constitution prohibits state and local governments from imposing taxes which restrict interstate commerce. Stinnett v. Weno, 6 FSM R. 312, 313 (Chk. 1994).

The national government has the express authority to regulate international commerce. International commerce is also a power of such an indisputably national character as to be beyond them power of a state to control because the customs and immigration borders of the country are controlled by agencies of the national government. FSM v. Fal, 8 FSM R. 151, 154 (Yap 1997).

Congress may legislate regulation of firearms and ammunition under the foreign and interstate commerce clause of article IX, section 2(g). FSM v. Fal, 8 FSM R. 151, 154 (Yap 1997).

Because the FSM Constitution expressly delegates to Congress the power to regulate interstate commerce and because the existence, availability and quality of telecommunication services in the FSM clearly impacts on interstate commerce, the FSM government is constitutionally authorized to establish the FSM Telecommunications Corporation and may similarly exempt it from taxes or assessments. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 384 (Pon. 2000).

A state "use tax" calculated on the value of items brought into the state plus the cost of shipping, handling, insurance, labor or service cost, transportation charges or any expenses whatsoever, has nothing to do with benefits provided by the state associated with the use of the item and cannot be justified as having a substantial nexus with the state. It only serves as an unauthorized burden on interstate commerce. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 386 (Pon. 2000).

Article IX, section 2(g) of the Constitution expressly delegates to Congress the power to regulate foreign and interstate commerce. A delegation of power to the national government under section 2 of Article IX is exclusive. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 581-82 (App. 2000).

As to interstate commerce, Article VIII, section 3 contains the negative counterpart to Article IX, section 2(g)'s positive grant of power by prohibiting state and local governments from imposing taxes which restrict interstate commerce. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 582 (App. 2000).

Since the event triggering the Pohnpei use tax is the unqualified "use or consumption" in Pohnpei of nonexempt goods, the statute applies to goods brought into Pohnpei from Yap, Chuuk, and Kosrae, as well as from locations outside the FSM. It is thus clear that the statute directly regulates or restricts interstate commerce in the same way it does imports. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 582 (App. 2000).

As to goods making their way from any of the other three states into Pohnpei, the direct nexus between the simultaneous arrival of the goods and imposition of the Pohnpei use tax points to direct regulation of interstate commerce. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 582 (App. 2000).

Even assuming that the Pohnpei use tax apportionment clause could be interpreted to remedy concerns about discrimination against interstate commerce, the fact remains that the use tax is indissolubly linked to the event of importation, and no semantic calisthenics liberate the tax from this inherent defect. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 583 (App. 2000).

A state tax that is unconstitutional as an import tax, if applied to interstate commerce, is also restrictive of interstate commerce. The Constitution does not permit a state to erect tax barriers to the free movement of goods among the states. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 583 (App. 2000).

Because the national government has the exclusive power to regulate foreign and interstate commerce, the Consumer Protection Act is the law of the FSM insofar as any advertising, sale, offer or distribution involves commerce between the states of the FSM or with any foreign entity. The Consumer Protection Act also is the law of the states of the FSM, insofar as it involves commerce which is intrastate and has not been repealed by the state legislatures. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 415 (Pon. 2001).

When trochus was harvested to be sold for the export market and pepper was grown and processed for the export trade, that is foreign commerce. That Pohnpei arranged its affairs so that its purchases and sales were all in state does not take it out of the stream of foreign commerce. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 15-16 (App. 2006).

The national government is expressly delegated the power to regulate foreign and interstate commerce. Title 32 is a valid exercise of that power and the anticompetitive practices statute in Title 32 creates a statutory tort. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16 (App. 2006).

When the imported materials in a Philippine slingshot are not manufactured abroad with the intent that they be assembled into a Philippine slingshot but are manufactured abroad as other articles or as parts of other articles and are legitimately imported for other purposes but are then recycled into Philippine slingshot parts, a Philippine slingshot is manufactured locally, out of locally available materials. It does not pass through foreign or interstate commerce. That some of those materials were once imported as something else to be used for some other purpose is not enough to implicate the national government's activity or function to regulate foreign commerce. FSM v. Masis, 15 FSM R. 172, 176 (Chk. 2007).

The Constitution grants the national government, not the state governments, the power to regulate foreign and interstate commerce and taxation is regulation just as prohibition is. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 160 (Chk. 2010).

A service tax on plane passengers does not have only an incidental effect on foreign commerce; its only effect is on foreign commerce. A tax on shipping cargo or freight affects only foreign commerce or interstate commerce since the airline does not fly to anywhere in Chuuk except Weno. Since state and local governments are prohibited from imposing taxes which restrict interstate commerce, to the extent that the tax is imposed on freight or cargo shipped from Chuuk to other FSM states, would appear to be specifically barred by the Constitution and to the extent it is imposed on cargo or freight shipped elsewhere, it would be regulation of foreign commerce – in effect, an export tax. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 160 (Chk. 2010).

The Constitution expressly grants the national government, not the state governments, the power to regulate foreign and interstate commerce, and taxation is a form of regulation. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 531 (Chk. 2011).

The Chuuk service tax on plane passengers does not have only an incidental effect on foreign commerce. Its main effect (and its sole intended effect) is on foreign commerce. By its terms, it is to be imposed only on those passengers whose "final destination" would be "outside of the FSM." The Chuuk service tax on outgoing paying airline passengers is thus an unconstitutional regulation of foreign commerce. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 531-32 (Chk. 2011).

The tax on shipping air cargo or air freight on Continental affects only foreign commerce or interstate commerce, and since state governments are prohibited from imposing taxes which restrict interstate commerce, to the extent that it is imposed on freight or cargo shipped from Chuuk to other FSM states, the Chuuk service tax would be specifically barred by the Constitution, and to the extent the tax is imposed on cargo or freight shipped elsewhere, it would be regulation of foreign commerce – an export regulation and tax. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533 (Chk. 2011).

The Constitution expressly delegates to Congress the power to regulate banking and foreign and interstate commerce. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 619 (Pon. 2013).

Congress has the power to create institutions that engage in the activity that Congress has the power to regulate. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 619 (Pon. 2013).

The Constitution's broadly-stated express grants of power to regulate banking and foreign and interstate commerce contain within them innumerable incidental or implied powers as well as certain inherent powers. These incidental and implied powers include the power to form public corporations, such as the FSM Development Bank or the FSM Telecommunications Corporation, even in the absence of the express power to do so. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 619 (Pon. 2013).

The creation of the restructured FSM Development Bank was a valid exercise of Congress's power to regulate banking and to regulate interstate and foreign commerce. Development banking is also a power of national character beyond the power of a state to control or provide and so is a national power. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 619 (Pon. 2013).

Only the national government can impose taxes on imports and no state may impose taxes that restrict interstate commerce. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 153 (Chk. 2013).

Since imported cigarettes are not taxable unless sold (or presumed sold) and may be nontaxable if not, the Chuuk cigarette tax appears to be a sales tax and not an import tax because the taxable event is their sale not their importation. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 154 (Chk. 2013).

A municipal "road service" fee is not a tax on imports since it does not vary based on the amount or value of the goods brought into the municipality and since it does it vary based on the origin of those goods. It is a flat annual fee or a tax that does not violate the Constitution's prohibition of local taxes which restrict interstate commerce because the road service fee does not restrict or hinder interstate commerce or impose an import tax, but it does restrict or hinder intrastate or inter-municipal commerce, a type of commerce the FSM Constitution does not grant the national government the power to regulate. Isamu Nakasone Store v. David, 20 FSM R. 53, 57-58 (Pon. 2015).

– Freedom of Expression

The right of citizens to express their views, including views critical of public officials, is fundamental to the development of a healthy political system. Therefore, courts are generally reluctant to find that expression of opinions asserted outside of the court itself, however intemperate or misguided, constitute contempt of court. In re Iriarte (I), 1 FSM R. 239, 247-48 (Pon. 1983).

If the preponderance of evidence shows that a government employee would have been terminated even in the absence of the protected free speech conduct the employee's termination should be upheld. Damarlane v. Pohnpei Legislature, 8 FSM R. 23, 28 (App. 1997).

It is not a violation of a person's free speech rights to be arrested when he was attempting to interfere with the arrest of his cousin, when he was drunk at the time, and when he was disturbing the peace. Conrad v. Kolonia Town, 8 FSM R. 183, 193 (Pon. 1997).

A political candidate's freedom of expression is guaranteed, as it is to all citizens, under section 1 of the FSM Constitution's Declaration of Rights. FSM v. Moses, 9 FSM R. 139, 146 (Pon. 1999).

The freedom to communicate is the rule and restraint is the exception. Censorship, a form of prior restraint, is the most suspect punishment in a free society; ideas do not even get to the marketplace to compete for recognition and acceptance. Censorship thus runs counter to the freedom of speech and press. FSM v. Moses, 9 FSM R. 139, 146 n.2 (Pon. 1999).

When a vague statute abuts upon sensitive areas of basic freedoms, it operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked. FSM v. Moses, 9 FSM R. 139, 146 (Pon. 1999).

To conclude that 9 F.S.M.C. 107(1) criminalizes either a candidate's conduct in submitting his campaign tape directly to a broadcast facility without previously submitting it to the national election commissioner, or to conclude that the owner and operator of the radio station faces a criminal penalty because it aired the tape would be to attribute an uncertain meaning to the statute, which might well cause candidates to steer far wider of the unlawful zone than they otherwise would, or should, in the important work of presenting their views to a public which needs to exercise its franchise in an intelligent manner. The court declines to credit such an uncertain meaning to the statute. FSM v. Moses, 9 FSM R. 139, 146 (Pon. 1999).

Until such time as the plaintiff demonstrates the allegedly defamatory nature of the publications at issue, either by way of trial or proper motion accompanied by admissible supporting evidence, a permanent injunction cannot lawfully issue against the publication of speech that the defendants contend is true and which involves matters of public concern. O'Sullivan v. Panuelo, 10 FSM R. 257, 262 (Pon. 2001).

A public employer may not discharge either a tenured or a non-tenured employee for the reasonable exercise of constitutional rights such as freedom of speech. Lokopwe v. Walter, 10 FSM R. 303, 306 (Chk. S. Ct. Tr. 2001).

While no law may deny or impair freedom of expression, traditions are also protected under the FSM Constitution. Kosrae v. Waguk, 11 FSM R. 388, 390 (Kos. S. Ct. Tr. 2003).

The Kosrae Constitution provides for the fundamental right of freedom of expression, and also permits denial or impairment of that fundamental right by a statute which protects tradition. Kosrae v. Waguk, 11 FSM R. 388, 390 (Kos. S. Ct. Tr. 2003).

No law may deny or impair freedom of expression, except by a statute which protects tradition. If a statute is one which protects tradition, it may deny or impair the fundamental right of freedom of expression provided by the FSM and Kosrae Constitutions. If it is not a statute which protects tradition, then the statute may not impair the fundamental right of freedom of expression. Kosrae v. Waguk, 11 FSM R. 388, 390-91 (Kos. S. Ct. Tr. 2003).

The offense of defamation was not enacted to protect tradition, and if the offense of defamation does not protect tradition, then the fundamental right of freedom of expression as guaranteed by the Kosrae Constitution may not be impaired or denied. Kosrae v. Waguk, 11 FSM R. 388, 392 (Kos. S. Ct. Tr. 2003).

Since the Kosrae criminal defamation statute does not protect tradition, it may not impair a defendant's fundamental right of freedom of expression. The defamation statute impairs the fundamental right of

freedom of expression because it fails to provide a specific standard of criminal conduct, thereby persons would not have adequate notice of what type of speech was regulated under it. Kosrae v. Waguk, 11 FSM R. 388, 392 (Kos. S. Ct. Tr. 2003).

Flyers and newspaper advertisements may be interpreted as "press" for purposes of constitutional freedom of expression. Yang v. Western Sales Trading Co., 11 FSM R. 607, 614 (Pon. 2003).

Commercial speech is expression related solely to the economic interests of the speaker and its audience, or speech which does no more than propose a commercial transaction. Yang v. Western Sales Trading Co., 11 FSM R. 607, 614 (Pon. 2003).

No guidance is found in the Journal of the Constitutional Convention as to the specific protection the FSM Constitution's framers sought to give commercial speech, but it did recognize that some forms of speech deserve less protection than others. Yang v. Western Sales Trading Co., 11 FSM R. 607, 614-15 (Pon. 2003).

Commercial expression serves two different functions – it serves the economic interests of the speaker, and also assists consumers and furthers the societal interest in dissemination of information. It may be constitutionally protected from unwarranted governmental restriction; however, there are common sense distinctions between commercial speech, which proposes a commercial transaction, and other varieties of speech. Yang v. Western Sales Trading Co., 11 FSM R. 607, 615 (Pon. 2003).

Commercial speech deserves less constitutional protection than other varieties of speech. Commercial speech's societal benefits are directly related to the informational function; thus, there can be no constitutional objection to the suppression of commercial messages that do not accurately inform the public about a lawful activity. The government should be permitted to restrict commercial forms of communication more likely to deceive the public than to inform it. Yang v. Western Sales Trading Co., 11 FSM R. 607, 615 (Pon. 2003).

A court approaches arguments as to the unconstitutionality of any prior restraint on the right to free speech as follows: first, the distinction is drawn between those portions of the publications that legitimately provide consumers with information and those portions which are solely related to proposing a commercial transaction. The court accords the first category constitutional protection as it approximates pure speech. As for the commercial speech contained within the publications, it would not be afforded constitutional protection unless the court found that the speech concerned a lawful activity and was not misleading. Yang v. Western Sales Trading Co., 11 FSM R. 607, 615 (Pon. 2003).

A court may issue a preliminary injunction when certain portions of commercial speech are misleading to consumers and merchants. Yang v. Western Sales Trading Co., 11 FSM R. 607, 615 (Pon. 2003).

The public interest weighs in favor of issuing a preliminary injunction when the injunction is limited in scope to protect the public from defendants' statements which are more likely to mislead than to inform the public. Yang v. Western Sales Trading Co., 11 FSM R. 607, 618 (Pon. 2003).

The right of citizens to express their views, including views critical of public officials, is fundamental to development of a healthy political system. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 312 (App. 2007).

When a legislature employee aired his opinion about a number of issues concerning the Speaker in a letter that was submitted directly to the Speaker, with copies to the Governor and the Pohnpei Supreme Court Chief Justice, it did not constitute an employee grievance. When the employee's assertion that he was notifying the Speaker of his intention to seek redress over his missing raise was false because an earlier letter previously notified the Speaker about the initiation of such legal proceedings; and when the employee appears to have sent the letter in pursuit of matters of a purely personal interest and the letter's overall tone was one of a personal grievance about his pay raise and his cancelled travel plans to events in

Guam and Florida, which other Legislature employees had attended, the overriding factor is the context in which the statements were made: in pursuit of matters of the employee's personal importance and not as protected free speech. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 312-13 (App. 2007).

In evaluating a government employee's speech, the issue is not whether the speaker's statements were true or false, but instead whether the speech is made in the context of a public citizen making statements about issues of public importance, or as an employee making statements about matters of personal interest. Thus, courts must begin by considering whether the expressions in question were made by the speaker as a public citizen. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 313 (App. 2007).

A state employee's speech that concerns genuine public issues would be protected, but his speech that relates to items of personal importance to the employee would not necessarily be protected. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 314 (App. 2007).

Considerations of constitutional law and free speech sometimes apply to defamation cases, as when the action involves a public official, a public figure, or a matter of substantial public controversy. In such cases, beyond the other elements of defamation, the plaintiff must show that the defendant knew that the defamatory statement was false, or acted with malice or a reckless disregard for the truth. Smith v. Nimea, 18 FSM R. 36, 46 (Pon. 2011).

Although falsity is included in the FSM's definition of defamation, falsity is not a traditional element of a plaintiff's prima facie case; rather, truth is an affirmative defense. Even so, a court must distinguish between statements of fact and assertions of opinion, because opinions, false or not, libelous or not, are constitutionally protected and may not be the subject of private damage actions, provided that the facts supporting the opinions are set forth. Smith v. Nimea, 18 FSM R. 36, 46 (Pon. 2011).

Free speech is not a limitless right. One limitation comes from defamation law. FSM Dev. Bank v. Abello, 18 FSM R. 192, 196 (Pon. 2012).

Considerations of constitutional law and free speech sometimes apply in defamation cases, as when the action involves a public official, a public figure, or a matter of substantial public controversy. In such cases, beyond the other elements of defamation, the plaintiff must show that the defendant knew that the defamatory statement was false, or acted with malice or a reckless disregard for the truth. FSM Dev. Bank v. Abello, 18 FSM R. 192, 197 (Pon. 2012).

A state employee's speech that concerns genuine public issues is protected speech. Tither v. Marar, 18 FSM R. 303, 306 (Chk. 2012).

A plaintiff's termination or discharge was not unlawful when, even if he had been able to prove that his constitutionally-protected conduct had been a substantial or motivating factor in his termination and the burden had have shifted to the defendants, he still would not prevail because the defendants demonstrated that they would have taken the same action in the absence of the protected conduct because of his probationary status and his unsatisfactory and unprofessional conduct prevented him from being converted from a probationary employee to a permanent employee and he would have been terminated anyway. Tither v. Marar, 18 FSM R. 303, 306 (Chk. 2012).

If the preponderance of evidence shows that a government employee would have been terminated even in the absence of the protected free speech conduct, then the employee's termination should be upheld. Alexander v. Hainrick, 20 FSM R. 377, 383 (App. 2016).

– Fundamental Rights

Waiver of a fundamental right may not be presumed in ambiguous circumstances. FSM v. Edward, 3 FSM R. 224, 235 (Pon. 1987).

In adopting the Declaration of Rights as part of the Constitution of the Federated States of Micronesia and therefore the supreme law of the land, the people of Micronesia subscribed to various principles which place upon the judiciary the obligation, among others, to assure that arrests are based upon probable cause, that determinations of guilt are arrived at fairly, and that punishments for wrongdoing are proportionate to the crime and meet prescribed standards. Tammed v. FSM, 4 FSM R. 266, 281-82 (App. 1990).

When a trial court is asked to give special mitigative effect to customary punishment during its sentencing proceedings, the court must first consider whether these customary activities have become so imbued with official state action so that the actions of the assailants are seen as actions of the state itself; if so the punishments must be tested by the same standards that would be applied if state officials carried out these punishments directly. Tammed v. FSM, 4 FSM R. 266, 283 (App. 1990).

The Compact of Free Association's immunization provisions, which limit a plaintiff's right to sue a physician for malpractice, do not affect a fundamental right, and therefore, the provisions need not be subjected to a strict scrutiny, but instead should be tested under the less stringent rational relationship test. Samuel v. Pryor, 5 FSM R. 91, 104 (Pon. 1991).

A defendant that has failed to raise and preserve the issue has waived his right to object to the admission of evidence, but when a plain error that affects the constitutional rights of the defendant has occurred the court may notice the error. Moses v. FSM, 5 FSM R. 156, 161 (App. 1991).

There is no fundamental interest in unbounded wrongful death recovery requiring strict scrutiny of a state law imposing a recovery cap. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 362 (Kos. 1992).

Since the FSM people's traditions may be protected by statute and if challenged as violative of the fundamental rights in Article IV, protection of Micronesian tradition shall be considered a compelling social purpose warranting such governmental action, Kosrae may pass a law which protects the Kosraean people's traditions. Kosrae v. Waguk, 11 FSM R. 388, 390 (Kos. S. Ct. Tr. 2003).

The right to marry is a fundamental constitutional right. Prisoners retain that right, but the right is subject to substantial restrictions as a result of imprisonment. Prisons may regulate the time and place of the wedding ceremony. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

A fundamental right is some principle of justice so rooted in the traditions and conscience of our people as to be ranked fundamental and examples of which are the freedom of association, the right to vote, the right to travel, rights associated with certain criminal proceedings, and the right to privacy. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 82 (Pon. 2007).

Equal protection forbids only invidious discrimination. Where relevant differences exist between classes, different treatment by the state is permissible. However, any statute that classifies and affords different treatment is subject to the same tests as those under substantive due process: 1) Does the legislature have power to enact the statute that classifies? 2) Does the classification bear a rational relationship to the legislative goal? The classification is presumed to be valid and the burden of proving that the statute is without a rational relationship to the legislative objective is on the challenger of the classification. 3) Where fundamental rights are involved, the classification constitutes a suspect criteria. As such, the burden of proving that the classification bears a close rational relationship to some compelling governmental interests shifts to the government. Fundamental rights are presumed to be absolute until the government proves a compelling governmental interest to curtail or restrain them. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 592 (App. 2008).

The court should be wary of requests that it identify as fundamental any rights beyond those specified in the declaration of rights. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 592 (App. 2008).

Employment is not listed as a fundamental right in the Declaration of Rights although a case has referred to "employment opportunity" as a "liberty interest." But when the interest in contention is

employment pay not the opportunity for employment, being paid a lower rate than another involves a fundamental right if the reason for the lower pay is the employee's sex, race, ancestry, national origin, language, or social status. Being paid at a lower rate for some other reason does not involve a fundamental right. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 592 (App. 2008).

Although an employment opportunity is a liberty interest protected by due process, the right to governmental employment in Pohnpei is not a constitutionally-protected fundamental right, requiring invoking a strict scrutiny test. Berman v. Pohnpei Legislature, 16 FSM R. 492, 497 (Pon. 2009).

Equal protection analysis within the FSM has adopted a two-tiered test. The first tier is a rational basis test. Under this test a law will be upheld if it is rationally related to a state interest. Under the second tier, laws that involve a "suspect" class of persons or touch on a "fundamental interest" are subject to strict scrutiny and are struck down unless justified by a compelling state interest. Berman v. Lambert, 17 FSM R. 442, 450 (App. 2011).

Employment is not listed as a fundamental right in the Declaration of Rights and the court should be wary of requests that it identify as fundamental any rights beyond those specified in the Declaration of Rights. Berman v. Lambert, 17 FSM R. 442, 450 (App. 2011).

The right to work for the Pohnpei state government is not a constitutionally protected right, and, although there is a right to seek employment, there is no fundamental right for employment particularly to public employment. Berman v. Lambert, 17 FSM R. 442, 450 (App. 2011).

– Imprisonment for Debt

The constitutional provision prohibiting imprisonment for debt does not restrict the manner in which 6 F.S.M.C. 1412 is applied, although that statute includes imprisonment as one possible sanction for violating an order in aid of judgment. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 381 (App. 2003).

The constitutional prohibition prohibiting imprisonment for debt is a restriction on the courts against the enforcement of judgments of a certain character, but does not restrict a court's power to enforce its lawful orders by imprisonment for contempt. Even when the violation of the order is for failure to make payments for the recovery of a judgment enforceable by an order in aid of judgment, if the order is one which the court could lawfully make, the imprisonment is not for failure to pay the debt, but failure to obey a lawful court order. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 382 (App. 2003).

The prohibition on imprisonment for debt is to bar imprisonment for honest failure to pay contractual debts. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 382 (App. 2003).

A debtor who knows that he is under a court order to pay an amount certain, has the ability to pay the amount, and still refuses to pay it, acts against good morals and fair dealing. Such a situation amounts to being "tainted by fraud" and is within the exceptions to the prohibition on imprisonment for debt. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 382-83 (App. 2003).

– Indefinite Land Use Agreements

Read in the light of its legislative history, article XIII, section 5 of the Constitution of the Federated States of Micronesia was intended to cover leases, not easements, and therefore an easement that is indefinite in term does not violate this constitutional section. Melander v. Kosrae, 3 FSM R. 324, 330 (Kos. S. Ct. Tr. 1988).

The FSM Constitution terminated all existing indefinite term land use agreements five years after the effective date of the Constitution. After that date, without a new lease agreement the occupier becomes a trespasser on the land. Billimon v. Chuuk, 5 FSM R. 130, 132 (Chk. S. Ct. Tr. 1991).

Easements are not indefinite land use agreements prohibited by the Constitution because "indefinite land use agreement" is a term of art referring to Trust Territory leases for an indefinite term. Nena v. Kosrae, 5 FSM R. 417, 423 (Kos. S. Ct. Tr. 1990).

Land granted for "for so long as it is used for missionary purposes," is not a constitutionally prohibited indefinite land use agreement because the length of the term of the land use will continue, with all certainty, as long as a court determines that the land is still being used for missionary purposes. The term is definite, because its termination can be determined with certainty. Dobich v. Kapriel, 6 FSM R. 199, 202 (Chk. S. Ct. Tr. 1993).

The Constitutional prohibition against indefinite land use agreements does not apply to an agreement where none of the parties are a non-citizen, a corporation not wholly owned by citizens, or a government. Dobich v. Kapriel, 6 FSM R. 199, 202 (Chk. S. Ct. Tr. 1993).

An easement for a road is not an indefinite land use agreement prohibited by the Constitution because it is perpetual. It is not indefinite in that it is effective into perpetuity. Nena v. Kosrae (I), 6 FSM R. 251, 254 (App. 1993).

An easement may be created for a permanent duration, or, as it is sometimes stated, in fee, which will ordinarily continue in operation and be enforceable forever. The grant of a permanent easement is for as definite a term as the grant of a fee simple estate. Both are permanent and not for a definite term. Nena v. Kosrae (II), 6 FSM R. 437, 439 (App. 1994).

A grant of a permanent or perpetual easement is definite in the same sense that a grant of a fee simple estate is definite – it is a permanent transfer of an interest in land. Nena v. Kosrae (III), 6 FSM R. 564, 568 (App. 1994).

Where no indefinite land use agreement existed when the Constitution took effect there was no agreement that had to have been renegotiated by 1984. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 491 (App. 1996).

All indefinite land use agreements are void after July 12, 1984, as being in violation of the FSM Constitution. Hartman v. Chuuk, 9 FSM R. 28, 33 (Chk. S. Ct. App. 1999).

Under the original version of Article XIII, section 5 of the FSM Constitution, FSM governments were barred from obtaining an agreement for the use of land for an indefinite term and that could have made a land purchase agreement unconstitutional because of a reversionary clause returning the land to the original land owner or successor at the end of an indefinite term of airport use, but, when that provision was amended in 1991 so that only land lease agreements for an indefinite term were prohibited, and that constitutional amendment was effective before the subject land purchase agreement was executed, Article XIII, section 5 does not prohibit the Land Purchase Agreement because it is not a lease. Uehara v. Chuuk, 14 FSM R. 221, 226 (Chk. 2006).

When the Trust Territory leased Unupuku in 1956 and had indefinite land use rights under the lease, but did not claim to own Unupuku, but indefinite land use agreements were abolished by Article XIII, section 5 of the FSM Constitution and became void on July 12, 1984, five years after the FSM Constitution's effective date, and when the state executed a fifteen-year lease for Unupuku in 1984 and it did not claim to own Unupuku, in any suit claiming title to Unupuku, the state was not the party to sue since it did not claim title to Unupuku. Unupuku's titleholders were. Ruben v. Hartman, 15 FSM R. 100, 111 (Chk. S. Ct. App. 2007).

– Interpretation

The FSM Supreme Court must remain sensitive to the unique circumstances of the Federated States of Micronesia and may not slavishly follow interpretations of similar language by United States, Trust Territory, or other tribunals in different contexts. Lonno v. Trust Territory (I), 1 FSM R. 53, 69 n.11 (Kos.

1982).

Because the Constitution of the Federated States of Micronesia has drawn upon numerous concepts established in the Constitution of the United States, interpretations of the United States Constitution, as of 1978 when the Constitution was ratified by plebiscite, are pertinent to determining the meaning of particular provisions in the FSM Constitution. To the extent that the FSM clearly patterned upon the United States Constitution, the reasonable expectation of the framers would be that the words of the FSM Constitution would have substantially the effect those same words had been given in the United States Constitution as of the times that the convention was acting, or when the ratifying vote occurred. Lonno v. Trust Territory (I), 1 FSM R. 53, 69-70 (Kos. 1982).

Decisions of the Trust Territory courts may be a useful source of guidance in determining the meaning of particular provisions within the Constitution. The framers were working against the background of legal concepts recognized and applied by the Trust Territory High Court and may have been guided by those interpretations in selecting or rejecting certain provisions. Lonno v. Trust Territory (I), 1 FSM R. 53, 71 (Kos. 1982).

The FSM Supreme Court may look to the law of other nations, especially other nations of the Pacific community, to determine whether approaches employed there may prove useful in determining the meaning of particular provisions within the Constitution. Lonno v. Trust Territory (I), 1 FSM R. 53, 71 (Kos. 1982).

Analysis of the Constitution must start with the words of the constitutional provision. If these words are clear and permit only one possible result, the court should go no further. FSM v. Tipen, 1 FSM R. 79, 82 (Pon. 1982).

When the words of a constitutional provision are not conclusive as to its meaning, the next step in determining the intent of the framers is to review the Journal of the Micronesian Constitutional Convention to locate any discussion in the convention about the provision. FSM v. Tipen, 1 FSM R. 79, 82 (Pon. 1982).

If doubt as to the meaning of a constitutional provision still remains after careful consideration of the language and constitutional history, the court should proceed to other sources for assistance. These include interpretations of similar language in the United States Constitution, decisions of the Trust Territory High Court, generally held notions of basic justice within the international community, and consideration of the law of other nations, especially others within the Pacific community. FSM v. Tipen, 1 FSM R. 79, 83 (Pon. 1982).

In interpreting the Declaration of Rights, courts should emphasize and carefully consider United States Supreme Court interpretations of the United States Constitution. FSM v. Tipen, 1 FSM R. 79, 85 (Pon. 1982).

The provisions in the Constitution's Declaration of Rights are to a substantial degree patterned upon comparable provisions in the United States Constitution; the FSM Supreme Court should consider carefully decisions of the United States courts interpreting the United States counterparts. Tosie v. Tosie, 1 FSM R. 149, 154 (Kos. 1982).

As the provisions set forth in the Constitution's Declaration of Rights are based on counterparts in the United States Constitution, it is appropriate to review decisions of United States courts, especially those in effect when the Constitution was approved and ratified, to determine the content of the words employed therein. In re Iriarte (I), 1 FSM R. 239, 249 (Pon. 1983).

The framers of the Federated States of Micronesia Constitution drew upon the United States Constitution and it may be presumed that phrases so borrowed were intended to have the same meaning given to them by the United States Supreme Court. Jonas v. Trial Division, 1 FSM R. 322, 327 n.1 (App.

1983).

An analysis of constitutional grants of power must start with the constitutional language itself. Suldan v. FSM (II), 1 FSM R. 339, 342 (Pon. 1983).

The similarities of the FSM and the United States Constitutions mandate that the FSM Supreme Court, in attempting to determine its role under the FSM Constitution, will give serious consideration to United States constitutional analysis at the time of the Micronesian Constitutional Convention. Suldan v. FSM (II), 1 FSM R. 339, 345 (Pon. 1983).

If the words of the Constitution are ambiguous or doubtful, it is a court's duty to seek out the intention of the framers. Suldan v. FSM (II), 1 FSM R. 339, 348 (Pon. 1983).

By using the United States Constitution as a blueprint, the framers created a presumption that they were adopting such a fundamental American constitutional principle as judicial review, found to be inherent in the language and very idea of the United States Constitution. Suldan v. FSM (II), 1 FSM R. 339, 348 (Pon. 1983).

A legitimate method for determining the meaning of a constitution is to trace the language to its source. When the language in the FSM Constitution and the United States Constitution is similar, it is appropriate to look to interpretations by United States courts, especially those in existence at the time of the Micronesian Constitutional Convention, as a guide to the intended meaning of the words employed in the Constitution of the FSM. Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 394 (Pon. 1984).

The FSM Supreme Court may look to decisions under the United States Constitution for guidance in determining the scope of jurisdiction since the jurisdictional language of the Federated States of Micronesia Constitution is similar to that of the United States. Etpison v. Perman, 1 FSM R. 405, 414 (Pon. 1984).

United States constitutional law at the time of the Micronesian Constitutional Convention furnishes guidance as to the intended scope of the FSM Constitution's double jeopardy clause. Laion v. FSM, 1 FSM R. 503, 523 (App. 1984).

Where the framers of the FSM Constitution have borrowed phrases from the Constitution of the United States for guidance, it may be presumed that those phrases were intended to have the same meaning given to them by the Supreme Court of the United States. Tammow v. FSM, 2 FSM R. 53, 56-57 (App. 1985).

Interpretative efforts for a clause in the FSM Constitution which has no counterpart in the United States Constitution must begin with recognition that such a clause presumably reflects a conscious effort by the framers to select a road other than that paved by the United States Constitution. The original focus must be on the language of the clause. If the language is inconclusive the tentative conclusion may be tested against the journals of the Micronesian Constitutional Convention and the historical background against which the clause was adopted. Tammow v. FSM, 2 FSM R. 53, 57 (App. 1985).

Interpretations of the FSM Constitution which strip constitutional clauses of substance and effect run against the norms of constitutional interpretation and are greatly disfavored. Tammow v. FSM, 2 FSM R. 53, 57 (App. 1985).

Departure from the form of the United States Constitution reveals an intention by the framers of the FSM Constitution to depart from the substance as well, so far as major crimes are concerned. Tammow v. FSM, 2 FSM R. 53, 58 (App. 1985).

General principles gleaned from an entire constitution and constitutional history may not be employed to defeat the clear meaning of an individual constitutional clause. Tammow v. FSM, 2 FSM R. 53, 59 (App. 1985).

Interpretations which strip clauses of substance and effect run against the norms of interpretation and

are greatly disfavored. FSM v. George, 2 FSM R. 88, 94 (Kos. 1985).

Though the words used in article XI, section 6 of the FSM Constitution, including the case or dispute requirements, are based on the similar case and controversy provisions set out in article III of the United States Constitution, courts within the FSM are not to consider themselves bound by the details and minute points of decisions of United States courts attempting to ferret out the precise meaning of article III. Aisek v. Foreign Inv. Bd., 2 FSM R. 95, 98 (Pon. 1985).

Many provisions of this Constitution are derived from the United States Constitution and the framers intended that interpretation of the words adopted would be influenced by United States decisions in existence when this Constitution was adopted in October 1975 and ratified on July 12, 1978. Yet the framers also surely intended that courts here would not place undue importance on decisions of United States courts but would employ the words and concepts used in the United States Constitution to develop a jurisprudence appropriate and applicable to the circumstances of the Federated States of Micronesia. Aisek v. Foreign Inv. Bd., 2 FSM R. 95, 98 (Pon. 1985).

Constitutional interpretation must start and end with the words of the provision when the words themselves plainly and unmistakably provide the answer to the issue posed. The court may not look to constitutional history nor to United States interpretations of similar constitutional language in this circumstance. Ponape Federation of Coop. Ass'ns v. FSM, 2 FSM R. 124, 126-27 (Pon. 1985).

Courts may look to the Journals of the Micronesian Constitutional Convention for assistance in determining the meaning of constitutional language that does not provide an unmistakable answer. The Journals provide no conclusion as to whether promises of leniency by the police should be regarded as having compelled a defendant to give statements and other evidence but shows that the article IV, section 7 protection against self-incrimination was based upon the fifth amendment to the United States Constitution. Therefore courts within the Federated States of Micronesia may look to United States decisions to assist in determining the meaning of article IV, section 7. FSM v. Jonathan, 2 FSM R. 189, 193-94 (Kos. 1986).

Differences in the language employed in parallel provisions of the FSM and United States Constitutions presumably reflect a conscious effort by the framers of the FSM Constitution to select a road other than that paved by the United States Constitution. FSM Dev. Bank v. Estate of Nanpei, 2 FSM R. 217, 219 n.1 (Pon. 1986).

Because the Declaration of Rights is patterned after provisions of the United States Constitution, and United States cases were relied on to guide the constitutional convention, United States authority may be consulted to understand the meaning. Afituk v. FSM, 2 FSM R. 260, 263 (Truk 1986).

In determining whether constitutional language is amenable to only one possible interpretation, courts should consider the words in the light of history and the accepted meaning of those words prior to and at the time the Constitution was written. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM R. 256, 258 (Pon. 1987).

Exact scope of admiralty jurisdiction is not defined in the FSM Constitution or legislative history, but United States Constitution has a similar provision, so it is reasonable to expect that words in both Constitutions have similar meaning and effect. Weilbacher v. Kosrae, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

In interpreting the Constitution, each provision should be interpreted against the background of all other provisions in the Constitution, and an effort should be made to reconcile all provisions so that none is deprived of meaning. Bank of Guam v. Semes, 3 FSM R. 370, 378 (Pon. 1988).

Courts should interpret the national Constitution in such a manner that each provision is given effect. Carlos v. FSM, 4 FSM R. 17, 29 (App. 1989).

Because the jurisdiction provisions of the FSM Constitution are substantially similar to those of the United States but the words themselves provide no definite interpretation and no party has pointed either to constitutional history or to other matters, such as custom or tradition, calling for a particular interpretation or for departure from the accepted meaning in the United States, it is appropriate to look to United States precedents for possible guidance in determining what the framers intended in adopting the provisions that now appear in the Constitution. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 41 (Pon. 1989).

Where the language of the FSM Constitution has been borrowed from the United States Constitution, the court may look to leading United States cases for guidance in interpreting that language, especially where the meaning is not self-evident from the words themselves; in particular, United States constitutional law at the time of adoption of the FSM Constitution can have special relevance in determining the meaning of similar constitutional language here. Paul v. Celestine, 4 FSM R. 205, 208 (App. 1990).

Analysis of Constitutional issues must begin with the words of the Constitution. Constitutional Convention 1990 v. President, 4 FSM R. 320, 325 (App. 1990).

Consideration of the general plan of the Constitution and the institutions created thereunder may be helpful in determining the proper interpretation of specific language within the FSM Constitution. Constitutional Convention 1990 v. President, 4 FSM R. 320, 326 (App. 1990).

When the meaning of the words in the FSM Constitution are not self-evident and it is apparent the words have been drawn from or are patterned upon language in the Constitution of the United States or of some other jurisdiction, the Supreme Court of the FSM may look to decisions of courts in that other jurisdiction for assistance in discerning the appropriate meaning of the words in the FSM Constitution. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 371 (App. 1990).

The decisions of United States courts are not binding upon the FSM Supreme Court as to the meaning of the FSM Constitution even when the words of the FSM Constitution plainly are based upon comparable language in the United States Constitution, and the FSM Supreme Court will not accept a United States interpretation which 1) was shaped by historical factors not relevant to the FSM; 2) was widely and persuasively criticized by commentators in the United States; and 3) was not specifically recognized or even alluded to by the framers of the FSM Constitution. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 371 (App. 1990).

In interpreting the provision against cruel and unusual punishment in the FSM Constitution, the court should consider the values and realities of Micronesia, but against a background of the law concerning cruel and unusual punishment and international standards concerning human rights. Plais v. Panuelo, 5 FSM R. 179, 196-97 (Pon. 1991).

Constitutional analysis always starts with the words of the Constitution. Where the wording is inconclusive and where the wording is unique to the FSM Constitution, then the court should look to the journals of the Constitutional Convention and the historical background at the time the clause was adopted for guidance. But when there is a conflict with the language of the Constitution, then the actual wording of the Constitution prevails. Nena v. Kosrae, 5 FSM R. 417, 422 (Kos. S. Ct. Tr. 1990).

The term "concurrent" in article XI, section 6(c) of the FSM Constitution has the same meaning as in section 6(b); i.e., that jurisdiction is concurrent as between the FSM Supreme Court and any other national courts that may be established by statute. It would be illogical and contrary to norms of constitutional interpretation to assume a different meaning for "concurrent" in section 6(c) than in section 6(b), since it is quite clear that the two sections are to be read together. Faw v. FSM, 6 FSM R. 33, 35 (Yap 1993).

Where the constitutional language is inconclusive or does not provide an unmistakable answer courts may look to the journal of the Constitutional Convention for assistance in determining the meaning of constitutional words. Robert v. Mori, 6 FSM R. 394, 397 (App. 1994).

Some weight may be given as well to the early Congresses' understanding of constitutional provisions given the continuity of elected representation in the early Congresses. Robert v. Mori, 6 FSM R. 394, 399 (App. 1994).

A litigant, in order to make arguments based on the legislative history of the constitutional provision, must first show the ambiguity in the constitutional provision. Only if the constitutional language is unclear or ambiguous can a court proceed to consult the constitutional convention journals and the historical background. Nena v. Kosrae (III), 6 FSM R. 564, 568 (App. 1994).

Where distinctions exist between the Constitution of the Federated States of Micronesia and the United States Constitution or other foreign authorities, court must not hesitate to depart from foreign precedent and develop its own body of law. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 600 (Pon. 1994).

If a matter may properly be resolved on statutory grounds without reaching potential constitutional issues, then the court should do so. FSM v. George, 6 FSM R. 626, 628 (Kos. 1994).

Analysis of constitutional issues must begin with the words of the Constitution, and where the framers of the FSM Constitution drew upon the Constitution of the United States it may be presumed that phrases so borrowed were intended to have the same meaning given to them by the Supreme Court of the United States. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 45 (App. 1995).

A committee report that refers to language that is not in the Constitution and that accompanied a committee proposal that was killed by the Constitutional Convention cannot be relied upon to discover the real intent of the framers. At best it can only be used to show what was not their intent. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 47 (App. 1995).

Where the constitutional language itself, following FSM precedents on constitutional interpretation, only requires minimal diversity for the national courts to have jurisdiction, and the constitutional journals do not reveal any intent to depart from the plain meaning of the constitutional language, there are no sound reasons why twelve years of FSM jurisprudence requiring only minimal diversity should be overturned. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 48 (App. 1995).

The primary source available to courts when engaging in constitutional interpretation are the words of the constitution itself, and, if those are capable of more than one meaning, then the legislative history. Assuming that these two sources, taken together, are dispositive of the issue in question, a court may not look to any other source. Tafunsak v. Kosrae, 7 FSM R. 344, 347 (App. 1995).

Courts are to interpret constitutions so as to give effect to each provision, because interpretations which strip constitutional clauses of substance and effect run against the norms of constitutional interpretation and are greatly disfavored. Tafunsak v. Kosrae, 7 FSM R. 344, 347 & n.4 (App. 1995).

FSM courts may look for guidance to decisions of United States courts construing words of the United States Constitution which are similar to those in the Constitution of the Federated States of Micronesia, but FSM courts need not follow them in areas where United States constitutional law has been particularly unsettled or where the decision relies on specific and unique historical factors that do not exist here. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 459-60 (App. 1996).

When the language of the Constitution is not conclusive as to the issue presented, it is proper to refer to the constitutional convention journal for the history of the provision. If the journal does not address the point, a court may next consult cases from the United States if the phrase in the U.S. Constitution suggests that the FSM borrowed the term, and the court can infer that the framers intended that the meaning here be given the same meaning as it was given in U.S. courts. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 463-64 (App. 1996).

The FSM Constitution due process provision is derived from the United States Constitution and thus United States cases may be consulted for guidance in interpretation, emphasizing cases in effect at the times of the framing (1975) and the ratification (1978) of the FSM Constitution. FSM v. Skico, Ltd. (II), 7 FSM R. 555, 556-57 (Chk. 1996).

A state court is competent to rule on FSM Constitution, but should avoid unnecessary adjudication of the FSM Constitution. Damarlane v. Pohnpei Legislature, 8 FSM R. 23, 28 (App. 1997).

When analyzing provisions of the FSM Constitution, a court must look first to the actual words of the Constitution. Where the words are clear and permit only one possible result, the court should go no further. Only where the words of the Constitution are not clear is it necessary to consult other sources. Chuuk v. Secretary of Finance, 8 FSM R. 353, 362-63 (Pon. 1998).

A court should consider all provisions of the Constitution, because different sections may relate to the same subject matter, giving the specific provision questioned added meaning. Chuuk v. Secretary of Finance, 8 FSM R. 353, 363, 368, 386 (Pon. 1998).

If a court finds that the words of the Constitution are not clear or do not permit only one possible result, the court should next consult the Journal of the Constitutional Convention to ascertain the intent of the framers in drafting that language. If these two sources are dispositive, the court may not look to any other source. If the Constitution's language considered together with the legislative history is not dispositive, the court should look to interpretation of comparable language in other constitutions and to custom and tradition for guidance. Given the continuity of elected representation in the early FSM Congresses, some weight may be given as well to early Congresses' understanding of constitutional provisions. Chuuk v. Secretary of Finance, 8 FSM R. 353, 363 (Pon. 1998).

The framers intended that the constitutional language delegating governmental functions to the FSM national government be strictly and narrowly construed and not used to excessively and unduly expand the power of the central government, but they did not intend that the general grant of power be ignored, with the effect of denying to the central government the power necessary to deal with problems which are national in scope. Chuuk v. Secretary of Finance, 8 FSM R. 353, 369 (Pon. 1998).

The Constitution must be interpreted so as to give effect to each provision, because interpretations which strip constitutional clauses of substance and effect run against the norms of constitutional interpretation, and are greatly disfavored. Chuuk v. Secretary of Finance, 8 FSM R. 353, 371 (Pon. 1998).

Because of the continuity of representation in the early Congresses of the FSM, courts can give some weight to the early Congresses' understanding of Constitutional provisions. Chuuk v. Secretary of Finance, 8 FSM R. 353, 374 (Pon. 1998).

The FSM Constitution contains a provision by which the net revenues from offshore mineral resources are to be divided equally between the states and the national government, FSM Const. art. IX, § 6. There would be no need to specify the division of income from such resources if such revenues were taxes to be automatically divided under article IX, section 5. Chuuk v. Secretary of Finance, 8 FSM R. 353, 386 (Pon. 1998).

Counsel's conversations with persons involved in drafting the Constitution are hearsay, especially when there is no competent evidence in the record, or in the Constitutional Convention Journal, to support counsel's assertion. Chuuk v. Secretary of Finance, 8 FSM R. 353, 386 n.27 (Pon. 1998).

Because the Declaration of Rights is to a substantial degree patterned after provisions of the U.S. Constitution, and U.S. cases were relied on to guide the constitutional convention, U.S. authority may be consulted to understand its meaning. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

When the court has analyzed the present meaning of the Constitution by recognized judicial standards

of constitutional interpretation as long as the present language remains the court's conclusions carry full force and effect. Chuuk v. Secretary of Finance, 9 FSM R. 73, 75 (Pon. 1999).

The FSM Constitution's Declaration of Rights is based on the United States Constitution's Bill of Rights, and a court may look to United States precedent in this regard. FSM v. Moses, 9 FSM R. 139, 146 (Pon. 1999).

Since the Due Process Clause in the Declaration of Rights of the FSM Constitution is based on the Due Process Clause of the U.S. Constitution's Fourteenth Amendment, the FSM Supreme Court may properly consider U.S. cases in construing due process under the FSM Constitution. Weno v. Stinnett, 9 FSM R. 200, 213 (App. 1999).

When a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, United States authority may be consulted to understand its meaning. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 412 n.2 (App. 2000).

What is important is not how the states imagine it might have been in Trust Territory times, but what presently exists under the provisions of the Constitution, which the people of all four states ratified. Chuuk v. Secretary of Finance, 9 FSM R. 424, 431 (App. 2000).

Trust Territory statutes that mostly never took effect cannot be relied upon to interpret provisions of the FSM Constitution. Chuuk v. Secretary of Finance, 9 FSM R. 424, 432-33 (App. 2000).

A normal English language reading of the phrase "the revenues" in article IX, section 5's second sentence necessarily refers to those revenues mentioned in section 5's first sentence – national taxes. Chuuk v. Secretary of Finance, 9 FSM R. 424, 434 (App. 2000).

The Constitution delegates to the national government the power to impose only two types of taxes – that based on imports and that on income. Money collected through these forms of taxation are the revenues of which half must be paid into the treasury of the state where collected. Chuuk v. Secretary of Finance, 9 FSM R. 424, 434 (App. 2000).

A court can neither read into the Constitution nor rewrite the Constitution to contain a provision that is not there. Chuuk v. Secretary of Finance, 9 FSM R. 424, 436 (App. 2000).

In interpreting the Constitution, a court looks first to the language and words of the Constitution. When that language is plain and unambiguous, a court need not look any further. Chuuk v. Secretary of Finance, 9 FSM R. 424, 436 (App. 2000).

While our Constitution's wording is otherwise similar to that in article III, section 2, clause 1 of the U.S. Constitution, the FSM national courts have jurisdiction over "cases" and "disputes" while the U.S. federal courts have jurisdiction over "cases" and "controversies," but no significance can be attached to the difference between controversies and disputes. The FSM Constitution's case or dispute clause is thus similar to the U.S. Constitution's case or controversy clause. FSM v. Louis, 9 FSM R. 474, 482 (App. 2000).

In the usual case, a court will not decide a question on a constitutional ground if it may be resolved on a statutory or other basis. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 579 (App. 2000).

When the tax exemption issue is implicitly a constitutional one because the statute, to the extent viewed as seeking to impose a state tax upon the national government, goes to the constitutional relationship between the state and national governments and when as between the exemption issue and the interstate commerce restriction issue, which is explicitly constitutional in character, the determination of one makes the other moot, and when if only the tax exemption issue were addressed it could resolve the

dispute between the parties but would leave in place an injunction precluding all collection of the tax as unconstitutional, the court must decide the constitutional tax and commerce question in order to accord the appellant a meaningful remedy. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 579 (App. 2000).

When analyzing provisions of the FSM Constitution, a court must look first to the actual words of the Constitution. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 62 (Pon. 2001).

When a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, United States authority may be consulted to understand its meaning. FSM v. Inek, 10 FSM R. 263, 265 (Chk. 2001).

Because the FSM Declaration of Rights was modeled after the U.S. Bill of Rights, the court may look to U.S. sources for guidance in interpreting similar Declaration of Rights provisions, such as the right to confrontation. FSM v. Wainit, 10 FSM R. 618, 621 n.1 (Chk. 2002).

In resolving a constitutional question, first the court must look at plain meaning of words of the Constitution. If a particular provision is not clear, the court should attempt to ascertain the drafters' intent by looking at Constitutional Convention and the reasons expressed for including a particular provision in the Constitution. Finally, if there are constitutional provisions similar to provisions in other countries' constitutions, the court may look to other countries' case law for guidance, but is not bound. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 630 (Pon. 2002).

Where the framers of the FSM Constitution borrowed phrases from the United States Constitution for guidance, it may be presumed that those phrases were intended to have the same meaning given to them by the United States Supreme Court. Where the FSM Constitution's language has been borrowed from the United States Constitution, the court may look to leading United States cases for guidance in interpreting that language, especially where the meaning is not self-evident from the words themselves. Kosrae v. Sigrah, 11 FSM R. 26, 30 (Kos. S. Ct. Tr. 2002).

The court must begin with the presumption that acts of Congress are constitutional. FSM v. Anson, 11 FSM R. 69, 74 (Pon. 2002).

In interpreting a constitutional provision, a court must initially analyze the constitution's actual words. If those words are clear and permit only one possible result, then the court should go no further. But if a constitutional provision is not clear and does not permit only one possible result, a court should next consult the constitutional convention journal to ascertain the framers' intent in drafting the language. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 380-81 (App. 2003).

Since the words "involuntary servitude" are subject to various definitions, the constitutional provision is not clear and does not permit only one possible result. A court may consult the constitutional convention journal to ascertain the framers' intent in drafting this language. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 385 (App. 2003).

When the language in the FSM Constitution and the United States Constitution is similar, it is appropriate to look to interpretations by United States courts, especially those in existence at the time of the Micronesian Constitutional Convention, as a guide to the intended meaning of the words employed in the Constitution. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 385 (App. 2003).

The search and seizure provision of the FSM Constitution's Declaration of Rights is similar to and drawn from a provision in the U.S. Constitution's Bill of Rights, and when a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, U.S. authority may be consulted to understand its meaning. FSM v. Wainit, 11 FSM R. 424, 434 (Chk. 2003).

The similarities of the FSM and the U.S. Constitutions mandate that the FSM Supreme Court will give

particular consideration to U.S. constitutional analysis at the time of the Micronesian Constitutional Convention and the Constitution's adoption. FSM v. Wainit, 11 FSM R. 424, 434 (Chk. 2003).

Two old (1937 and 1924) cases that do not reflect U.S. constitutional analysis and practice at the time the FSM Constitution was drafted and adopted in the last half of the 1970's cannot be a basis for an FSM constitutional analysis of provisions adopted from and similar to a provision in the U.S. Constitution's Bill of Rights when those cases differ significantly from the constitutional analysis current in the 1970's. FSM v. Wainit, 11 FSM R. 424, 436 (Chk. 2003).

Statutes are presumed constitutional until challenged, and the burden is on the challenger to clearly demonstrate that a statute is unconstitutional. Parkinson v. Island Dev. Co., 11 FSM R. 451, 453 (Yap 2003).

Unnecessary constitutional adjudication is to be avoided. Parkinson v. Island Dev. Co., 11 FSM R. 451, 453 (Yap 2003).

When analyzing provisions of the FSM Constitution, a court must look first to the Constitution's actual words. When the words are clear and permit only one possible result, the court should go no further. After reviewing the Constitution's words, if the court finds that the words are not clear or do not permit only one possible result, the court should next consult is the Journal of the Constitutional Convention to ascertain the framers' intent in drafting that language. Yang v. Western Sales Trading Co., 11 FSM R. 607, 613 (Pon. 2003).

When there are no decisions by FSM courts which discuss which standard applies to conducting an investigatory stop of a vehicle, the court may look to the law of the United States for guidance. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

In the absence of Micronesian precedent, the FSM Supreme Court can and should consider the reasoning from the courts of other common law jurisdictions. When the FSM Constitution's language has been borrowed from the U.S. Constitution, the court may look to leading U.S. cases for guidance in interpreting that language, especially where the meaning is not self-evident from the words themselves; in particular, U.S. constitutional law at the time of adoption of the FSM Constitution can have special relevance in determining the meaning of similar constitutional language here. But in evaluating the reasoning of other courts, the court emphasizes that it must always independently consider the suitability of that reasoning for the FSM. Sigrah v. Kosrae, 12 FSM R. 320, 325 (App. 2004).

In construing a provision of the Declaration of Rights, our courts should carefully evaluate the way that the United States Supreme Court has interpreted the United States Constitution because a phrase appearing in our Constitution that was borrowed from the United States Constitution may be presumed to have a similar interpretive meaning. Sigrah v. Kosrae, 12 FSM R. 320, 327-28 (App. 2004).

It is appropriate to look to U.S. constitutional law and its courts' interpretations, especially those interpretations existing at the time of the Micronesian Constitutional Convention, as a guide to the intended meaning and scope of the FSM Constitution's words (such as the speedy trial right) since the provisions in the FSM Constitution's Declaration of Rights are traceable to the U.S. Constitution's Bill of Rights. FSM v. Wainit, 12 FSM R. 405, 409 (Chk. 2004).

When an FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning, and where the FSM Constitution's framers borrowed phrases from the U.S. Constitution, it may be presumed that those phrases were intended to have the same meaning given them by the U.S. Supreme Court. FSM v. Wainit, 12 FSM R. 405, 409 (Chk. 2004).

The nation's laws are presumed to be constitutional. A fundamental principle of statutory interpretation is that where a statute can be read in two ways, one raising constitutional issues and the other interpreting the language as affecting matters clearly within Congress's constitutional reach, the latter

interpretation should prevail so that the constitutional issue is avoided. Jano v. FSM, 12 FSM R. 569, 572-73 (App. 2004).

Courts should, where possible, avoid selecting interpretations of a statute which may bring into doubt that statute's constitutionality. Jano v. FSM, 12 FSM R. 569, 573 (App. 2004).

The final test in determining whether a statute is repealed by implication by a new constitutional provision is: Has the legislature, under the new constitutional provision, the present right to enact statutes substantially like the statutes in question? Jano v. FSM, 12 FSM R. 569, 574 (App. 2004).

In the important process of construing the nation's formative document, we must first pay heed to the language of the Constitution itself. Urusemal v. Capelle, 12 FSM R. 577, 586 (App. 2004).

When the Constitution's words themselves are not determinative of a question, the court may look to the Micronesian Constitutional Convention journal to locate any discussion about the provision in question. Urusemal v. Capelle, 12 FSM R. 577, 586 (App. 2004).

It is plain from the framers' discussions at the time of the Constitution's creation that in order to insure the judiciary's independence, there should be only one removal process for justices, and that that process should be the one specified in the Constitution. Urusemal v. Capelle, 12 FSM R. 577, 586 (App. 2004).

The court cannot amend the Constitution by reading into it language that does not appear in it. To do so would be to amend the Constitution by judicial fiat, a course of action not only plainly inimical to Article XIV, Section 1 of the Constitution, but one upon which the court is constitutionally forbidden from embarking. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 149-50 (App. 2005).

When our nation's highest court, the FSM Supreme Court appellate division, interprets a constitutional provision in a case before it, that interpretation is to be given full effect in all cases still open on direct review, and as to all events, regardless of when they occurred. Once it announces a new rule of law, the integrity of judicial review requires application of the new rule to all similar cases pending on review. Kosrae v. Sikain, 13 FSM R. 174, 177 (Kos. S. Ct. Tr. 2005).

When the funds garnished came from tax revenues already credited to the State of Chuuk and held by the FSM pending disbursement, and these are funds credited to the states in accordance with Title 54, Section 805, and are automatically paid into the state government treasury by statute and are simply held by the FSM national government, the state's argument that this money was not withdrawn from the national treasury "by law," is therefore incorrect. Chuuk v. Davis, 13 FSM R. 178, 184-85 (App. 2005).

The similarities of the FSM and the U.S. Constitutions mandate that the court give particular consideration to U.S. constitutional analysis at the time of the Micronesian Constitutional Convention and of the Constitution's adoption. FSM v. Wainit, 13 FSM R. 433, 444-45 (Chk. 2005).

When there are no reported decisions by FSM courts which discuss whether a person, who has been stopped for suspected driving under the influence, must be provided his or her Miranda rights prior to the administration of field sobriety tests, the court may look to United States law for guidance. Kosrae v. Phillip, 13 FSM R. 449, 452 (Kos. S. Ct. Tr. 2005).

Once a plaintiff's claim fails on its statutory grounds then the court should have considered either the plaintiff's common law ground or its constitutional grounds. On the general principle that constitutional adjudication should be avoided unless necessary, the trial court should first consider any non-constitutional grounds that might resolve the issue. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 25-26 (App. 2006).

The protection in article IV, section 5 of the FSM Constitution against unreasonable search and seizure is based upon and drawn from the comparable provision in the U.S. Constitution's fourth amendment. The addition of the phrase "invasion of privacy" to the FSM version was not intended to expand the search and

seizure protections in the FSM any further. It was intended to more adequately express its meaning. FSM v. Kansou, 14 FSM R. 136, 138 (Chk. 2006).

When a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, U.S. authority may be consulted to understand its meaning. FSM v. Kansou, 14 FSM R. 136, 138 (Chk. 2006).

When an FSM or Kosrae constitutional protection is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning. Neth v. Kosrae, 14 FSM R. 228, 233 (App. 2006).

U.S. authority may be consulted to understand the meaning of a Declaration of Rights provision patterned after a U.S. Bill of Rights provision since the provisions in the Constitution's Declaration of Rights are traceable to the U.S. Constitution's Bill of Rights. Where the Constitution's framers drew upon the U.S. Constitution, it may be presumed that phrases so borrowed were intended to have the same meaning given to them by the U.S. Supreme Court. FSM v. Fritz, 14 FSM R. 548, 552 n.1 (Chk. 2007).

When the language in an FSM rule or law is nearly identical to a United States counterpart, the court may look to the courts of the United States for guidance in interpreting the rule or law and may look to court decisions from the United States to assist in the interpretation of the double jeopardy clause set forth in the Declaration of Rights in the FSM Constitution, as that clause was drawn from the Bill of Rights of the United States Constitution. FSM v. Zhang Xiaohui, 14 FSM R. 602, 615 (Pon. 2007).

When no reported FSM case has dealt with alleged discrimination in an academic setting, the court may consider cases from other jurisdictions in the common law tradition. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 81 (Pon. 2007).

When the appellate court has not had previous occasion to consider the constitutionality of a DUI statute, the court may consider cases from other jurisdictions in the common law tradition. Phillip v. Kosrae, 15 FSM R. 116, 119 (App. 2007).

In determining the double jeopardy clause's scope and meaning the court first looks to the language of the Constitution itself. FSM v. Louis, 15 FSM R. 348, 354 (Pon. 2007).

Where the FSM Constitution's language has been borrowed from the United States Constitution, the court may look to leading United States cases for guidance in interpreting that language, especially where the meaning is not self-evident from the words themselves. The Double Jeopardy Clause, like most provisions of the Declaration of Rights, was drawn from the United States Constitution's Bill of Rights. Thus, United States constitutional law at the time of the Micronesian Constitutional Convention furnishes guidance as to the intended scope of the FSM Constitution's Double Jeopardy Clause. FSM v. Louis, 15 FSM R. 348, 354 (Pon. 2007).

Although the court must first look to FSM sources of law to establish legal requirements in criminal cases rather than begin with a review of other courts' decisions, when the language in the FSM Constitution and the U.S. Constitution is similar or identical, it is appropriate to look to United States constitutional law and its courts's interpretations, especially those interpretations existing at the time of the Micronesian Constitutional Convention, as a guide to the intended scope of the FSM Constitution's words. FSM v. Sam, 15 FSM R. 491, 493 n.1 (Chk. 2008).

The FSM Constitution is based in great part on the U.S. Constitution, but there are significant differences between the two, and where such differences exist, they presumably represent a conscious effort by the framers to select a road other than that paved by the United States Constitution. In re Neron, 16 FSM R. 472, 474 (Pon. 2009).

The FSM Constitution's separation-of-powers structure is derived from that in the U.S. Constitution. The similarities of the FSM and the U.S. Constitutions mandate that the FSM Supreme Court will give

particular consideration to U.S. constitutional analysis, especially at the time of the Micronesian Constitutional Convention and of the Constitution's adoption. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 n.1 (Pon. 2009).

When an FSM or Kosrae constitutional protection, such as the FSM or Kosrae double jeopardy protection, is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning. Kosrae v. Benjamin, 17 FSM R. 1, 4 n.2 (App. 2010).

Although it may look to U.S. constitutional decisions for guidance, the FSM Supreme Court may not simply accept the U.S. court interpretations, but must instead independently consider whether U.S. court rulings are appropriate for application within the FSM. FSM v. Phillip, 17 FSM R. 413, 423 (Pon. 2011).

Because the FSM Supreme Court has previously looked to the principles underlying the U.S. Constitution's Fourth Amendment when analyzing the requirements necessary to establish consent sufficient to justify a warrantless search in the FSM, the court may engage in that analysis again. FSM v. Phillip, 17 FSM R. 413, 423 (Pon. 2011).

Although the court must first look to FSM sources of law to establish legal requirements in criminal cases rather than start with a review of other courts' cases, when an FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning since it may be presumed that the borrowed phrases were intended to have the same meaning given to them by the U.S. Supreme Court. FSM v. Kool, 18 FSM R. 291, 294 n.2 (Chk. 2012).

In resolving a Constitutional question, the Chuuk State Supreme Court must first look at plain meaning of the Constitution's words. If the Constitution is not clear as to a particular provision, the court should attempt to ascertain the drafters' intent by looking at Constitutional Convention and the reasons expressed for including a particular provision in the Constitution. Finally, if there are provisions in the FSM Constitution similar to provisions in other countries' constitutions, the court may look to case law of other countries for guidance, but is not bound. Kama v. Chuuk, 18 FSM R. 326, 331 (Chk. S. Ct. Tr. 2012).

When it is an issue of first impression, U.S. court decisions may be used for guidance. Kama v. Chuuk, 18 FSM R. 326, 331 (Chk. S. Ct. Tr. 2012).

The FSM Supreme Court's subject-matter jurisdiction cannot be determined by reference to the Constitution's detailed command to the Public Auditor about the breadth and depth of the tasks that the Public Auditor must undertake. The exclusive jurisdiction that the FSM Supreme Court exercises when the national government is a party cannot be avoided, and was never meant to be avoided, by the mere device of naming a branch, or a department, or an agency, or a statutory authority of the national government as a party instead of naming the national government itself as a party. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 614 (Pon. 2013).

While the court must first look to FSM sources of law to rather than begin with a review of other courts' decisions, when a FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision and when there is no FSM case law on point, United States authority may be consulted to understand its meaning. Kon v. Chuuk, 19 FSM R. 463, 466 n.1 (Chk. 2014).

A constitutional provision that requires things to be done without prescribing the result that will follow if those things are not done is directory in character. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 25 (App. 2015).

Article XII, Section 3(b)'s specific language merely signifies those entities which come within the penumbra of duties/responsibilities incumbent upon the Office of the Public Auditor. By the use of the phrase "every branch . . . of the national government," it is readily apparent the framers were listing a series of entities that would come within the ambit of the Office of the Public Auditor's duties and responsibilities. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 514 (App. 2016).

Jurisdictional grants of power to the national courts in Article XI, § 6 appear to be self-executing, calling for no action by Congress. Since most U.S. Constitution jurisdictional provisions are not self-executing, determinations of U.S. courts' jurisdiction are typically based on statutory construction rather than constitutional interpretation, as in the FSM. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 517 n.5 (App. 2016).

The FSM Supreme Court's exclusive jurisdiction over cases in which the national government is a party is not paralleled in the United States, and such differences presumably reflect a conscious effort by the framers to select a road other than that paved by the United States Constitution. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 517 (App. 2016).

In light of the self-executing grants of jurisdiction embodied within the FSM Constitution, the United States decisions, which address the underlying congressional intent, provide little guidance, in terms of analysis of the Article XI, Section 6(b) "arising under" language, against the backdrop of a constitutional provision. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 517 (App. 2016).

A constitutional provision cannot be unconstitutional under the constitution it is a part of. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

Since unnecessary constitutional adjudication is to be avoided, if a matter may properly be resolved on a statutory basis without reaching potential constitutional issues, then the court should do so. Linter v. FSM, 20 FSM R. 553, 559 (Pon. 2016).

The general principle is that constitutional adjudication should be avoided unless necessary, so the trial court should first consider any non-constitutional grounds that might resolve the issue. Chuuk v. Weno Municipality, 20 FSM R. 582, 584 (Chk. 2016).

If a matter may properly be resolved without reaching potential constitutional issues, then the court should do so, since unnecessary constitutional adjudication is to be avoided. Tilfas v. Kosrae, 21 FSM R. 81, 93 (App. 2016).

– Involuntary Servitude

Slavery and involuntary servitude are prohibited except to punish crime. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 384 (App. 2003).

While the Constitution's prohibition of slavery and involuntary servitude may have had its source in the Trust Territory Bill of Rights and the U.S. Constitution, it has particular meaning within the FSM's historical context of forced labor by former foreign administering authorities. Some still-living citizens of this nation have experienced firsthand the evils of slavery and involuntary servitude, and the constitutional provision was meant to ban those types of atrocities forever. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 384 (App. 2003).

Since the words "involuntary servitude" are subject to various definitions, the constitutional provision is not clear and does not permit only one possible result. A court may consult the constitutional convention journal to ascertain the framers' intent in drafting this language. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 385 (App. 2003).

The determination of what constitutes 'involuntary servitude' or what is regarded as "badges of slavery" is to be made in the context of well established Micronesian customs. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 385 (App. 2003).

Absent a violation of a criminal statute, the court cannot compel a person to labor for the liquidation of a debt to another with the threat of punishment for failure to perform. Involuntary servitude thus has been held to encompass peonage, where a person is bound to the service of a particular employer until an

obligation to that person is satisfied. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 385 (App. 2003).

When a person claiming involuntary servitude is simply expected to seek and accept employment, if available, and is free to choose the type of employment and employer, and is also free to resign that employment if conditions are unsatisfactory or to accept other employment, none of the aspects of "involuntary servitude" are present. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 385 (App. 2003).

While the trial court does not violate the Constitution's involuntary servitude provision when it orders a judgment-debtor to seek immediate employment, when the judgment-debtor has presented evidence that he is unable to work, the trial court must make specific findings with regard to his fitness for work before it orders him to seek immediate employment. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 386 (App. 2003).

– Judicial Guidance Clause

The FSM Supreme Court must remain sensitive to the unique circumstances of the Federated States of Micronesia and may not slavishly follow interpretations of similar language by United States, Trust Territory, or other tribunals in different contexts. Lonno v. Trust Territory (I), 1 FSM R. 53, 69 n.11 (Kos. 1982).

The FSM Constitution is the supreme law and the decisions of the FSM Supreme Court must be consistent with it. Truk v. Hartman, 1 FSM R. 174, 176-77 (Truk 1982).

The FSM Supreme Court can and should consider decisions and reasoning of courts in the United States and other jurisdictions, including the Trust Territory courts, in arriving at its own decisions. It is not, however, bound by those decisions and must not fall into the error of adopting the reasoning of those decisions without independently considering suitability of that reasoning for the Federated States of Micronesia. Alaphonso v. FSM, 1 FSM R. 209, 212-13 (App. 1982).

1 F.S.M.C. 203, with its sweeping mandate that the *Restatements* and other common law rules as applied in the United States be the "rules of decision," would lure the courts in a direction other than that illuminated by the Constitution's Judicial Guidance Provisions, FSM Const. art. XI, § 11, which identifies as the guiding star, not the *Restatement* or decisions of United States courts concerning common law, but the fundamental principle that decisions must be "consistent" with the "Constitution, Micronesian custom and tradition, and the social and geographical configuration of Micronesia." Rauzi v. FSM, 2 FSM R. 8, 14 (Pon. 1985).

Under the FSM Constitution's Judicial Guidance Provision, FSM Const. art. XI, § 11, FSM Supreme Court decisions are to be consistent with the "social and geographical configuration of Micronesia." Ray v. Electrical Contracting Corp., 2 FSM R. 21, 26 (App. 1985).

The Constitution's judicial guidance clause cautions against simply adopting previous interpretations of other jurisdictions without careful analysis of its application to the circumstances of the Federated States of Micronesia. Luda v. Maeda Road Constr. Co., 2 FSM R. 107, 112 (Pon. 1985).

Common law decisions of the United States are an appropriate source of guidance for this court for contract and tort issues unresolved by statutes, decisions of constitutional courts here, or custom and tradition within the Federated States of Micronesia. Review of decisions of courts of the United States, and any other jurisdictions, must proceed however against the background of pertinent aspects of Micronesian society and culture. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 142 (Pon. 1985).

A message of the judicial guidance clause is that a court, when interpreting a contract, may not simply assume that reasonably intelligent Micronesians will perceive the same meaning as would reasonably intelligent Americans. Courts may not blind themselves to the pertinent aspects of Micronesian society, such as less facility in the English language, less exposure to business concepts, and paucity of legal

resources, which might cause a reasonably intelligent Micronesian to perceive a meaning differently than would a person from some other nation. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 149 (Pon. 1985).

The judicial guidance clause, FSM Const. art. XI, § 11, is intended to insure, among other things, that this court will not simply accept decisions of the Trust Territory High Court without independent analysis. FSM v. Oliver, 3 FSM R. 469, 478 (Pon. 1988).

The judicial guidance clause prohibits a sentencing court from giving special effect to customary beatings administered to the defendant, unless the court finds that such recognition would be consistent with the protections guaranteed to individuals by the Declaration of Rights. Tammed v. FSM, 4 FSM R. 266, 284 (App. 1990).

The judicial guidance clause implies a requirement that courts consult the values of the people in finding principles of law for this new nation, and the fact that all state legislatures in the Federated States of Micronesia, and the Congress, have enacted Judiciary Acts adopting the Code of Judicial Conduct as the standard for judicial officials and authorizing departures from those standards only to impose tighter standards, suggests that courts should rely heavily on those standards in locating minimal due process protections against biased decision-making in judicial proceedings within the Federated States of Micronesia. Etscheit v. Santos, 5 FSM R. 35, 38-39 (App. 1991).

The judicial guidance clause, article XI, section 11 of the Constitution, requires that in searching for legal principles to serve the Federated States of Micronesia, courts must first look to sources of law and circumstances here within the Federated States of Micronesia rather than begin with a review of cases decided by other courts. Etscheit v. Santos, 5 FSM R. 35, 38 (App. 1991).

State and national legislation may be useful as a means of ascertaining Micronesian values in rendering decisions pursuant to the judicial guidance clause, particularly when more than one legislative body in the FSM has independently adopted similar law. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 361 (Kos. 1992).

Article XI, section 11 of the FSM Constitution mandates that the court look first to Micronesian sources of law – which includes the FSM Code and rules of the court – in reaching decisions. Alfons v. FSM, 5 FSM R. 402, 404-05 (App. 1992).

Extradition is founded upon treaties between sovereign nations involving mutual agreements and commitments. There is no counterpart in Micronesia custom and tradition that is applicable. In re Extradition of Jano, 6 FSM R. 23, 25 (App. 1993).

Determining the relevancy of custom in carrying out the mandate of article XI, section 11 of the FSM Constitution must proceed on a case-by-case basis. Wito Clan v. United Church of Christ, 6 FSM R. 129, 132 (App. 1993).

Where entitlement to customary relief has been proven and the means to execute such a remedy are within the trial court's authority and discretion, the trial court should as a matter of equity and constitutional duty grant the relief. Wito Clan v. United Church of Christ, 6 FSM R. 129, 133 (App. 1993).

FSM courts must consider customary law where relevant to a decision, but it is not error for a court to consider custom and find that it is not relevant to its decision because a Certificate of Title had been issued for the land. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 50 (App. 1995).

A court must consult and apply sources of law in the FSM prior to rendering a decision, and would resort to local customary law before considering the common law of other nations. Ladore v. U Corp., 7 FSM R. 296, 299 (Pon. 1995).

The Judicial Guidance Clause requires that courts utilize the following analytic method. First, if a constitutional provision bears upon an issue, that provision will prevail over any other source of law. Second, any applicable Micronesian custom or tradition must be considered, and the court's decision must be consistent therewith. If there is no directly applicable constitutional provision, or custom or tradition, or if these sources are insufficient to resolve all issues in the case, then the court may look to the law of other nations. Chuuk v. Secretary of Finance, 8 FSM R. 353, 377 (Pon. 1998).

Certain issues are not of a local or traditional nature, and not amenable to determination based upon custom and tradition, such as issues related to business ventures in the FSM by non-citizens, foreign shipping agreements, and international extradition. Fishing fees derived from commercial fishing contracts, and collected primarily from foreign companies pursuant to agreements negotiated by the MMA are transactions and behaviors that are also distinctly non-customary and non-local. Chuuk v. Secretary of Finance, 8 FSM R. 353, 377 (Pon. 1998).

The FSM Constitution requires court decisions be consistent with Micronesian customs and traditions, and provides that the FSM Congress may enact statutes to protect the traditions of the people of the FSM. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 66 (Pon. 2001).

The Constitution admonishes that court decisions are to be consistent with the "social and geographical configuration of Micronesia," and a cause of action for loss of parental consortium is consistent with this admonition in that it acknowledges the important role played by the family in the many distinct cultures of Micronesia. Amayo v. MJ Co., 10 FSM R. 244, 253 (Pon. 2001).

When the court looks to common law sources in considering the nature of the legislative privilege enjoyed by members of the Pohnpei Legislature, it is mindful of Article XI, section 11 of the FSM Constitution, which requires that FSM Supreme Court decisions be consistent with the Constitution, Micronesian customs and traditions, and the social and geographical configuration of Micronesia. AHPW, Inc. v. FSM, 10 FSM R. 420, 423 (Pon. 2001).

The FSM Supreme Court can and should consider decisions and reasoning of United States courts and other jurisdictions in arriving at its own decisions. It is not, however, bound by those decisions and must not fall into the error of adopting reasoning of those decisions without independently considering suitability of that reasoning for the FSM. Panuelo v. Amayo, 10 FSM R. 558, 563 (App. 2002).

The judicial guidance clause requires that, in searching for legal principles to serve the FSM, courts must first look to sources of law and circumstances here within the FSM rather than begin with a review of cases decided by other courts. Panuelo v. Amayo, 10 FSM R. 558, 563 (App. 2002).

When the economic disparity between the indigent losing plaintiff and the successful defendants could not be more stark and when the plaintiff pursued his case in good faith and it was not frivolous, the defendants' motion to tax costs must be denied and no costs allowed. This result is consistent with the social configuration of Micronesia, as mandated by the Constitution's Judicial Guidance Clause. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 323 (Pon. 2003).

Under FSM constitutional jurisprudence, a person has no right, with some possible narrow exception, to resist a court-issued search warrant even if that search warrant turns out to be invalid. A person's remedies for being subjected to a search with an invalid search warrant are the suppression of any evidence seized, and, in the proper case, a civil suit for damages. The self-help of resistance is not a remedy and because of the Micronesian customary preference for the peaceful resolution of disputes, this conclusion is consistent not only with the FSM Constitution, but also with the social configuration of Micronesia as is required by the Constitution's Judicial Guidance Clause. FSM v. Wainit, 11 FSM R. 424, 436-37 (Chk. 2003).

This court is mandated by Article XI, Section 11 of the Constitution to first consult and apply sources from within the FSM. The overall goal is to develop principles of standing which are consistent with the

Constitution's language and designed to meet the needs of the nation's people and institutions. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 496-97 (Kos. 2003).

The FSM Constitution requires that court decisions be consistent with the Constitution, Micronesian customs and traditions, and the social and geographical configuration of Micronesia. Yang v. Western Sales Trading Co., 11 FSM R. 607, 613 (Pon. 2003).

Because the court is required to make decisions consistent with the FSM's social and geographical configuration and because the FSM is a large country in terms of geographical distances, but has a small land base, a small population, and limited resources with a small government legal office and few other lawyers available, the court thus should not order the government to go outside its Department of Justice for a prosecutor unless it is absolutely necessary. FSM v. Wainit, 12 FSM R. 172, 180 (Chk. 2003).

The FSM Supreme Court is ever mindful of the constitutional admonition that court decisions shall be consistent with the FSM Constitution, Micronesian custom and traditions, and Micronesia's social and geographical configuration and that in rendering a decision, a court shall consult and apply sources of the Federated States of Micronesia, and that the Kosrae Constitution also provides that court decisions shall be consistent with that constitution, state traditions and customs, and the state's social and geographical configuration. Sigrah v. Kosrae, 12 FSM R. 320, 325 (App. 2004).

When the project control document did not say otherwise, the community halls contemplated by the Uman Social Project project control document are the customary and traditional community hall (an *wuut* or *uut*) found in Uman (and throughout the Southern Namoneas and Chuuk Lagoon) because this is the meaning of the term community hall (*wuut* or *uut*) as understood by the defendants, who are all from the Southern Namoneas and because is this is not only the only logical conclusion to draw under the circumstances, this result is mandated by the Judicial Guidance Clause, which requires all judicial decisions to be consistent with custom and tradition. FSM v. Este, 12 FSM R. 476, 481 (Chk. 2004).

Since court decisions are constitutionally required to be consistent with the geographical configuration of Micronesia, which includes the relative isolation of various outer island communities, a fifteen-day delay caused by the inability of a mayor from an outer island with no air service to Chuuk Lagoon to travel to the Lagoon to sign legal papers will be considered excusable neglect. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM R. 492, 495-96 (Chk. 2004).

As required by the FSM Constitution, in rendering a decision, a court must consult and apply sources of the Federated States of Micronesia, but where appropriate, the FSM Supreme Court can and should consider decisions and reasoning of United States courts and other jurisdictions in arriving at its own decisions. Because there is very little FSM law governing the enforcement of national civil rights judgments against the states, the court will look to case law of the United States for guidance, as civil rights protections in the United States and FSM are similar. Chuuk v. Davis, 13 FSM R. 178, 185-86 (App. 2005).

The court is required to make decisions consistent with the FSM's social and geographical configuration. While the FSM is a country of large geographical distances, it has a small land base, a small population, and limited resources. Likewise, it has a small government legal office and few other lawyers available. The court, consistent with the FSM's social and geographical configuration, thus should not order the government to go outside its Department of Justice for a prosecutor unless it is absolutely necessary. The disqualification of all lawyers in a government office when one of them is disqualified is a question within the trial court's discretion. FSM v. Wainit, 13 FSM R. 433, 440 (Chk. 2005).

The court must make its decisions consistent with the FSM's social and geographical configuration. While the FSM is a nation of large geographical distances, it has a small land base, a small population, and limited resources. It also has a small government legal office and few other lawyers available. The court, consistent with the FSM's social and geographical configuration, thus should not order the government to go outside its Department of Justice for a prosecutor unless it is absolutely necessary. FSM v. Kansou, 14

FSM R. 273, 278 (Chk. 2006).

The Kosrae State Court recognizes the universal importance of marriage in our societies; the social and geographical configuration of Kosrae; and the importance of family relationships in our communities and of the building of new family relationships through marriages. Sigrah v. Noda, 14 FSM R. 295, 299 (Kos. S. Ct. Tr. 2006).

When a class action has vindicated rights that benefit a large number of people; when these rights required private enforcement since the State of Yap was not in the position to vindicate the private rights of the people of Rull and Gilman; when, considering Yapese society's heavy reliance on the inner lagoon's marine resources, the rights enforced were of great societal importance; and when Yapese society's dependence on the resources of the shoreline, inner reefs, and mangrove stands is a salient feature of Yap's social and geographical configuration; the use of the private attorney general theory conforms to the Constitution's Judicial Guidance Clause that court decisions are to be consistent with the social and geographical configuration of Micronesia. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 421 (Yap 2006).

U.S. courts' common law decisions are an appropriate source of guidance for the FSM Supreme Court for contract and tort issues unresolved by statutes, decisions of constitutional courts here, or custom and tradition within the FSM. The FSM Constitution's judicial guidance clause requires that the court's review of U.S. courts' decisions proceed against the background of pertinent aspects of Micronesian society and culture, but where the business activities which gave rise to the lawsuit are not of a local or traditional nature, and the work setting and the work itself are of a markedly non-local, international character, the court need not conduct an intense search for applicable customary laws and traditional rules when none have been brought to its attention by the parties and none are apparent. Reg v. Falan, 14 FSM R. 426, 430 n.1 (Yap 2006).

Customary business practice is distinguished from customary law, that is, from the "custom and tradition" enshrined in the Constitution. Amayo v. MJ Co., 14 FSM R. 487, 489 (Pon. 2006).

The court is bound by Article XI, Section 11, but when the respondent attorney has not pointed to any custom or tradition that either excuses his actions or provides the extraordinary circumstances necessary to prevent the court from suspending him and when he has been convicted of four felony violations of the Financial Management Act and an element of each of those crimes is that a government official act knowingly and willingly, there is conclusive evidence before the court (Disciplinary Rule 10(b) states that a final conviction is conclusive evidence of the crime) that the respondent attorney acted dishonestly and fraudulently since the legislature has decided that the actions taken by respondent attorney are bad, immoral, and unethical since they are crimes punishable by up to twenty years imprisonment. In re Fritz, 14 R. 563, 565 (Pon. 2007).

The court will give no weight to a contention that there was no contingent fee agreement in place because the fee agreement states that the clients are the Municipalities of Rull and Gilman and the plaintiff class is composed of Rull and Gilman residents when neither municipality is a corporate body or has an established municipal government and these municipalities exist as social constructs and when the court's decisions must conform to Micronesia's social configuration. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 64 n.3 (Yap 2007).

Decisions of the FSM Supreme Court must be consistent with Micronesian customs and traditions. Narruhn v. Aisek, 16 FSM R. 236, 242 (App. 2009).

The FSM Supreme Court may consider decisions and reasoning of U.S. courts and other jurisdictions in arriving at its decisions. It is not, however, bound by those decisions and must not fall into the error of adopting reasoning of those decisions without independently considering the suitability of that reasoning for the FSM. Berman v. Lambert, 17 FSM R. 442, 449 n.3 (App. 2011).

The court can take judicial notice that the social configuration of the outer islands in the State of Yap differs significantly from the Yap main island (even the vernacular language is significantly different) since it is a fact not subject to reasonable dispute in that it is generally known within the trial court's territorial jurisdiction and since the court's decisions are required to be consistent with the social and geographic configuration of Micronesia. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 267 (Yap 2012).

The FSM Constitution's judicial guidance clause requires that the court's review of U.S. courts' decisions proceed against the background of pertinent aspects of Micronesian society and culture, but when the business activities which give rise to the lawsuit are not of a local or traditional nature, and the work setting and the work itself are of a markedly non-local, international character, the court need not conduct an intense search for applicable customary laws and traditional rules when the parties have brought none to its attention and none are apparent. Ihara v. Vitt, 18 FSM R. 516, 526 (Pon. 2013).

The FSM Constitution's judicial guidance clause requires that the court's review of U.S. courts' decisions proceed against the background of pertinent aspects of Micronesian society and culture, but when the business activities which give rise to the lawsuit are not of a local or traditional nature, and the work setting and the work itself are of a markedly non-local, international character, the court need not conduct an intense search for applicable customary laws and traditional rules when none have been brought to its attention by the parties and none are apparent. Johnny v. Occidental Life Ins., 19 FSM R. 350, 357 (Pon. 2014).

Since the FSM Constitution requires that court decisions be consistent with the social and geographical configuration of Micronesia; since the geographical configuration of Micronesia is such that its population is scattered amongst numerous islands, and transportation between the distant islands of the FSM can be expensive, time consuming and unreliable, and since travel to and from the United States can be especially expensive and time consuming due to the vast distances involved and one commercial airline carrier's monopoly over transportation in the FSM, the FSM's unique geographical configuration generates a public policy impetus in favor of remote testimony by Skype that is lacking in the United States. FSM v. Halbert, 20 FSM R. 42, 48-49 (Pon. 2015).

The Judicial Guidance Clause's first command is that the court's decisions be consistent with the Constitution itself. FSM v. Fritz, 20 FSM R. 596, 600 (Chk. 2016).

When deciding a question of standing, the FSM Supreme Court utilizes a case-specific analysis and as mandated by Article XI, Section 11 of the FSM Constitution, the court will first consult and apply sources from within the FSM. The overall goal is to develop principles of standing which are consistent with the Constitution's language and designed to meet the needs of our nation's people and institutions. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 640 (Pon. 2016).

The FSM Supreme Court is indisputably charged with the duty of considering customary law when relevant to a decision since the constitutional government works not to override custom, but to work in cooperation with the traditional system in an atmosphere of mutual respect. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

Under the FSM Constitution's Judicial Guidance Clause, the FSM Supreme Court's decisions must be consistent with, *inter alia*, Micronesian customs and traditions. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 643 (Pon. 2016).

Although the court is mandated to first consult and apply sources from within the FSM, it is appropriate to look to United States case law for guidance on a complex standing issue, while proceeding against the background of pertinent aspects of Micronesian law, society, and culture. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 645 n.4 (Pon. 2016).

– Kosrae

Article VI, section 9 of the Kosrae State Constitution provides no basis for assuming that sovereign immunity is inherent in the Kosrae State Constitution because sovereign immunity was a creation of Trust Territory common law. Seymour v. Kosrae, 3 FSM R. 537, 541 (Kos. S. Ct. Tr. 1988).

In fiscal matters, the court must hear constitutional objections in order to save the state an expenditure of funds that may be unconstitutional. Siba v. Sigrah, 4 FSM R. 329, 335 (Kos. S. Ct. Tr. 1990).

The Kosrae Constitution empowers the state government to collect both tax and non-tax revenue, but that only the tax revenue must be shared with the municipality in which the funds are collected. Tafunsak v. Kosrae, 7 FSM R. 344, 347 (App. 1995).

Under the Kosrae Constitution tax revenue must be shared with the municipalities, and what constitutes non-tax, public money revenue need not be shared. A fee paid for use of airport facilities is non-tax public money. This follows a pattern widely recognized elsewhere of a distinction between taxes and user fees. Tafunsak v. Kosrae, 7 FSM R. 344, 348-49 (App. 1995).

Compensation of Kosrae State Court justices is prescribed by law. Compensation may not be increased or decreased during their terms of office, except by general law applying to all state government employees. Cornelius v. Kosrae, 8 FSM R. 345, 348 (Kos. S. Ct. Tr. 1998).

The Governor and Lieutenant Governor receive annual salaries as prescribed by law. The salaries may not be increased or decreased for their terms of office except by general law applying to all state government employees. Cornelius v. Kosrae, 8 FSM R. 345, 350 (Kos. S. Ct. Tr. 1998).

Senators receive compensation as prescribed by law. No law increasing compensation may take effect until the end of the term of office for which the Senators voting thereon were elected. Cornelius v. Kosrae, 8 FSM R. 345, 350 (Kos. S. Ct. Tr. 1998).

The phrase, "as prescribed by law," describes how the salaries of the senators; governor and lieutenant governor; and state court justices will be set in the first instance. Any subsequent increase or decrease as to the executive or judiciary will be by statute applicable to all state government employees; with respect to senators, any subsequent increase will occur by statute which becomes effective during a future term of office. Cornelius v. Kosrae, 8 FSM R. 345, 350 (Kos. S. Ct. Tr. 1998).

The phrase "all State Government employees" as it appears in article VI, section 5, means those employees whose salaries are "prescribed by law." Only those employees whose salaries are set in the first place by statute are the employees to whom subsequent statutory reductions should apply. Cornelius v. Kosrae, 8 FSM R. 345, 352 (Kos. S. Ct. Tr. 1998).

Although the Kosrae Constitution contains no impairment of contracts clause, it is not silent in this area. The Kosrae Transition Clause provides that contracts continue unaffected. Cornelius v. Kosrae, 8 FSM R. 345, 352 (Kos. S. Ct. Tr. 1998).

The phrase "all State Government employees" means employees whose compensation is determined by statute, and does not include those employees who have individual contracts with Kosrae. Therefore a state law reducing state public service system employees' pay can constitutionally be applied to a Kosrae State Court justice's pay. Cornelius v. Kosrae, 8 FSM R. 345, 352 (Kos. S. Ct. Tr. 1998).

The Kosrae Constitution provides that the state government protect the state's traditions as the public interest may require. Anton v. Heirs of Shrew, 10 FSM R. 162, 165 (Kos. S. Ct. Tr. 2001).

Since the normal sense or definition of the word "term" does not include term limits, the phrase "for the same term," in Article V, section 6 applies only to the Lieutenant Governor's four year term of office. It does not include any limitation on the number of consecutive terms of office that a person may serve as

Lieutenant Governor. The term limits imposed on the Governor thus do not apply to the Lieutenant Governor. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 162, 164 (Kos. S. Ct. Tr. 2002).

The Kosrae Constitution requires court decisions to be consistent with state traditions and customs, and the state's social and geographical configuration. Tolenoa v. Kosrae, 11 FSM R. 179, 183 (Kos. S. Ct. Tr. 2002).

The requirements that a person's driver's license be in the immediate possession of the operator, and that the operator display his license to a police officer upon demand do not violate the Kosrae Constitution. Kosrae v. Sigrah, 11 FSM R. 249, 257 (Kos. S. Ct. Tr. 2002).

The Kosrae Constitution provides for the fundamental right of freedom of expression, and also permits denial or impairment of that fundamental right by a statute which protects tradition. Kosrae v. Waguk, 11 FSM R. 388, 390 (Kos. S. Ct. Tr. 2003).

The Kosrae Constitution permits certain conveyances of land to be subject to conditions. Article II, Section 3 provides that any conveyance of land from a parent or parents to a child or children, may be subject to such conditions as the parent or parents deem appropriate, provided, that such conditions are in writing at the time of conveyance and duly reflected in the certificate of title. Benjamin v. Youngstrom, 13 FSM R. 542, 546 (Kos. S. Ct. Tr. 2005).

– Kosrae – Case

A difference of opinion between parties is not in and of itself a sufficient basis on which the Kosrae State Court may assume jurisdiction over a dispute. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 670 (Kos. S. Ct. Tr. 2002).

The Kosrae State Court has original jurisdiction in all cases, except cases within the exclusive and original jurisdiction of inferior courts. "Case" means a justiciable controversy, which is another way of saying that it must be suitable for determination by a court. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 670 (Kos. S. Ct. Tr. 2002).

A court will not pass on questions that are abstract, moot, academic, or hypothetical. The constitutionality of yet-to-be-enacted legislation presents a hypothetical question that is not justiciable. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 670 (Kos. S. Ct. Tr. 2002).

Because duly enacted laws are presumed constitutional in the first instance, confirmation through a suit for declaratory relief of what is already presumed is not a fruitful exercise when there is no certainty that such a declaration would alter the parties' legal interests. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 671 (Kos. S. Ct. Tr. 2002).

– Kosrae – Case – Standing

Standing exists where a putative plaintiff has a sufficient stake or interest in a justiciable controversy so that he may obtain judicial resolution of that dispute. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 671 (Kos. S. Ct. Tr. 2002).

A public official who is called upon to perform a legally required duty which he concludes is violative of the constitution has standing to ask a court to declare the statute unconstitutional. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 671 (Kos. S. Ct. Tr. 2002).

When the Legislature could very well exercise its legislative prerogative to decline to enact the proposed legislation irrespective of any declaration by the court of the constitutionality of the proposed legislation, Kosrae does not have a stake or interest that is amenable to judicial resolution. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 671 (Kos. S. Ct. Tr. 2002).

To have standing, a plaintiff must show that he personally has suffered some actual or threatened injury as result of the defendant's putatively illegal conduct. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 671 (Kos. S. Ct. Tr. 2002).

To the extent that an alleged salary loss constitutes a stake or interest that is subject to judicial resolution, it belongs to the specified officials, and not to Kosrae. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 672 (Kos. S. Ct. Tr. 2002).

– Kosrae – Due Process

Written notice in a letter giving a limited-term employee three days notice of the reasons for his two week suspension from work is sufficient compliance with the requirement of 61 TTC 10(15)(a), which provides that a suspended employee must receive notice of the reasons for suspension, and is also sufficient compliance with the notice requirements of due process under the Kosrae Constitution. Taulung v. Kosrae, 3 FSM R. 277, 279 (Kos. S. Ct. Tr. 1988).

To be property protected under the Kosrae State Constitution, the employment right must be supported by more than merely the employee's own personal hope. There must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Taulung v. Kosrae, 3 FSM R. 277, 280 (Kos. S. Ct. Tr. 1988).

The Kosrae Executive Appeals Board is authorized to subpoena witnesses, and may do so on its own motion, over the protest of a party. For the Board to question such a witness in absence of a party to the hearing, when the party had notice but elected to walk out of the proceeding to seek a writ of prohibition, is not violative of due process. Palik v. Executive Serv. Appeals Bd., 4 FSM R. 287, 290 (Kos. S. Ct. Tr. 1990).

To be property protected under the Federated States of Micronesia and Kosrae State Constitutions, the employment right must be based on governmental assurance of continual employment or dismissal for only specified reasons as stated in statute, regulation, formal contract or actions of a supervisory person with authority to establish terms of employment. Edwin v. Kosrae, 4 FSM R. 292, 302 (Kos. S. Ct. Tr. 1990).

Plaintiff's due process rights were not violated where the government did not use condemnation procedures specified in 67 TTC 451, but followed land registration procedures to obtain title and treated the plaintiff fairly and in the same way it treated other landowners. Palik v. Kosrae, 5 FSM R. 147, 152-54 (Kos. S. Ct. Tr. 1991).

When a panel hearing in a summary dismissal was closed to the public and the injured party and counsel were present to attend and participate in the hearing and the panel accepted and considered all testimony and evidence offered by the parties, due process was not violated. Palsis v. Kosrae State Court, 5 FSM R. 214, 217 (Kos. S. Ct. Tr. 1991).

The wording of the Due Process Clause of the Kosrae State Constitution is identical to the wording of the Due Process Clause of the FSM Constitution. Therefore the court will treat the clauses as identical in meaning and in scope. Alik v. Kosrae Hotel Corp., 5 FSM R. 294, 297 (Kos. 1992).

The wording of the due process clause of the Kosrae Constitution is the same as that of the FSM Constitution, and are equivalent in terms of scope and meaning, and, in turn, because the FSM Declaration of Rights, which contains the due process clause, is patterned after provisions of the United States Constitution, and United States cases were relied on to guide the Constitutional Convention, United States authority may be consulted to understand the meaning of these rights. Cornelius v. Kosrae, 8 FSM R. 345, 349 (Kos. S. Ct. Tr. 1998).

A summary order of contempt for non-appearance violates an accused's right to due process under the

Kosrae Constitution. Accordingly, on appeal the conviction will be vacated and remanded. In re Contempt of Skilling, 8 FSM R. 419, 426 (App. 1998).

State employees are entitled to recover the base salary that they would have received during the periods of time that they were placed on leave without pay because the state's imposition of a "lay off" and leave without pay violated the employees' right to continued employment under the Kosrae Constitution and the Kosrae State Code. Langu v. Kosrae, 8 FSM R. 427, 436 (Kos. S. Ct. Tr. 1998).

A person may not be deprived of property without due process of law. Talley v. Lelu Town Council, 10 FSM R. 226, 237 (Kos. S. Ct. Tr. 2001).

To be property protected under the FSM and Kosrae Constitutions, the employment right must be based on governmental assurance of continual employment or dismissal for only specified reasons. A person who has been hired under an employment contract, for a specific length of time, with no provisions for renewal of the contract and no entitlement for renewal of the contract, does not have a property interest in his continued employment and is not entitled to a hearing before termination. Talley v. Lelu Town Council, 10 FSM R. 226, 237 (Kos. S. Ct. Tr. 2001).

Due process requires that the parties be given the opportunity to comment upon evidence. Ittu v. Heirs of Mongkeya, 10 FSM R. 446, 448 (Kos. S. Ct. Tr. 2001).

When a party was not given an opportunity to comment or rebut the evidence presented by the adverse claimants at the formal Land Commission hearing, and was not given an opportunity to cross examine adverse witnesses or an opportunity to present his own testimony to rebut adverse claims, this procedural failure is a violation of the due process protection provided by the Kosrae Constitution; and the issued determination of ownership will be set aside, and held null and void and the matter remanded to the Land Commission. Ittu v. Heirs of Mongkeya, 10 FSM R. 446, 448 (Kos. S. Ct. Tr. 2001).

When the Senior Land Commissioner failed to disqualify himself after the parcel was recorded for adjudication, took part in the hearing and consideration of the parcel by appointing the two pro-tempore members of the registration team, and failed to disqualify himself from the matter until after the two Associate Land Commissioners had concurred on the findings and decision, awarding ownership of the parcel to his family, his actions violated Kosrae State Code, Section 11.602 and the due process protection provided by the Kosrae Constitution. Langu v. Heirs of Jonas, 10 FSM R. 547, 549 (Kos. S. Ct. Tr. 2002).

The wording of the due process provisions in both the FSM and Kosrae Constitutions are identical. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 665 (Kos. S. Ct. Tr. 2002).

The due process requirements applicable to employment that is a property interest are: to be property protected under the FSM and Kosrae Constitutions, the employment rights must be based on governmental assurance of continual employment or dismissal for only specified reasons as stated in statute, regulations, formal contract or actions of a supervisory person with authority to establish terms of employment. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 666 (Kos. S. Ct. Tr. 2002).

Since the Kosrae State Court has not been shy in vacating and remanding Land Commission decisions for due process violations, including involvement of commissioners who should have disqualified themselves, Kosrae's social configuration should not prevent an appellant from timely raising the issue of disqualification of persons in the Land Commission proceedings. Anton v. Cornelius, 12 FSM R. 280, 285 (App. 2003).

Adjudicatory decisions affecting property rights, such as ownership, are subject to due process requirements of the state constitution. Due process demands impartiality on the part of the adjudicators, including a Land Court Presiding Justice. Edmond v. Alik, 13 FSM R. 413, 416 (Kos. S. Ct. Tr. 2005).

Since a judge must disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned, when the presiding justice's failure to recuse himself from the proceeding resulted in a

violation of the appellant's due process rights, the decision determining ownership must be vacated and the matter remanded for further proceedings. Edmond v. Alik, 13 FSM R. 413, 417 (Kos. S. Ct. Tr. 2005).

The FSM Constitution's due process provision protects persons from governments, and those acting under them, and does not create causes of action against private parties. The Kosrae Constitution due process provision functions in the same manner. A party alleging a due process violation has the burden of showing that the defendant is a state actor and that the conduct in question was a state action. Kinere v. Sigrah, 13 FSM R. 562, 569 (Kos. S. Ct. Tr. 2005).

When the defendants are individuals and private parties; and not governments and the plaintiff has failed to show that the defendants are state actors and that the conduct in question was a state action, the plaintiff has failed to provide any authority in support of her cause of action based upon due process violation. Accordingly, the Kosrae Constitution due process provision does not create a cause of action against these defendants. Kinere v. Sigrah, 13 FSM R. 562, 569 (Kos. S. Ct. Tr. 2005).

Employment is a property right protected by the Kosrae Constitution when there is an assurance of continued employment or when dismissal is allowed for specified reasons. An employee's personal hope of continued employment or the expiration of a contract with no provisions for renewal does not give rise to a property interest. Thus, when the Tafunsak Constitution states that the position of Treasurer is a four-year term and the plaintiff's employment was terminated before the term's end, this is sufficient to show an assurance of continued employment and gives rise to a property right protected by due process under the Kosrae Constitution. Palsis v. Tafunsak Mun. Gov't, 14 FSM R. 517, 520 (Kos. S. Ct. Tr. 2006).

Once a property interest is found to exist, the next step is to determine if due process rights were violated. The court looks at whether the procedures used to apply the disciplinary action were fair based on the circumstances of the case; procedures must assure a rational decision making process. Municipal defendants are not required to follow the State of Kosrae's Public Service System laws and regulations and are not required to adopt their own written procedures, but they must be fair considering all the circumstances and use a rational decision making process. Palsis v. Tafunsak Mun. Gov't, 14 FSM R. 517, 520 (Kos. S. Ct. Tr. 2006).

Where the plaintiff claims that he was not given an administrative remedy and did not have an opportunity to meet or rebut the allegations against him and when the defendants began by giving the plaintiff written notice listing specific issues and specifying their concerns about the plaintiff's failure to perform his duties and gave the plaintiff several months until late February 2004 to correct his behavior; when the plaintiff did not change his behavior to perform his job responsibilities and he spoke with the defendants about resigning from employment during this time period, thus demonstrating that he met with the defendants and had an opportunity to rebut the first letter's allegations; the Council gave him a copy of its March 2004 letter to the Mayor recommending termination of his employment; when the Mayor's letter to the plaintiff based on this recommendation again gave him an opportunity to bring forth any grievances, this procedure consistently gave the plaintiff notice of the defendants' specific reasons for concern and gave him several opportunities to meet and rebut allegations and bring forth grievances and was thus fair based on the circumstances and was based on a rational decision-making process. Palsis v. Tafunsak Mun. Gov't, 14 FSM R. 517, 520 (Kos. S. Ct. Tr. 2006).

When reviewing the Land Commission's actions after the plaintiff filed his request in 1987 and the issuance of title in 2002, the question is whether the Land Commission or Land Court deprived the plaintiff or any other party of property in an unfair fashion and whether the procedures used ensured a fair and rational decision-making process. This is consistent with the due process requirements of the Kosrae Constitution, Article II. Siba v. Noah, 15 FSM R. 189, 194 (Kos. S. Ct. Tr. 2007).

The Constitutions of both Kosrae and the Federated States of Micronesia state, in identical wording, that a person may not be deprived of life, liberty, or property without due process of law and these two clauses are treated as identical in meaning and in scope and may be analyzed together. Palsis v. Kosrae, 16 FSM R. 297, 306 (Kos. S. Ct. Tr. 2009).

Both the FSM and Kosrae Constitutions provide that "a person may not be deprived of life, liberty, or property without due process of law." The wording of each of these clauses is identical in meaning and scope. Palsis v. Kosrae, 17 FSM R. 236, 240 (App. 2010).

– Kosrae – Due Process – Notice and Hearing

The essential features of procedural due process, or fairness, require notice and opportunity to be heard. Ittu v. Heirs of Mongkeya, 10 FSM R. 446, 447 (Kos. S. Ct. Tr. 2001).

When a party not represented by legal counsel is not given the opportunity to present his claim in Land Court, pursuant to the requirements of GCO 2002-13, this procedural failure is a violation of the due process protection provided by the Kosrae Constitution. Edmond v. Alik, 13 FSM R. 413, 416 (Kos. S. Ct. Tr. 2005).

Procedural due process, or fairness, requires notice and an opportunity to be heard. Fundamentally, the government may not strip its citizens of property in an unfair or arbitrary manner; the Constitution requires the government to follow procedures calculated to assure a fair and rational decision-making process. Palsis v. Kosrae, 17 FSM R. 236, 240 (App. 2010).

When a terminated state employee, since she was given an immediate opportunity to respond and another opportunity to respond one week later, had two opportunities to be heard after being informed of the reasons for her dismissal, and when after these two opportunities, she had two full post-termination evidentiary hearings that analyzed the Hospital's decision to terminate her employment, her procedural due process rights were not violated. Palsis v. Kosrae, 17 FSM R. 236, 242 (App. 2010).

– Kosrae – Equal Protection

The protection afforded by the Kosrae Constitution equal protection provision can only be asserted when the denial of such rights are based on account of sex, race, ancestry, national origin, language or social status. The constitutional provisions providing equal protection of law apply similarly to laws and government actions. A party alleging an equal protection violation has the burden of showing that the defendant is a state actor and that the conduct in question was a state action or a law. Kinere v. Sigrah, 13 FSM R. 562, 569 (Kos. S. Ct. Tr. 2005).

When the plaintiff has failed to show that she was denied her rights based on account of her sex, race, ancestry, national origin, language or social status, and that the conduct in question was either based upon a law or upon a state action, she has failed to provide any authority whatsoever in support of her cause of action based upon violation of equal protection. Accordingly, the Kosrae Constitution equal protection provision does not create a cause of action against these defendants. Kinere v. Sigrah, 13 FSM R. 562, 569-70 (Kos. S. Ct. Tr. 2005).

– Kosrae – Interpretation

Article II, section 1(d) of the Kosrae State Constitution is similar to article IV, section 5 of the FSM Constitution and to the fourth amendment to the U.S. Constitution, and therefore, interpretations of these provisions may be useful for interpreting the provision in the Kosrae State Constitution. Kosrae v. Alanso, 3 FSM R. 39, 42 (Kos. S. Ct. Tr. 1985).

Because the Kosrae State Constitution does not provide an exact standard for determining whether a search is "reasonable," this court will first turn to the framers' intent. In the absence of an official journal of the First Constitutional Convention, this court will then look to FSM and U.S. judicial decisions interpreting the search and seizure provision in their respective constitutions. Kosrae v. Alanso, 3 FSM R. 39, 42 (Kos. S. Ct. Tr. 1985).

If language of a provision of the Kosrae State Constitution is susceptible to more than one meaning, the court should look to the legislative history, including the constitutional convention committee notes and journals, all other provisions of the Constitution, and cases from jurisdictions with similar constitutional provisions, to clarify the definitions of the ambiguous term. Seymour v. Kosrae, 3 FSM R. 537, 540 (Kos. S. Ct. Tr. 1988).

The movant is burdened with a high standard of proof in establishing the unconstitutionality of either state laws or the Constitution. Siba v. Sigrah, 4 FSM R. 329, 335 (Kos. S. Ct. Tr. 1990).

A practice which has been engaged in by a branch of government for a significant period of time is entitled to great weight in establishing the constitutionality of that practice. Siba v. Sigrah, 4 FSM R. 329, 342 (Kos. S. Ct. Tr. 1990).

The wording of the Due Process Clause of the Kosrae State Constitution is identical to the wording of the Due Process Clause of the FSM Constitution. Therefore the court will treat the clauses as identical in meaning and in scope. Alik v. Kosrae Hotel Corp., 5 FSM R. 294, 297 (Kos. 1992).

In analyzing constitutional provisions a court must initially look to the actual words of the constitution. The court should also consider all provisions of the constitution because other sections may touch on the same subject area, thus giving the questionable provision added meaning. If those words are clear and permit only one possible result, the court should go no further. Tafunsak v. Kosrae, 7 FSM R. 344, 347 (App. 1995).

If the language of a Kosrae constitutional provision or section is susceptible to more than one meaning, the court should look to the legislative history, including the Constitutional Committee Notes and the Journals, if available, to clarify the definition of the ambiguous term. Tafunsak v. Kosrae, 7 FSM R. 344, 347 (App. 1995).

The party that raises the issue has the burden of proof as to the unconstitutionality of a statute. This burden is high and heavy, and that party must negative every reasonable, conceivable basis which would support the constitutionality of the statute, because statutes are presumed to be constitutional. Tafunsak v. Kosrae, 7 FSM R. 344, 348 (App. 1995).

A court should avoid unnecessary constitutional adjudications. When interpreting a statute, courts should, where possible, avoid selecting interpretations of a statute which may bring into doubt the constitutionality of that statute. If construction of a statute by which a serious doubt of constitutionality may be avoided is fairly possible, a court should adopt that construction. Cornelius v. Kosrae, 8 FSM R. 345, 348 (Kos. S. Ct. Tr. 1998).

If a matter may properly be resolved on a statutory basis without reaching potential constitutional issues, then the court should do so. Unnecessary constitutional adjudication is to be avoided. Kosrae v. Langu, 9 FSM R. 243, 251 (App. 1999).

The framework for analysis of constitutional provisions has been clearly established by the FSM Supreme Court. The court must first look to the actual words of the Constitution. When the constitutional language is inconclusive or does not provide an unmistakable answer, the court may look to the journal of the Constitutional Convention for assistance in determining the meaning of the constitutional words. Kosrae v. Sigrah, 11 FSM R. 26, 29 (Kos. S. Ct. Tr. 2002).

The testimony of one Constitutional Convention delegate as to the meaning of a constitutional provision would reflect his personal opinions and beliefs on the interpretation of the subject constitutional provision, and not the opinions of the entire twenty-two member Convention, and will therefore not be admitted. Kosrae v. Sigrah, 11 FSM R. 26, 30 (Kos. S. Ct. Tr. 2002).

In analyzing constitutional provisions, a court must first look to the constitution's actual words. If those

words are clear and permit only one result, the court should go no further, but if the language of a Kosrae constitutional provision or section is susceptible to more than one meaning, the court should look to the legislative history, including the Constitutional Committee notes and the journals, if available, to clarify the definition of the ambiguous term. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 162, 164 (Kos. S. Ct. Tr. 2002).

Words in constitutions are ordinarily given their natural, normal, usual, common, popular, general and ordinary sense. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 162, 164 (Kos. S. Ct. Tr. 2002).

When the constitutional language is clear and permits only one result, the court goes no further and does not consider its legislative history. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 162, 164 (Kos. S. Ct. Tr. 2002).

Acts of the Kosrae Legislature are presumed to be constitutional. Kosrae v. Sigrah, 11 FSM R. 249, 256 (Kos. S. Ct. Tr. 2002).

Courts should avoid, where possible, selecting interpretations of a statute which may bring into doubt the constitutionality of that statute. Accordingly, a defendant is burdened with a high standard of proof in establishing the unconstitutionality of a state law. Kosrae v. Sigrah, 11 FSM R. 249, 256 (Kos. S. Ct. Tr. 2002).

A practice which has been engaged in by a government for a significant period of time is entitled to great weight in establishing the constitutionality of that practice. Thus, when the licensing of vehicle operators and that the license be in the immediate possession of the driver has been required for at nearly forty years, this significant period of time and therefore the licensing and possession requirement is entitled to great weight in establishing the constitutionality of that practice. Kosrae v. Sigrah, 11 FSM R. 249, 256 (Kos. S. Ct. Tr. 2002).

Since article II, section 1(d) of the Kosrae Constitution is similar to article IV, section 5 of the FSM Constitution Declaration of Rights and the fourth amendment to the U.S. Constitution, interpretations of these two provisions may be useful for interpreting the Kosrae Constitution provision, and when a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, U.S. authority may be consulted to understand its meaning. Sigrah v. Kosrae, 12 FSM R. 320, 327 (App. 2004).

A practice which has been engaged in by a branch of government for a significant period of time is entitled to great weight in establishing the constitutionality of that practice. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 421 (Kos. S. Ct. Tr. 2004).

When an FSM or Kosrae constitutional protection is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning. Neth v. Kosrae, 14 FSM R. 228, 233 (App. 2006).

When an FSM or Kosrae constitutional protection, such as the FSM or Kosrae double jeopardy protection, is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning. Kosrae v. Benjamin, 17 FSM R. 1, 4 n.2 (App. 2010).

Unnecessary constitutional adjudication is to be avoided. Andrew v. Heirs of Seymour, 19 FSM R. 331, 342 (App. 2014).

– Kosrae – Legislative Privilege

Historically the legislative privilege from arrest has not applied in criminal cases. Sigrah v. Kosrae, 12 FSM R. 320, 326 (App. 2004).

The Kosrae Constitution's drafters by no means intended the legislative privilege from arrest to be absolute. In addition to the stated exception for felony and breach of the peace that was incorporated into

the privilege as adopted, the drafters felt that charges may still be filed against members at a time different from when a legislator is going to or coming from a legislative session. Sigrah v. Kosrae, 12 FSM R. 320, 326 (App. 2004).

The court declines to adopt a general rule that any Kosrae police officer who stops a motorist has a specific duty to inquire of the motorist whether he is a Kosrae legislator going to or returning from conducting official business. Sigrah v. Kosrae, 12 FSM R. 320, 326 (App. 2004).

The scope the Kosrae Constitution's legislative privilege is coterminous with the historical understanding of the phrase, "treason, felony, and breach of the peace," and that the privilege conferred by the Kosrae Constitution does not apply to criminal cases. Since the Kosrae Constitution's privilege of freedom from arrest does not apply to criminal cases, it is thus inapplicable to a category 4 misdemeanor, which is a criminal offense. Sigrah v. Kosrae, 12 FSM R. 320, 327 (App. 2004).

– Kosrae – Taking of Property

When a landowner voluntarily enters into a statement of intent to grant the state an easement the state has not violated the landowner's constitutional rights by "taking" his property without just compensation, and is not liable for trespass. Nena v. Kosrae, 5 FSM R. 417, 425 (Kos. S. Ct. Tr. 1990).

– Pohnpei

The tenor of the Pohnpei Constitution is that the government is to be responsible to the people. That Constitution does not provide for sovereign immunity. Panuelo v. Pohnpei (I), 2 FSM R. 150, 157-59 (Pon. 1986).

A constitutional provision is self-executing when no legislation is required to bring it into effect. Panuelo v. Pohnpei, 3 FSM R. 76, 82 (Pon. S. Ct. App. 1987).

The provisions of article 7, section 4 of the Pohnpei Constitution are not self-executing because they provide general principles or policy directives without providing the means to effectuate them. Panuelo v. Pohnpei, 3 FSM R. 76, 82 (Pon. S. Ct. App. 1987).

The government has the power to undertake projects in the areas set forth in article 7 of the Pohnpei Constitution, but the provisions of article 7 are merely directory rather than mandatory. Panuelo v. Pohnpei, 3 FSM R. 76, 81-82 (Pon. S. Ct. App. 1987).

Article 4 of the Pohnpei Constitution confers fundamental rights and is mandatory and enforceable by the courts; in contrast, article 7 does not vest individuals with legal rights that they can assert in the courts. The framers of the Constitution structured these two articles in different ways because they intended them to achieve different goals. Panuelo v. Pohnpei, 3 FSM R. 76, 81-82 (Pon. S. Ct. App. 1987).

The court may, in the interest of justice, make the application of its decision prospective where the court is overruling a previous decision or declaring a statute unconstitutional and the present ruling does not prejudice those who might have relied on such ruling or on such statute. Paulus v. Pohnpei, 3 FSM R. 208, 222 (Pon. S. Ct. Tr. 1987).

The Pohnpei Constitution provides protection for custom and tradition, and mandates that the Pohnpei government shall respect and protect the customs and traditions of Pohnpei. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

An act of government in conflict with the Pohnpei Constitution is invalid to the extent of the conflict. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

In order to be protected by the Pohnpei Constitution, the customary law must still exist. Custom is a

practice that by its common adoption and long, unvarying habit has come to have the force of law. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

– Pohnpei – Due Process

The Pohnpei State Government has discretion in hiring or firing employees, but that discretion does not carry with it the right to its arbitrary exercise. Paulus v. Pohnpei, 3 FSM R. 208, 217 (Pon. S. Ct. Tr. 1987).

Substantive due process relates to the constitutional guarantee that no person shall be deprived of his life, liberty or property for arbitrary reasons. Such a deprivation is supportable constitutionally only if the conduct from which the deprivation flow is prescribed by reasonable legislation. The legislation shall be enacted within the scope of legislative authority and be reasonably applied for a purpose consonant with the purpose for which it was enacted. Paulus v. Pohnpei, 3 FSM R. 208, 221 (Pon. S. Ct. Tr. 1987).

Procedural due process relates to the requisite characteristics of proceedings tending toward a deprivation of life, liberty, or property and thus makes it necessary that a person whom it is sought to deprive of such a right must be given notice of this fact. An individual must be given an opportunity to defend himself before tribunal or office having jurisdiction of the cause, and the problem of the propriety of this deprivation, under the circumstances presented, must be resolved in a manner consistent with essential fairness, in accordance with the Pohnpeian concept of justice. Paulus v. Pohnpei, 3 FSM R. 208, 221 (Pon. S. Ct. Tr. 1987).

A statute providing that any person who has been convicted of a felony and who is currently under sentence shall be terminated from public employment, constitutes an unconstitutional deprivation of procedural due process by allowing for an affected individual's termination without a hearing, and thus must be struck down. Paulus v. Pohnpei, 3 FSM R. 208, 221-22 (Pon. S. Ct. Tr. 1987).

The Due Process Clause of the Pohnpei State Constitution, art. IV, § 4, guarantees the right of due process articulated in the governing law. Micronesian Legal Servs. Corp. v. Ludwig, 3 FSM R. 241, 244 (Pon. S. Ct. Tr. 1987).

A statute does not violate the Pohnpei constitutional safeguards of due process if the provisions of the statute are reasonably clear and give fair notice of what acts or omission are prescribed. Hadley v. Kolonia Town, 3 FSM R. 267, 269 (Pon. S. Ct. App. 1987).

Whether statutory language is so unreasonably vague as to violate the Due Process Clause of the Pohnpei State Constitution is a question of degree, and when the law in question is a municipal ordinance greater leeway should be given to the municipality in recognition of the members' lack of prior training or experience in law or statutory drafting. Hadley v. Kolonia Town, 3 FSM R. 267, 269-70 (Pon. S. Ct. App. 1987).

The right to due process under the Pohnpei Constitution, like the FSM Constitution, only protects people from actions by the government. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 636 (Pon. 2002).

Under the Pohnpei Constitution, substantive due process relates to the constitutional guarantee that no person shall be deprived of his life, liberty, or property for arbitrary reasons. Such a deprivation is supportable constitutionally only if the conduct from which the deprivation flows is prescribed by reasonable legislation. The legislation must be enacted within the scope of legislative authority and be reasonably applied for a purpose consonant with the purpose for which it is enacted. Kallop v. Pohnpei, 18 FSM R. 130, 134 (Pon. 2011).

– Pohnpei – Equal Protection

A classification of ex-felons currently under sentence is not suspect within the suspect classifications of

section 3, article 4 of the Constitution of Pohnpei. Paulus v. Pohnpei, 3 FSM R. 208, 216 (Pon. S. Ct. Tr. 1987).

Where the legislature has a rational basis for a statutorily non-suspect classification, the court will not inquire into the wisdom of that statute. Paulus v. Pohnpei, 3 FSM R. 208, 218 (Pon. S. Ct. Tr. 1987).

Section 14(1) of the State Public Service System Act of 1981 (2L-57-81) is impermissibly arbitrary and irrationally unfair in its blanket prohibition of employment of any person who has been convicted of a felony and is currently under sentence; such statutory prohibition fails to tailor its impact to those convicted felons who otherwise lack the habits of industry. Consequently, the section of the statute is violative of the Equal Rights Clause of the Pohnpei State Constitution by failing to demonstrate that the exclusion of all felons under sentence is necessary to achieve the articulated state goal. Paulus v. Pohnpei, 3 FSM R. 208, 220 (Pon. S. Ct. Tr. 1987).

– Pohnpei – Fundamental Rights

Article 4 of the Pohnpei Constitution confers fundamental rights and is mandatory and enforceable by the courts; in contrast, article 7 does not vest individuals with legal rights that they can assert in the courts. The framers of the Constitution structured these two articles in different ways because they intended them to achieve different goals. Panuelo v. Pohnpei, 3 FSM R. 76, 81-82 (Pon. S. Ct. App. 1987).

The right to governmental employment in Pohnpei is not a fundamental right, constitutionally protected, requiring invoking a strict scrutiny test. Paulus v. Pohnpei, 3 FSM R. 208, 217 (Pon. S. Ct. Tr. 1987).

– Pohnpei – Interpretation

When confronted with an issue of first instance, the Pohnpei Supreme Court may look beyond prior state experience for guidance, including looking towards the common law and United States precedents. People of Kapingamarangi v. Pohnpei Legislature, 3 FSM R. 5, 10 (Pon. S. Ct. Tr. 1985).

In interpreting the Constitution, Pohnpeian and English versions must be construed together in harmony to determine the intent of the Constitutional Convention on any subject. Pohnpei v. Hawk, 3 FSM R. 17, 22-23 (Pon. S. Ct. Tr. 1986).

Whether article 7 of the Pohnpei Constitution is self-executing, creating substantive rights that individuals can seek to enforce in court of law, will depend upon the intent of the framers, as disclosed within the four corners of the Constitution when the words are given their ordinary meaning, as well as upon the nature of the acts and the goals they are to accomplish. Panuelo v. Pohnpei, 3 FSM R. 76, 80-81 (Pon. S. Ct. App. 1987).

The words of the Pohnpei Constitution are words in common use and are to be understood according to their ordinary meaning. Panuelo v. Pohnpei, 3 FSM R. 76, 81 (Pon. S. Ct. App. 1987).

A constitutional provision is self-executing when no legislation is required to bring it into effect. Panuelo v. Pohnpei, 3 FSM R. 76, 82 (Pon. S. Ct. App. 1987).

The provisions of article 7, section 4 of the Pohnpei Constitution are not self-executing because they provide general principles or policy directives without providing the means to effectuate them. Panuelo v. Pohnpei, 3 FSM R. 76, 82 (Pon. S. Ct. App. 1987).

In considering an issue of constitutional interpretation of an accused's right to a speedy trial in the light of Pohnpei's experience, manner and usage, and the concept of justice of the peoples of Pohnpei, it is helpful to review the application and development of the constitutional right to a speedy trial in other parts of the world. Pohnpei v. Weilbacher, 5 FSM R. 431, 435 (Pon. S. Ct. Tr. 1992).

Differences in procedure, history, customs and practice do not require similar construction and application of the rights to a speedy trial in Pohnpei as the clause is construed and applied in other jurisdictions. Pohnpei v. Weilbacher, 5 FSM R. 431, 449-50 (Pon. S. Ct. Tr. 1992).

– Pohnpei – Legislative Privilege

A member of the Pohnpei Legislature is responsible only to the Legislature for statements in the Legislature or a committee thereof. AHPW, Inc. v. FSM, 10 FSM R. 420, 424 (Pon. 2001).

A Pohnpei legislator may decline to answer any questions that fall within the legitimate legislative activity of the Pohnpei legislature. AHPW, Inc. v. FSM, 10 FSM R. 420, 425 (Pon. 2001).

Questions that are casually or incidentally related to legislative affairs but not a part of the legislative process itself, do not fall within the legislative privilege. Such questions, when otherwise appropriate under Rule 26(b)(1), should be answered. AHPW, Inc. v. FSM, 10 FSM R. 420, 426 (Pon. 2001).

– Pohnpei – Taking of Property

Under Pohnpei state law, owners of the land adjacent to the lagoon do not have sufficient property rights in the reef and the lagoon as to entitle them to monetary compensation or other relief for damage to the reef caused by unauthorized dredging activity in the lagoon near their land. Damarlane v. United States, 7 FSM R. 56, 59-60 (Pon. S. Ct. App. 1995).

Under Pohnpei state law persons simply possessing a permit in the lagoon do not have sufficient property rights in the reef and the lagoon as to entitle them to monetary compensation or other relief for damage to the reef caused by unauthorized dredging activity in the lagoon near their land unless there has been some affirmative action such as prior written approval from the appropriate authority and effecting some development in the area in question. Damarlane v. United States, 7 FSM R. 56, 60 (Pon. S. Ct. App. 1995).

Under Pohnpei state law, if a reef is damaged by persons carrying out dredging activities authorized by state officials for a public purpose, adjacent or nearby coastal landowners are not entitled to a payment of just compensation for the depreciation of the value of the reef and fishing grounds. Damarlane v. United States, 7 FSM R. 56, 60 (Pon. S. Ct. App. 1995).

Under Pohnpei state law, if a fish maii [trap] is damaged by persons carrying out dredging activities authorized by state officials for a public purpose, adjacent or nearby coastal landowners are entitled to a payment of just compensation for the damage to a fish maii which they had constructed in the lagoon, if the fish maii was constructed pursuant to the dictate of customary law as a joint enterprise of the villagers, supervised by the village chief, managed, maintained and owned in common by the villagers; or, if an individual constructed the fish maii, prior written permission from the District Administrator, now the Pohnpei Public Land Board of Trustees, was obtained. Damarlane v. United States, 7 FSM R. 56, 60 (Pon. S. Ct. App. 1995).

Under Pohnpei law, damage to reefs or soil under the high water mark resulting from dredging activities, the object of which is for public purposes, does not justify compensation to abutting land owners. If the Pohnpei Public Land Board of Trustees had granted certain rights in writing to an individual or group of individuals, and acting on that grant the grantees erected or constructed certain improvements, including fish maii (fish trap) in shallow waters, and if destroyed or value reduced as a result of state dredging activities, the owners thereof may be entitled to just compensation in accordance with the Pohnpei Constitution. Damarlane v. United States, 7 FSM R. 56, 69 (Pon. S. Ct. App. 1995).

– Professional Services Clause

The Constitution vests the national government with power to act concerning health care and may

place some affirmative health care obligations on it. Manahane v. FSM, 1 FSM R. 161, 172 (Pon. 1982).

Primary responsibility, perhaps even sole responsibility, for affirmative implementation of the Professional Services Clause, FSM Const. art. XIII, § 1, must lie with Congress. Carlos v. FSM, 4 FSM R. 17, 29 (App. 1989).

The Professional Services Clause of the Constitution demands that when any part of the national government contemplates action that may be anticipated to affect the availability of education, health care or legal services, the national officials involved must consider the right of the people to such services and make a reasonable effort to take "every step reasonable and necessary" to avoid unnecessarily reducing the availability of the services. Carlos v. FSM, 4 FSM R. 17, 30 (App. 1989).

Since Congress did not give any consideration to, or make any mention of, the services enumerated in article XIII, section 1 of the FSM Constitution in enacting the Foreign Investment Act, 32 F.S.M.C. 201-232, the avoidance of potential conflict with the Constitution calls for the conclusion that Congress did not intend the Foreign Investment Act to apply to noncitizen attorneys or to any other persons who provide services of the kind described in article XIII, section 1 of the Constitution. Carlos v. FSM, 4 FSM R. 17, 30 (App. 1989).

Since the Constitution's Professional Services Clause is a promise that the national government will take every step "reasonable and necessary" to provide health care to its citizens, a court should not lightly accept a contention that 6 F.S.M.C. 702(4), which creates a $20,000 ceiling of governmental liability, shields the government against a claim that FSM government negligence prevented a person from receiving necessary health care. Leeruw v. FSM, 4 FSM R. 350, 362 (Yap 1990).

When considering a foreign investment permit application the Secretary of Resources and Development must consider "the extent to which the activity will contribute to the constitutional policy of making education, health care, and legal services available to the people of the Federated States of Micronesia." 32 F.S.M.C. 210(8). Michelsen v. FSM, 5 FSM R. 249, 254 (App. 1991).

Since the denial of the application resulted in a decrease in the availability of legal services in Yap and since the Secretary did not properly weigh the extent to which the application would contribute to the constitutional policy of making legal services available to the of the Federated States of Micronesia, the denial of the foreign investment permit to practice law in Yap was unwarranted by the facts in the record and therefore unlawful. Michelsen v. FSM, 5 FSM R. 249, 256 (App. 1991).

Article XIII, section 1 is a general provision that recognizes the right of the people to education, health care, and legal services. It does not act as an exclusive duty to ensure the availability of attorney services in the FSM, and it does not prohibit a state from administering its own bar. Berman v. Santos, 7 FSM R. 231, 237 (Pon. 1995).

Although it is doubtful whether the Constitution's Professional Services Clause protects an attorney's fee from forfeiture in any or all circumstances where the law would seem to allow it, that is an issue that must await another day when there is a case or dispute before the court ripe for adjudication. Sipos v. Crabtree, 13 FSM R. 355, 366 (Pon. 2005).

The Office of the Public Defender was created by 2 F.S.M.C. 204(5). For at least the criminal side of the docket, this represents Congress's affirmative implementation of the Constitution's Professional Services Clause. The primary, perhaps even the sole, responsibility, for the Professional Services Clause's affirmative implementation lies with Congress. FSM v. Kansou, 13 FSM R. 392, 394 & n.1 (Chk. 2005).

The Professional Services Clause provides that the FSM national government recognizes the people's right to education, health care, and legal services and shall take every step reasonable and necessary to provide these services. The term "the people" refers only to natural persons, and does not include juridical

persons such as corporations. FSM v. Kansou, 13 FSM R. 392, 394-95 (Chk. 2005).

The framers' intent in including the Professional Services Clause was to establish a national policy of providing the services when requested by individual citizens unable to provide for themselves, although these services would not necessarily be free. Thus the framers intended that these professional services were to be provided only to natural persons, not to artificial persons. Therefore neither the Office of the Public Defender's refusal to represent business entity defendants nor Public Defender Directive No. 19 barring such representation is unconstitutional. FSM v. Kansou, 13 FSM R. 392, 395 (Chk. 2005).

– Supremacy Clause

The FSM Constitution is the supreme law and the decisions of the FSM Supreme Court must be consistent with it. Truk v. Hartman, 1 FSM R. 174, 176-77 (Truk 1982).

While the FSM Constitution is the supreme law of the land and the FSM Supreme Court may under no circumstances acquiesce in unconstitutional governmental action, states should be given a full opportunity to exercise their legitimate powers in a manner consistent with the commands of the Constitution without unnecessary intervention by national courts. Etpison v. Perman, 1 FSM R. 405, 428 (Pon. 1984).

Failure to apply a constitutional holding retroactively does not violate the supremacy clause of the Constitution, FSM Const. art. II, § 1. To the contrary, courts may choose between prospective and retroactive application in order to avert injustice or hardship. Innocenti v. Wainit, 2 FSM R. 173, 184-85 (App. 1986).

A state law provision attempting to place "original and exclusive jurisdiction" in the Yap State Court cannot divest a national court of responsibilities placed upon it by the national constitution, which is the "supreme law of the Federated States of Micronesia." Gimnang v. Yap, 5 FSM R. 13, 23 (App. 1991).

It is the duty of the FSM Supreme Court to review any national law, including a treaty such as the Compact of Free Association, in response to a claim that the law or treaty violates constitutional rights, and if any provision of the Compact is contrary to the constitution, which is the supreme law of the land, then that provision must be set aside as without effect. Samuel v. Pryor, 5 FSM R. 91, 98 (Pon. 1991).

The supremacy clause of the FSM Constitution does not admit a result where a state constitutional provision prevents the enforcement of a national statute which gives a private cause of action for rights guaranteed by the FSM Constitution, especially when it is the solemn obligation of state governments to uphold the principles of the FSM Constitution and to advance the principles of unity upon which the Constitution is founded. Louis v. Kutta, 8 FSM R. 208, 213 (Chk. 1997).

The FSM Constitution is the supreme law of the FSM, and any actions taken by the government which are in conflict with the FSM Constitution are invalid to the extent of conflict. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 630-31 (Pon. 2002).

Although a state constitutional and a statutory provisions barring payment without a legislative appropriation are neither facially objectionable, what is not constitutionally permissible is to use the requirement defensively to avoid payment of a judgment based on a civil rights claim brought under the national civil rights statute. Principles of supremacy under Article II of the FSM Constitution preclude this result. Estate of Mori v. Chuuk, 12 FSM R. 3, 11 n.5 (Chk. 2003).

Any conflict between the Pohnpei Constitution provision that no appeal of any matter relating to the Pohnpei Constitution, Pohnpei law, customs or traditions may be made to any court except the Pohnpei Supreme Court and the FSM Supreme Court's jurisdiction to hear cases under the FSM Constitution is resolved under the FSM Constitution's supremacy clause, which provides that any act of a government that conflicts with the FSM Constitution is invalid, to the extent of the conflict. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 307 (App. 2007).

A state constitution cannot control or restrict the actions of the national government, whose powers and limitations are derived solely from the national constitution, which is the supreme law of the land. Thus, a state constitution's protections cannot be invoked against the national government. FSM v. Aiken, 16 FSM R. 178, 182 (Chk. 2008).

The FSM Constitution's supremacy clause does not permit a state law to prevent the enforcement of a national statute which gives a private cause of action for rights guaranteed by the FSM Constitution, especially when it is the solemn obligation of state governments to uphold the principles of the FSM Constitution and to advance the principles of unity upon which the Constitution is founded. Barrett v. Chuuk, 16 FSM R. 229, 234-35 (App. 2009).

No national statute regulates a state's duties and functions, except to the extent that a national statute may limit the state's lawmaking ability in specific areas through the supremacy clause. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659 (App. 2009).

While all public officials are sworn to uphold the Constitution, the Constitution places upon the courts the ultimate responsibility for interpreting the Constitution. The court is forsworn by the Supremacy Clause from enforcing national laws or treaties contrary to the Constitution itself. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 187 (Pon. 2010).

Under the FSM Constitution's Supremacy Clause, a national statute must control over a conflicting state statute. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 619 (Chk. 2011).

A Yap state statute cannot divest the FSM Supreme Court of jurisdiction conferred on it by the FSM Constitution, which is the supreme law of the land. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 94 (Yap 2011).

The FSM Supreme Court has issued writs of garnishment directed toward the assets of a state government when the underlying cause of action is based on a violation of the national civil rights statute, but it has declined to issue a writ of garnishment where the judgment debtor was a state government and the judgment was based on ordinary breach of contract. The rationale for the issued writs was the FSM Constitution's Supremacy Clause, which must control regardless of a state constitutional provision, or national law, to the contrary. Kama v. Chuuk, 18 FSM R. 326, 334 (Chk. S. Ct. Tr. 2012).

– Taking of Property

Government employment that is "property" within the meaning of the Due Process Clause cannot be taken without due process. To be property protected under the Constitution, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Suldan v. FSM (II), 1 FSM R. 339, 351-52 (Pon. 1983).

The fundamental concept of procedural due process is that the government may not be permitted to strip citizens of life, liberty or property in an unfair, arbitrary manner. When such important individual interests are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision-making process. Suldan v. FSM (II), 1 FSM R. 339, 354-55 (Pon. 1983).

A temporary seizure is itself a significant taking of property, depriving the owner of possession, an important attribute of property. Ishizawa v. Pohnpei, 2 FSM R. 67, 75 (Pon. 1985).

Where a seizure is for forfeiture rather than evidentiary purposes, the constitutional prohibitions against taking property without due process come into play. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

When a landowner voluntarily enters into a statement of intent to grant the state an easement the state has not violated the landowner's constitutional rights by "taking" his property without just compensation,

and is not liable for trespass. Nena v. Kosrae, 5 FSM R. 417, 425 (Kos. S. Ct. Tr. 1990).

The mere act of the United States' funding the FSM and Pohnpei does not subject it to liability for a taking because its involvement was insufficiently direct and substantial to warrant such liability and because one government is not liable for a taking by officials of another government for merely advocating measures that other government should take. Damarlane v. United States, 7 FSM R. 167, 169-70 (Pon. 1995).

An unconstitutional taking occurs whenever a public entity substantially deprives a private party of the beneficial use of his property for a public purpose. Therefore where neither the Trust Territory nor a U.S. government agency could be considered a public entity in the FSM after the effective date of the Compact they are legally incapable of committing a taking after that date. Damarlane v. United States, 7 FSM R. 167, 170 (Pon. 1995).

The government does not engage in a taking where the interests lost are not private property. Damarlane v. United States, 8 FSM R. 45, 52 (App. 1997).

A claim of taking of property without due process of law is effective only against governmental entities or officials. The constitutional guarantee of due process only protects persons from the governments, and those acting under them, established or recognized by the Constitution. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

A claim that some private party has taken or deprived someone of their property is, if it was personal property that was allegedly taken, a claim for conversion or for trespass to chattels, and, if it was real property that was allegedly taken by some private party, it is a claim for trespass (including actions for ejectment) or possibly for nuisance (interference with use and enjoyment of land). They are not due process or takings claims. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

The fundamental concept of procedural due process is that the government may not deprive citizens of life, liberty or property in an unfair, arbitrary manner. A taking occurs whenever a public entity substantially deprives a private party of the beneficial use of his property for a public purpose. Ladore v. Panuel, 17 FSM R. 271, 275 (Pon. 2010).

The requirement of a public purpose for a taking means that the deprivation must have as its cause some sort of public purpose. Even if the court were to interpret "public purpose" liberally to include any government policy, no interpretation of the facts could make out a government policy or public purpose which caused the deprivation when the cause was a quotidian traffic accident which raises a question of tort, not due process. Ladore v. Panuel, 17 FSM R. 271, 275-76 (Pon. 2010).

When a tort claim – trespass – that the state occupied and continues to occupy the plaintiff's property to the exclusion of all others rises to the level of a constitutional claim and a civil rights violation, it is a taking of the plaintiff's property without just compensation. Stephen v. Chuuk, 18 FSM R. 22, 25 (Chk. 2011).

In order to prevail on a claim of deprivation of liberty or property without due process of law, a plaintiff must: 1) identify a liberty or property right which implicates the Due Process Clause; 2) identify a governmental action which amounts to a deprivation of that liberty or property right; and 3) demonstrate that the deprivation occurred without due process of law. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

Although no state shall deprive any person of life, liberty, or property without due process of law is the mandate of the constitution, a party cannot be said to be deprived of his property in a judgment because at the time he is unable to collect it. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

Plaintiffs are not deprived of their judgments, so long as they continue to be existing liabilities against the entity. Therefore a failure to timely fulfill a judgment does not constitute a taking in violation of the due process clause as there continues to be an existing liability against the state. Kama v. Chuuk, 18 FSM R.

326, 333 (Chk. S. Ct. Tr. 2012).

The state's failure to appropriate funds to pay a judgment debt does not constitute a taking in violation of the due process clause because the property right created by a judgment against a government entity is merely the recognition of a continuing debt of that government entity. Kama v. Chuuk, 20 FSM R. 522, 529 (Chk. S. Ct. App. 2016).

A money judgment against the state is not property such that its non-payment constitutes a taking, but a money judgment against the state is a recognition of the state government's continuing debt or obligation. Kama v. Chuuk, 20 FSM R. 522, 529-30 (Chk. S. Ct. App. 2016).

A money judgment against the state is not a property interest but an existing, continuing liability against the state, and a failure to timely satisfy that judgment does not constitute a taking in violation of due process or equal protection. Kama v. Chuuk, 20 FSM R. 522, 534 (Chk. S. Ct. App. 2016).

The fundamental concept of due process is that the government may not be permitted to strip citizens of life, liberty or property in an unfair or arbitrary manner. When such interests are subject to possible government taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision-making process. Linter v. FSM, 20 FSM R. 553, 557 (Pon. 2016).

In order to prevail on a claim of deprivation of liberty or property without due process of law, a plaintiff must: 1) identify a liberty or property right which implicates the due process clause; 2) identify a governmental action which amounts to deprivation of that liberty or property right; and 3) demonstrate that the deprivation occurred without due process of law. Linter v. FSM, 20 FSM R. 553, 557 (Pon. 2016).

When no property right can be ascribed to the alleged property at issue, the due process standard does not apply. Linter v. FSM, 20 FSM R. 553, 557 (Pon. 2016).

Government employment that is property within the meaning of the due process clause cannot be taken without due process. To be property protected under the FSM Constitution, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. These assurances may come from various sources, such as statute, formal contract, or actions of a supervisory person with authority to establish terms of employment. Linter v. FSM, 20 FSM R. 553, 558 (Pon. 2016).

– Title to Land

Citizenship may affect, among other legal interests, rights to own land, to engage in business or be employed, and even to reside within the Federated States of Micronesia. In re Sproat, 2 FSM R. 1, 6 (Pon. 1985).

The Constitution specifically bars noncitizens from acquiring title to land or waters in Micronesia and includes within the prohibition any corporation not wholly owned by citizens. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM R. 256, 259 (Pon. 1987).

Where a person is constitutionally prohibited from inheriting land that person's valid assignment of expectancy to a person who may acquire land will operate only to assign the non-land holdings in the expectancy. Etscheit v. Adams, 6 FSM R. 365, 382-83 (Pon. 1994).

The FSM Constitution mandates that a noncitizen may not acquire title to land or waters in Micronesia, but the Constitution does not prohibit a noncitizen from acquiring or holding some non-title interest in the land. Marcus v. Truk Trading Corp., 10 FSM R. 387, 390 (Chk. 2001).

The Constitution does not divest noncitizens of their title to land if they had acquired title to land before the Constitution's effective date. Marcus v. Truk Trading Corp., 10 FSM R. 387, 390 (Chk. 2001).

The Constitution does not prohibit a citizen landowner from becoming a citizen of another country and it does not strip a citizen landowner who does become a foreign citizen of title to land to which he acquired title when he was a citizen. Marcus v. Truk Trading Corp., 10 FSM R. 387, 390 (Chk. 2001).

A foreign citizen, is barred from acquiring legal title to land anywhere in the FSM. In re Engichy, 12 FSM R. 58, 68 (Chk. 2003).

Noncitizens cannot acquire title to land, but leasing land for 99 years does not constitute acquiring title to land. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99d (Chk. 2004).

That a citizen-buyer obtains the funds used to acquire title to land from a noncitizen does not affect the citizen-buyer's title to the land. To hold otherwise would throw all land sales, and land titles derived from them, into question because there is no way to determine from the land records the funds' source. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99d-99e (Chk. 2004).

– Yap

The Yap Constitution provides that the state recognizes traditional rights and ownership of natural resources and areas within the marine space of the State within 12 miles from island baselines and Yap statutory law provides that traditionally recognized fishing rights wherever located within the State Fishery Zone and internal waters must be preserved and respected and also preserves existing private rights of action for civil damages, for damage to coral reefs, seagrass areas, and mangroves. Thus 67 TTC 2 is no longer Yap state law. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 414 (Yap 2006).

– Yap – Interpretation

A constitutional provision that a thing shall be done in such a way "as provided by law" is not self-executing and requires legislation to implement it. Gimnang v. Yap, 7 FSM R. 606, 609 (Yap S. Ct. Tr. 1996).

CONTEMPT

Failure to proceed with a contempt hearing offered by the court without prior notice cannot be deemed a loss or waiver of the hearing right itself when no clear and unmistakable warning is issued that a failure to proceed immediately with the hearing will constitute a loss or waiver of that right. In re Iriarte (II), 1 FSM R. 255, 264-65 (Pon. 1983).

The Judiciary Act of 1979 permits the court to both fine and imprison a person found to be in contempt of court, but does not permit the fine to exceed $1,000 or the term of imprisonment to go beyond six months. Soares v. FSM, 4 FSM R. 78, 84 (App. 1989).

In a contempt trial, the trial court may consider information in addition to evidence adduced in the contempt hearing itself when the other information came to the knowledge of the trial court in previous judicial hearings related to the matter which gave rise to the contempt charge, and when the judge identified the "outside" information and gave the defendant an opportunity to object but the defendant failed to do so. Semes v. FSM, 5 FSM R. 49, 52 (App. 1991).

While the Judiciary Act says relatively little about the appropriate distinctions between civil and criminal contempt proceedings, the statute does reveal a general expectation of Congress that the legal system here shall adhere generally to the same kinds of distinctions between civil and criminal contempt proceedings that have been established in other common law systems. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 62, 65 (Pon. 1991).

Criminal contempt under the FSM Code results from intentional disregard of a court order; the fact that the defendant was not specifically informed that he would be subject to punishment for disobedience does not negate a finding of requisite intent. Alfons v. FSM, 5 FSM R. 402, 406 (App. 1992).

Whether the lower court erred by not holding the appellee in contempt of court involves a trial court's exercise of discretion and is reviewed using an abuse of discretion standard. Onopwi v. Aizawa, 6 FSM R. 537, 539 (Chk. S. Ct. App. 1994).

Contempt is not a matter between opposing litigants; it is a matter between the offending person and the court, and the degree of punishment for contempt, if any, is within the sound discretion of the court. Onopwi v. Aizawa, 6 FSM R. 537, 540 (Chk. S. Ct. App. 1994).

The intentional disobedience required for a conviction for contempt necessarily includes an element of voluntariness. In re Contempt of Cheida, 7 FSM R. 183, 185 (App. 1995).

The tardiness of a person who appears before the court as a witness, not as an attorney, who was presented with an unexpected legitimate and confirmed conflict between the demands of two branches of government, and who made efforts to notify the court he would be late, cannot be considered intentional disobedience of the court's summons. In re Contempt of Cheida, 7 FSM R. 183, 186 (App. 1995).

Generally, a person who seeks to satisfy the court that his failure to obey an order or decree was due entirely to his inability to render obedience, without fault on his part, must prove such inability. The FSM Supreme Court places the burden on the movant to show that the debtor has the ability to comply. Once this burden has been met and the debtor has been held in contempt, it is then the debtor's burden to show that he no longer has the ability to comply through no fault of his own despite his exercise of due diligence. Hadley v. Bank of Hawaii, 7 FSM R. 449, 452-53 (App. 1996).

In order to hold a debtor in contempt for failure to comply with an order in aid of judgment it is not enough that the debtor's noncompliance was found to be willful. There must also be a recital, or a finding somewhere in the record, that the debtor was able to comply. Hadley v. Bank of Hawaii, 7 FSM R. 449, 453 (App. 1996).

Punishment of imprisonment for contempt is automatically stayed on appeal, unless the court finds that a stay of imprisonment will cause an immediate obstruction of justice. "Obstruction of justice" means to impede those who seek justice in court or to impede those who have duties or powers to administer justice. In re Contempt of Umwech, 8 FSM R. 20, 22 (Chk. S. Ct. App. 1997).

When all parties are seeking to vindicate their positions in a court of law an immediate obstruction of justice is not present that would prevent the automatic stay of punishment of imprisonment for contempt. In re Contempt of Umwech, 8 FSM R. 20, 22 (Chk. S. Ct. App. 1997).

Any intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command is contempt of court, which the court has the power to punish. Johnny v. FSM, 8 FSM R. 203, 206 (App. 1997).

An officer of the court should be held to a higher standard for his contumacious behavior due to his intimate knowledge of the legal system. Cheida v. FSM, 9 FSM R. 183, 190 (App. 1999).

The test for compliance with court orders is that one have knowledge of the order and if such knowledge exists, it is irrelevant that the person has not been served. Nameta v. Cheipot, 9 FSM R. 510, 511 (Chk. S. Ct. Tr. 2000).

In addition to its statutory contempt power, the FSM Supreme Court does retain inherent powers to sanction attorneys. In re Sanction of Woodruff, 10 FSM R. 79, 85 (App. 2001).

In order for a person to be held in contempt, a court must find that he knew of the order and had the ability to comply with the order. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 102 (Kos. 2001).

Any adjudication of contempt is subject to appeal to the FSM Supreme Court appellate division. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 470 (Pon. 2001).

The appropriate means by which someone may challenge a discovery order is to subject themselves to a contempt proceeding. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 470 (Pon. 2001).

The court may impose no further sanctions when a party is in contempt for its failure to abide by a court order because it knew of the order, had the ability to comply with the order, and decided not to comply, but Rule 37 sanctions have already been imposed. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 229 (Pon. 2002).

Since a finding of contempt is final and appealable, the legality of the specific sanction of imprisonment should be reviewed at the same time in the interest of judicial economy. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 380 (App. 2003).

When a defendant who was found in contempt of court for failure to comply with an order in aid of judgment later dies, the court will vacate its order sentencing him to jail. Bank of the FSM v. Rodriguez, 11 FSM R. 542, 544 (Pon. 2003).

A motion to vacate a contempt order will be denied when nothing stated changes the previous finding. Davis v. Kutta, 11 FSM R. 545, 548 (Pon. 2003).

A possible, but drastic, means by which a party may immediately challenge an interlocutory court order is to not comply with it and thus subject themselves to a contempt proceeding and then appeal the contempt finding, if there is one. Usually in such cases, if the client chooses to follow the attorney's advice it is only the party disobeying the order, not the party's attorney, who is then subjected to a contempt proceeding, often as part of the same proceeding in which the disobeyed order was given. FSM v. Kansou, 13 FSM R. 344, 349 (Chk. 2005).

When FSM cases have not addressed a precise point (about contempt), in such an instance, the court may consider authorities from other jurisdictions in considering the question before it. RRG (FSM) Ltd. v. Maezoto, 15 FSM R. 243, 244 (Pon. 2007).

The FSM contempt statute expressly provides that one who is in violation of a court order may be put in jail until such time as he or she conforms his or her conduct the court's lawful order. Before imposing a sentence for contempt, the court must determine that the person who is potentially liable for contempt knew of the order, and had the ability to obey it. Carlos Etscheit Soap Co. v. Gilmete, 15 FSM R. 285, 289 (Pon. 2007).

When FSM cases have not addressed the precise point of a non-party's contempt, the court may consider authority from other common law jurisdictions. Carlos Etscheit Soap Co. v. Gilmete, 15 FSM R. 285, 289 (Pon. 2007).

It is plain that a non-party may be in contempt of a court order. Carlos Etscheit Soap Co. v. Gilmete, 15 FSM R. 285, 289 (Pon. 2007).

No motion for a show cause hearing regarding contempt shall fail in the FSM for failure formally and explicitly to assert either existence of the order or failure to comply with that order. However, inclusion of these two elements is helpful to the court. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 225 (Kos. 2010).

Traditionally, the movant has the burden to show that the debtor has the ability to comply with the court

order; once this burden has been met, it is then the debtor's burden to show that he no longer has the ability to comply through no fault of his own despite due diligence. Thus, it is the moving party's burden not only to submit a proper motion for a show cause hearing, but also, at the hearing, to prove by a preponderance that the judgment debtor has the ability to pay. If the movant cannot provide evidentiary support, or certify his information and belief that such support is likely after a reasonable opportunity for further investigation or discovery, the court must deny the motion, but if the court does set a hearing and order parties to appear, and if at the hearing the moving party presents such evidence, only then will the burden shift to the debtor to show that he does not in fact have the ability to pay. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 226-27 (Kos. 2010).

Since a movant is least likely to procure agreement or acquiescence for a hostile or adversarial motion, and since there are few motions more hostile or adversarial than one for an order to show cause why the opposing party should not be held in contempt, it is clear that no agreement would ever be considered by, or forthcoming from, the opposing party in such a situation. Thus, although the movant takes the risk that the absence of the certification might result in the motion's denial, the court, in its discretion, may find that lack of formal certification was not fatal to the motion. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 228 (Kos. 2010).

A person with a judgment may initiate contempt proceedings when enforcement of a favorable judgment is required to prevent irreparable injury to the winning party's interests and is otherwise in the interests of justice. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 309 (Pon. 2010).

Final judgments may be enforced by contempt proceedings provided that enforcement at such time is required to prevent irreparable injury or multiple damage to the interests of the winning party and is otherwise in the interests of justice. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 310 (Pon. 2010).

The relevant subsections of Chuuk State Law No. 190-08, § 27 provide that upon appeal, punishments of imprisonment for contempt will automatically be stayed unless the court finds cause to the contrary and renders its findings in writing. Chuuk v. Billimon, 17 FSM R. 313, 315 (Chk. S. Ct. Tr. 2010).

When the court has ordered counsel to submit a brief solely on the issue of whether the defendant's parcel is exempt from attachment and execution and counsel has chosen to ignore the court's order and proceeded to relitigate the issue of her ability to pay, normally, such intentional disobedience of the court's lawful order may be sanctionable under 4 F.S.M.C. 119(1)(b). FSM Dev. Bank v. Jonah, 17 FSM R. 318, 323 (Kos. 2011).

The inability to serve a show cause motion on a defendant means that a court cannot grant that motion without depriving the accused of due process rights. A wiser course of action, with respect to show cause motions, would be to serve the motion first, and then to file the motion and certificate of service within a reasonable time after service, an option expressly provided by the rules of civil procedure. In light of this alternative, and because circumstances may have changed since November 12, 2008, denial of the November 12, 2008 show cause motion is appropriate. Dateline Exports, Inc. v. George, 18 FSM R. 147, 149 (Kos. 2012).

When the court has enjoined the defendant from the activity that is the source of the bank's grievance against him, the court will hold the show cause motion in abeyance until such time as the bank either requests a show cause hearing or withdraws the motion. FSM Dev. Bank v. Abello, 18 FSM R. 192, 198 (Pon. 2012).

Courts generally have the power, in proper circumstances, to hold a party, or an attorney, or a witness summoned to appear before it in contempt of court for acts committed in the court's presence or for failure to appear when ordered to. The power to punish for contempt of court may be regarded as an essential element of judicial authority. It existed at common law. Helgenberger v. U Mun. Court, 18 FSM R. 274, 281 (Pon. 2012).

Only the court whose order was violated can punish a person for contempt – one court does not have the power to punish someone for the contempt of another court's order. Helgenberger v. U Mun. Court, 18 FSM R. 274, 281 (Pon. 2012).

If a person has been given adequate notice that he or she is ordered or required to appear before a court at a certain date and time and fails to do so, that court may, usually upon request, issue a bench warrant to compel that person to appear by authorizing the police to arrest that person and bring him or her before the court. The court does not need to first issue a second order for that person to appear and to explain his or her absence (show cause) and then if that order to appear is not obeyed, issue a third order to appear and explain the second absence, and then a fourth and so on without end. Helgenberger v. U Mun. Court, 18 FSM R. 274, 281 (Pon. 2012).

When an impeached U official was arrested on the U Impeachment Panel's bench warrant and brought within 24 hours before the only court competent to try him for the contempt charge, the U Impeachment Panel, where he was heard and then convicted of contempt, he received the process of law due him. Helgenberger v. U Mun. Court, 18 FSM R. 274, 281 (Pon. 2012).

If a person's contempt conviction was unsafe, that is, if he should have been acquitted because there was no earlier order requiring his appearance or if he was not allowed to present a defense, or if he had some valid defense that should have resulted in an acquittal on the contempt charge, his remedy would have been an immediate appeal of the contempt conviction as a final collateral order. Helgenberger v. U Mun. Court, 18 FSM R. 274, 282 (Pon. 2012).

While an impeachment conviction may not be appealable, a contempt conviction certainly is. Helgenberger v. U Mun. Court, 18 FSM R. 274, 282 n.6 (Pon. 2012).

The imposition of disciplinary sanctions is subject to due-process scrutiny. An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on her whether that sanction is imposed on her under the civil procedure rules, the criminal contempt statute, or some other court power. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

Contempt of court, under 4 F.S.M.C. 119(1)(a) and (b) is defined as any intentional obstruction of the administration of justice by any person, including an officer of the court acting in his official capacity, or any intentional disobedience or resistance to the court's lawful writ. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 105 (Chk. 2015).

The court's first duty in reviewing a contempt judgment is to determine whether the nature of the contempt proceeding was civil or criminal. That the court earlier characterized the contempt as civil or criminal is not conclusive. In re Contempt of Jack, 20 FSM R. 452, 461 & n.5 (Pon. 2016).

There are four states of culpability which establish the requisite mental element: intentional, knowing, reckless, and negligent, but only the first two subjective states of mind, intent or knowledge, can be used to support a contempt finding. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

In finding contempt, the court must first determine whether the contempt was a civil contempt or criminal contempt; second it must determine whether the contempt was direct or indirect – whether it was committed in the court's presence or not; and third, it must determine, by a clear and convincing standard, that the defendant intentionally disobeyed a court order. In re Contempt of Jack, 20 FSM R. 452, 467 (Pon. 2016).

An attorney who is again found in contempt in a case, may be subject to further payments to compensate the opposing party for any additional attorney's fees and costs. In re Contempt of Jack, 20 FSM R. 452, 467 (Pon. 2016).

– Acts Constituting

A counsel's decision to take steps which may cause him to be late for a scheduled court hearing, coupled with his failure to advise the court and opposing counsel of the possibility that he might be late to the hearing, may, when followed by failure to appear at the scheduled time, constitute an intentional obstruction of the administration of justice within the meaning of section 119(a) of the Judiciary Act, and may be contempt of court. 4 F.S.M.C. 119(a). In re Robert, 1 FSM R. 18, 20 (Pon. 1981).

The right of citizens to express their views, including views critical of public officials, is fundamental to the development of a healthy political system. Therefore, courts are generally reluctant to find that expression of opinions asserted outside of the court itself, however intemperate or misguided, constitute contempt of court. In re Iriarte (I), 1 FSM R. 239, 247-48 (Pon. 1983).

When the accused disrupts courtroom proceedings and the judge must act immediately to restore order, a trial judge may immediately convict a defendant (the accused) through a "summary contempt" procedure, that is, without prior notice or hearing. In re Iriarte (II), 1 FSM R. 255, 260 (Pon. 1983).

Voluntary acts or omissions by a person, done with knowledge of facts sufficient to warn the person that such acts or omission could create a substantial risk of court delay, may constitute intentional obstruction of the administration of justice. In re Tarpley, 2 FSM R. 221, 224 (Pon. 1986).

When counsel receives notice of a hearing, yet intentionally departs without making adequate efforts to reschedule the hearing or to assure that someone will appear on the client's behalf, he knowingly creates a substantial risk of obstruction of justice. In re Tarpley, 2 FSM R. 221, 224-25 (Pon. 1986).

"Intentional Obstruction," as specified in 4 F.S.M.C. 119, requires that the consequences of the act are the purpose for which it was done, or that the consequences were substantially certain to follow the act. In re Tarpley (II), 3 FSM R. 145, 149 (App. 1987).

One who acts negligently but whose actions do not create a substantial risk of obstruction, may not be deemed to have acted with the necessary intention to be found in contempt. In re Tarpley (II), 3 FSM R. 145, 150 (App. 1987).

Where the record reflects that assets were removed from an insolvent's warehouse by its president following the issuance of a writ of execution banning removal of the insolvent's property and no evidence was presented which showed that the assets removed were not the insolvent's property, a reasonable trier of fact could infer that the assets belonged to the insolvent and could base the president's conviction for contempt of court upon such a finding. Semes v. FSM, 5 FSM R. 49, 51 (App. 1991).

Where the record lacked any identifiable order directing a particular counsel to appear before the court, insofar as the court's expectation was that "somebody" from the Office of the Public Defender appear, no affirmative duty to appear existed; nor did any intentional obstruction of the administration of justice occur to support the lower court's finding of contempt against counsel. In re Powell, 5 FSM R. 114, 117 (App. 1991).

A garnishee who deliberately disobeys a court order may be held in contempt of court. Mid-Pac Constr. Co. v. Senda, 6 FSM R. 135, 136 (Pon. 1993).

An appellate court cannot hold a party in contempt for violating a trial court's orders because his actions were not a violation of the appellate court's orders or done in the appellate court's presence. Onopwi v. Aizawa, 6 FSM R. 537, 539 (Chk. S. Ct. App. 1994).

The inability of an alleged contemnor, without fault on his part to obey a court order generally absolves him from being held in contempt for violating that order, but such a defense is effective only where, after using due diligence, the person still is not able to comply with the order. The defense of inability to comply

is not available where the contemnor has voluntarily created the incapacity. Hadley v. Bank of Hawaii, 7 FSM R. 449, 452 (App. 1996).

FSM law allows imprisonment of a debtor for "not more than six months" if he is "adjudged in contempt as a civil matter" for failure "without good cause to comply with any order in aid of judgment." 6 F.S.M.C. 1412. The inability of a judgment debtor to comply with an order in aid of judgment without fault on his part after his exercise of due diligence constitutes "good cause" within the meaning of the statute. Hadley v. Bank of Hawaii, 7 FSM R. 449, 452 (App. 1996).

Conduct proscribed by a court order may be punished as contempt even though authorized by an executive order because such activity is illegal, and under a government of laws, illegal conduct pays a price. Johnny v. FSM, 8 FSM R. 203, 208 (App. 1997).

In the Kosrae State Code, contempt of court is defined as intentionally obstructing court proceedings or court operations directly related to the administration of justice or intentionally disobeying or resisting the court's writ, process, order, rule, decree or command. In re Contempt of Skilling, 8 FSM R. 419, 424 (App. 1998).

In order to maintain order in the courtroom, courts have a limited power to make a finding of contempt "summarily" where the contemptuous conduct takes place during courtroom proceedings and is personally observed by the judge. This exception is typically used when the accused disrupts courtroom proceedings and the judge must act immediately to restore order. Fewer procedural safeguards are required in such contexts because the events have occurred before the judge's own eyes and because a reporter's transcript is often available, a hearing is less critical to ensuring that the defendant is treated fairly. In re Contempt of Skilling, 8 FSM R. 419, 424 (App. 1998).

A debtor who knew of an order, since he stipulated to it, and who had some ability to pay, as evidenced by the payments that he did make, cannot be found in contempt for failing to meet the payments under the stipulated order when there was insufficient evidence presented to establish any income sufficient to confer on the debtor the ability to pay under the order because having some ability to pay is different from having the ability to make the payments specified in the order. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 102 (Kos. 2001).

Any intentional disobedience or resistance to the court's lawful order is contempt of court. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 475 (Pon. 2001).

When various recent financial exigencies have affected the judgment-debtor's ability to make the payments as pledged, and the judgment-debtor felt that a payment of no more than $50,000 could be made by the end of February, and that the remainder of the judgment could be paid by the end of the fiscal year, the court is satisfied that the judgment-debtor has not intentionally disobeyed the court's order. Davis v. Kutta, 10 FSM R. 505, 506 (Chk. 2002).

The statutory remedy for violations of an order in aid of judgment is that if any debtor fails without good cause to comply with any order in aid of judgment, he may be adjudged in contempt as a civil matter. The inability of a judgment debtor to comply with an order in aid of judgment without fault on his part after his exercise of due diligence constitutes "good cause." Rodriguez v. Bank of the FSM, 11 FSM R. 367, 374 (App. 2003).

Contempt of court is any intentional obstruction of the administration of justice by any person or any intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

While the court cannot find, beyond a reasonable doubt, that an attorney intended either to obstruct the administration of justice or to disobey the court's order since he thought the order did not apply to him because he believed he was no longer counsel and he thought (at that time) that he had informed the court of that, it can conclude that the attorney's conduct falls below that expected of someone admitted to the

FSM bar. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

When someone has no say over payment of judgments against the state beyond approving or disapproving vouchers that are submitted to the commission for payment he cannot be in contempt for failure to pay. Estate of Mori v. Chuuk, 11 FSM R. 535, 539 (Chk. 2003).

A person's failure to obey a witness summons is considered contempt of court, and may subject the offending witness to arrest and imprisonment. Kosrae v. Nena, 12 FSM R. 20, 23 (Kos. S. Ct. Tr. 2003).

When the defendants knew of two scheduled conference dates and were able to inform and/or seek leave of court to obtain a rescheduled conference date, but failed to take any action to do so prior to those conferences and when the defendants have intentionally and inexcusably delayed the litigation's progress, and since contempt of court is any intentional obstruction of the administration of justice by any person, or any intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command, the defendants are in civil contempt. FSM Dev. Bank v. Ladore, 12 FSM R. 169, 170-71 (Pon. 2003).

Failure to comply with an order in aid of judgment and an injunction can be grounds for a contempt proceeding. Edwin v. Heirs of Mongkeya, 12 FSM R. 220, 222 (Kos. S. Ct. Tr. 2003).

Neither the petitioner nor his counsel will be held in contempt of court when their failure to include the decedent's adopted daughter as an heir was not intentional since the petitioner did not inform counsel of the decedent's adopted child and counsel failed to ask the petitioner, who was a lay person not expected to know the law's requirements and expected to rely on his counsel, to verify all of the decedent's heirs. In re Skilling, 12 FSM R. 447, 449 (Kos. S. Ct. Tr. 2004).

Failure to pay a judgment in accordance with a court order may in the appropriate case constitute conduct that is sanctionable by an order of contempt under 4 F.S.M.C. 119. For such an order to issue, it must be shown that the putative contemnor had knowledge of the order and the ability to obey, and that he did not do so. Barrett v. Chuuk, 12 FSM R. 558, 561 (Chk. 2004).

When counsel's contentions are colorable and not made in bad faith, counsel is not subject to criminal liability merely because his or her interpretation or understanding of the law is incorrect. FSM v. Kansou, 13 FSM R. 344, 349 (Chk. 2005).

By failing to move from the land as they were ordered to do, a named party and another are in contempt of the court's permanent injunction because both knew of the injunction and had the ability to comply with it. Although the other was not a named party, he nevertheless knew of the order, and is subject to punishment for violating the order himself when he also encouraged the named party to stay on the land. Carlos Etscheit Soap Co. v. Gilmete, 15 FSM R. 285, 289 (Pon. 2007).

Contempt is any intentional obstruction of the administration of justice by any person, including any clerk or officer of the court acting in his official capacity; or any intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command. The FSM Code provides for differences between civil and criminal contempt, at least in terms of adjudication. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 225 (Kos. 2010).

The elements for establishing contempt for failure to comply with or obey a court order are well established: in order for a person to be held in contempt, a court must find that he knew of the order and had the ability to comply with the order. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 225 (Kos. 2010).

For a party to be held in contempt, the court must find that he knew of the order and had the ability to comply. Implicit in the charge that the party knows of the order is the requirement that the order is in existence and is valid and actionable. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 310 (Pon.

2010).

Contempt of court is the intentional obstruction of administration of justice, or the intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command. FSM Dev. Bank v. Abello, 18 FSM R. 192, 197 (Pon. 2012).

Generally, the failure to obey a court's order is considered civil contempt, and when the refusal takes place outside of the court's presence, it is an indirect civil contempt. Because the court has no personal knowledge of the indirect contempt, the acts must be proven through the testimony of third parties or the contemnor. Thus minimal due process requirements apply to indirect contempts. In re Contempt of Jack, 20 FSM R. 452, 463-64 (Pon. 2016).

An attorney's absence alone does not constitute contempt, but if the attorney offers an insulting, frivolous, or clearly inadequate explanation, a direct contempt has been committed in the presence of the judge. Patently false, flippant, inconsistent, contradictory, and evasive replies support a contempt finding, as does an attorney's refusal to give any explanation for his or her absence or lateness in arriving for a trial or hearing since that is the equivalent of the lack of a valid excuse. In re Contempt of Jack, 20 FSM R. 452, 464 n.10 (Pon. 2016).

Contemptuous behavior includes not only intentionally avoiding a hearing, but also intentionally arriving late for a hearing. Thus, failure to appear or even tardiness may be treated as an indirect civil contempt pursuant to 4 F.S.M.C. 119(2)(a), or as an indirect criminal contempt pursuant to 4 F.S.M.C. 119(2)(b), or both. But in either case, it cannot be treated summarily. In re Contempt of Jack, 20 FSM R. 452, 464 (Pon. 2016).

A contemnor's intent must be ascertained from all the acts, words, and circumstances surrounding the occurrence. Ultimately, most *bona fide* representations tend to excuse, but cannot justify the act. Notably, an attorney's good faith belief that they were not obligated to appear at that time may be accepted or rejected. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

Although an act of negligence is not sufficient to support a finding of contempt, an act of willful neglect is. Thus, while a single act of negligence is usually not sufficient by itself to support a finding of contempt, a pattern of neglect can give rise to the inference of an intentional design to disobey. In re Contempt of Jack, 20 FSM R. 452, 466 (Pon. 2016).

When an attorney's off-island notice was filed several weeks after a court order set the hearing date; when the off-island notice's filing indicates that the attorney knew of the conflict over a month in advance, but failed to notify the court until the last minute; and when the attorney never notified the opposing counsel, the off-island notice cannot be used to imply that the court scheduled the hearing in error since the attorney had a professional duty to not only notify the court, but also the opposing party in a timely manner in order to reschedule the hearing. While this alone is not contemptuous, it can be used as further support the inference of intent to disobey a court order when supported by a pattern or other similar acts and omissions drawn from the surrounding circumstances. Collectively, the attorney's acts and omissions form a pattern and indicate that she knew her duty, had the ability to perform it, and willfully neglected to perform it. In re Contempt of Jack, 20 FSM R. 452, 466 (Pon. 2016).

When an attorney failed to appear as required and the court held a show cause hearing to determine why she failed to appear at the scheduled hearing; when, after receiving her explanation, the court found her in contempt because she knew of the hearing and had the ability to appear, at least telephonically; and when this was supported in the record, clearly and convincingly, this was an act of intentional disobedience of a court order within the meaning of 4 F.S.M.C. 119(1)(b), and a sanction will be imposed that is not punitive but which is made to compensate the opposing party for losses he incurred. In re Contempt of Jack, 20 FSM R. 452, 467 (Pon. 2016).

– Civil

Before a trial court can hold a defendant in civil contempt of a court order it must find that the alleged contemnor knew of the court order and it must find that the alleged contemnor had the ability to comply with that order. Hadley v. Bank of Hawaii, 7 FSM R. 449, 452 (App. 1996).

The distinction between civil and criminal contempt is that the former is prospective, while the latter is retrospective, which is to say that a civil contempt proceeding's purpose is to bring about compliance with a court order, while the criminal contempt's purpose is to punish for past wrongful conduct. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

The court may not punish a contemnor for civil contempt where the contemnor lacks the ability, through no fault of his own, to comply with the order, or, in other words, where the contemnor lacks the ability to purge the contempt. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

When a person no longer has the ability to purge the contempt by complying with the court's orders, he is not subject to punishment for civil contempt. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

Before a trial court can hold a defendant in civil contempt of court for violating an order in aid of judgment on a debt, it must find that the alleged contemnor both knew of the court order and had the ability to comply with that order. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 373 (App. 2003).

Traditionally the burden has been on the movant to show that the debtor has the ability to comply with the court order. This has been deemed reasonable because in the FSM debtors usually appear *pro se* and creditors do not. Once this burden has been met, it is then the debtor's burden to show that he no longer has the ability to comply through no fault of his own despite his exercise of due diligence. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 373-74 (App. 2003).

A finding that a judgment debtor is in civil contempt will be set aside on appeal only if it is clearly erroneous. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 374 (App. 2003).

Civil contempt is not punishment for the failure to pay a debt. It is a prospective remedial measure designed to encourage, or even coerce, compliance with a lawful court order when the contemnor has been found to have the ability to comply with that order. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 382 (App. 2003).

A person sent to jail after being adjudged in civil contempt can get out of jail anytime he or she chooses merely by complying with the court order and thereby purging himself or herself of the contempt because 6 F.S.M.C. 1412 provides that upon an adjudication of civil contempt, the contemnor shall be committed to jail until he complies with the order. The purpose of a civil contempt adjudication is to secure compliance with a lawful court order when the contemnor has the ability to do so. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 382 (App. 2003).

A finding of civil contempt necessitates a finding that the defendant failed without good cause to comply with the court order. Good cause is the inability of a judgment debtor to comply with an order in aid of judgment without fault on his part after his exercise of due diligence. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 382 (App. 2003).

When the court has found the defendants in civil contempt, it may order them imprisoned until such time as they comply with the orders issued to date and/or pay an amount necessary to compensate the court and plaintiff for the wasted time and expense involved in having held and set over pretrial conferences that the defendants never timely rescheduled nor attended; but if, in the court's opinion, imprisonment is a less suitable punishment than a ruling that by its nature will move this litigation to its conclusion, and when the defendant's only asserted defense to having defaulted on the underlying promissory note was his

unemployment and inability to pay and he is now employed, the court may order the defendants to settle the case and file a stipulated judgment or the court will strike defendants' answer and enter a default judgment against the defendants, grant a motion for order in aid of judgment, the plaintiff files one, hold a hearing thereon, make findings as to the defendants' ability to pay, and if warranted, order the defendants' wages garnished for such amount as the court deems appropriate in light of those findings. FSM Dev. Bank v. Ladore, 12 FSM R. 169, 171-72 (Pon. 2003).

Civil contempt is a prospective remedial measure designed to encourage, or even coerce, compliance with a lawful court order when the contemnor has been found to have the ability to comply with that order. On the other hand, criminal contempt is retrospective and is punishment for past wrongful conduct. It is not designed to secure compliance with a court order, but instead punishes the intentional violation of a lawful court order. FSM Dev. Bank v. Adams, 14 FSM R. 234, 252 (App. 2006).

Civil contempt may be employed to coerce compliance with the trial court's orders compelling discovery. FSM Dev. Bank v. Adams, 14 FSM R. 234, 253 (App. 2006).

The court will not issue an order to show cause why a defendant should not be held in contempt for his failure to appear at the start of trial on February 5, 2001 since civil contempt is inapplicable because the civil contempt is a remedial measure to coerce compliance, and the court can not now coerce the defendant to appear on time on February 5, 2001. Amayo v. MJ Co., 14 FSM R. 355, 361 (Pon. 2006).

One of the factors that the court must consider in making a finding of civil contempt is whether the relief requested is primarily for the benefit of the complainant. RRG (FSM) Ltd. v. Maezoto, 15 FSM R. 243, 244 (Pon. 2007).

When the relief sought is an order requiring payment of fees owed not to the movant, but to another, the relief sought is not primarily for the movant's benefit. Accordingly, the motion for an order for parties to show cause why they should not be held in contempt will be denied. RRG (FSM) Ltd. v. Maezoto, 15 FSM R. 243, 244 (Pon. 2007).

One difference between civil and criminal contempt revolves around intent. An essential element of a criminal contempt is the subjective intent to defy the court's authority. The requisite intent is specific intent, such that mere negligent failure to comply is not enough, but a finding of the requisite intent will not be negated because a defendant was not specifically informed of the consequences for disobedience. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 225 (Kos. 2010).

Although civil contempt does not require a finding of specific intent, it is not enough to find that noncompliance was willful, as shown by knowledge of the order; there must also be a recital, or a finding in the record, that there was an ability to comply. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 225-26 (Kos. 2010).

By statute, contempt proceedings to enforce judgments and orders in aid of judgment are meant to be civil matters. Further, by statute, orders in aid of judgment require hearings in which the court determines the judgment debtor's ability to pay. Since a judgment debtor is present at such hearings, no order in aid of judgment can logically issue without the court's determination of the debtor's ability to pay and the debtor's knowledge of the order in aid. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 226 (Kos. 2010).

In the context of failure to comply with an order in aid of judgment, there are four points in time when there may be a question of ability to pay: 1) when the order in aid was issued; 2) when the debtor misses a payment; 3) when the motion is submitted; and 4) when the hearing is held. Because the court assesses ability to pay when the order in aid is issued, the first point is irrelevant and because civil contempt is not used to punish past misconduct, ability to pay at the second point is similarly irrelevant, unless the moving party wishes to request criminal contempt proceedings, in which case the court may refer the matter to the appropriate government prosecutor. The remaining times are when the motion is submitted, and when the hearing is held. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 226 (Kos. 2010).

If a debtor cannot overcome the moving party's evidence that the debtor in fact had the ability to pay when the motion was submitted, the court will find him in contempt only if he still has the same ability to pay at the time of the hearing; and in either case the moving party may request a separate adjudication as to criminal contempt. If the debtor did not have the ability to pay when the motion was submitted, the court will not entertain any request for a separate adjudication as to criminal contempt and will find him in contempt only if he has regained the same ability to pay at the time of the hearing. If the debtor's ability to pay at the time of the hearing is diminished, the court will not find him in contempt, but may issue a modified order in aid. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 227 (Kos. 2010).

When a movant fails to plead the necessary elements of civil contempt and when the movant fails to provide evidentiary support for factual contentions and because of the motion's nature, a motion to show cause why a defendant should not be held in contempt is insufficient. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 228 (Kos. 2010).

Civil contempt is a prospective remedial measure designed to encourage, or even coerce, compliance with a lawful court order when the contemnor has been found to have the ability to comply with that order, but criminal contempt is retrospective and is punishment for past wrongful conduct. Criminal contempt is not designed to secure compliance with a court order, but instead punishes the intentional violation of a lawful court order. Berman v. Pohnpei Legislature, 17 FSM R. 339, 352 (App. 2011).

For a civil contempt finding, it is not enough to find that noncompliance was willful, as shown by knowledge of the order; there still must also be a recital – a finding in the record – that there was an ability to comply. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 (App. 2011).

Since a finding or "recital" that there was an ability to comply is required for civil contempt, it must also be a necessary element of the more difficult to prove criminal contempt. Thus, when nowhere in its contempt order did the trial court make a finding or a "recital" that the contemnor had the ability to comply with its deadlines for filing a pretrial statement and for marking her exhibits with the clerk, the trial court's failure to find a necessary factual element is generally enough to reverse a contempt finding whether civil or criminal. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 (App. 2011).

A person accused of committing civil contempt has a right to notice of the charges and an opportunity to present a defense and mitigation. FSM Dev. Bank v. Abello, 18 FSM R. 192, 198 (Pon. 2012).

When the parties all agreed that since the court's last order confirming that the preliminary injunction remained in place, the defendants had been complying with the injunction and that therefore, except possibly for some damages that might have accrued, there was no need to proceed on the show cause motion because it was moot. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41c (Pon. 2015).

The major factor in determining whether a contempt is civil or criminal is the purpose for which the power is exercised. The purpose of a civil contempt is remedial or compensatory, while the purpose of a criminal contempt is punitive. In re Contempt of Jack, 20 FSM R. 452, 461 (Pon. 2016).

In contempt cases, both civil and criminal relief have aspects that can be seen as either remedial or punitive or both: when a court imposes fines and punishments on a contemnor, it is not only vindicating its legal authority but also seeking to give effect to the law's purpose of modifying the contemnor's behavior. The confusion between civil and criminal contempt arises as a result of civil contempt often having the incidental effect of vindicating the court's authority, while, conversely, criminal contempt may permit the movant to derive the incidental benefit of preventing future noncompliance. In re Contempt of Jack, 20 FSM R. 452, 461 n.7 (Pon. 2016).

The distinction between civil and criminal contempt is that the former is prospective, while the latter is retrospective, which is to say that a civil contempt proceeding's purpose is to bring about compliance with a court order, while the criminal contempt's purpose is to punish for past wrongful conduct. In re Contempt

of Jack, 20 FSM R. 452, 461-62 (Pon. 2016).

The relief granted in civil contempt proceedings, is compensatory or coercive. This often takes the form of a fine in the amount of the damage sustained by the plaintiff and an award of costs and attorney's fees. In re Contempt of Jack, 20 FSM R. 452, 462 (Pon. 2016).

The sanction of civil contempt serves two remedial purposes, 1) to enforce compliance with a court order, and 2) to compensate for losses caused by noncompliance. In re Contempt of Jack, 20 FSM R. 452, 462 (Pon. 2016).

The distinction between civil and criminal contempt is somewhat elusive and has plagued the courts. Contempt proceedings, while usually called civil or criminal, are, strictly speaking, neither civil nor criminal but are instead *sui generis*. They partake of the characteristics of both but are procedurally different from other actions. Despite the verbiage used to designate them, they are neither wholly civil or criminal. Thus, criminal contempt is often said not to be a crime at all. In re Contempt of Jack, 20 FSM R. 452, 462-63 (Pon. 2016).

Generally, civil contempt invokes the rules of civil procedure, and criminal contempt invokes the rules of criminal procedure. In re Contempt of Jack, 20 FSM R. 452, 463 (Pon. 2016).

Even though the court chooses to sanction an attorney with a civil contempt, that does not prohibit the court from also sanctioning the attorney with a criminal contempt. The choice is not mutually exclusive and a single contumacious act may in fact necessitate both. In re Contempt of Jack, 20 FSM R. 452, 463 n.8 (Pon. 2016).

A contempt sanction is compensatory and correctly characterized as a civil contempt action when it goes directly to the aggrieved party's benefit, not to the state's; when the attorney's fee award is not a fixed fine, but is dependent on actual injuries incurred, and demonstrated in the record; and when the show cause hearing was ordered following a motion by the plaintiff, and not prosecuted separately by the government, nor brought *sua* sponte by the court itself. While it is true that the attorney did not have the ability to purge for her absence, as this is an act which has already occurred, the excuse is contemporaneous with the finding. In re Contempt of Jack, 20 FSM R. 452, 463 (Pon. 2016).

Generally, the failure to obey a court's order is considered civil contempt, and when the refusal takes place outside of the court's presence, it is an indirect civil contempt. Because the court has no personal knowledge of the indirect contempt, the acts must be proven through the testimony of third parties or the contemnor. Thus minimal due process requirements apply to indirect contempts. In re Contempt of Jack, 20 FSM R. 452, 463-64 (Pon. 2016).

If the court elects to pursue an attorney's absence as a civil contempt under 4 F.S.M.C. 119(2)(a), the accused has a right to notice of the charges and an opportunity to present a defense and mitigation. In a civil contempt proceeding, this due process requirement is usually met through a show cause hearing where the defendant is given the opportunity to explain or justify the failure to appear. In re Contempt of Jack, 20 FSM R. 452, 464 (Pon. 2016).

The movant bears the burden of establishing the elements of civil contempt by clear and convincing evidence, which is a higher standard than the preponderance of the evidence standard, common in civil cases, although not as high as beyond a reasonable doubt. In re Contempt of Jack, 20 FSM R. 452, 464 (Pon. 2016).

The clear and convincing standard will be applied to the evidence in a civil contempt case. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

The court has the power to punish any intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command and may do so either criminally or civilly, but the standard is not

the same. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

The civil standard of volition is "knew and had the ability to comply." Thus, the court may not punish a contemnor for civil contempt when the contemnor lacks the ability, through no fault of his own, to comply with the order. It is not enough to find that noncompliance was willful, as shown by knowledge of the order; there still must also be a recital – a finding in the record – that there was an ability to comply. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

An attorney's representation that she forgot about the hearing, will not be accepted and the attorney will be found in contempt when she filed a motion to continue the hearing only a few days before the scheduled hearing and when, in her motion for relief, she represents that she assumed the court would grant her motion to continue and if she had known that the court would not approve her motion she would have called in telephonically. In re Contempt of Jack, 20 FSM R. 452, 466 (Pon. 2016).

The moving party must show that the contemnor knew and had the ability to comply. This culpable state of mind can be ascertained through the words, acts and surrounding circumstances of the case, including a previous pattern of delay and neglect. If the court so finds, a civil sanction compensating the other party for costs and attorney's fees is appropriate. In re Contempt of Jack, 20 FSM R. 452, 467 (Pon. 2016).

– Criminal

The need to assure fairness in judicial proceedings is especially pronounced where, as in a criminal contempt proceeding, the court itself is the accuser. In re Iriarte (I), 1 FSM R. 239, 248 (Pon. 1983).

In criminal contempt proceedings, reasonable notice of a charge and an opportunity to be heard are basic in our system of jurisprudence; these rights include a right to examine witnesses against one, to offer testimony, and to be represented by counsel. In re Iriarte (I), 1 FSM R. 239 250 (Pon. 1983).

To insure that order is maintained in court proceedings, courts have a limited power to make a finding of contempt summarily, where the contemptuous conduct takes place during courtroom proceedings and is personally observed by the judge, and where the judge acts immediately. In re Iriarte (I), 1 FSM R. 239, 250 (Pon. 1983).

A hearing on a charge of contempt is less critical to fairness where the events occur before the judge's own eyes and a reporter's transcript is available. In re Iriarte (I), 1 FSM R. 239, 250 (Pon. 1984).

A summary punishment always, and rightly, is regarded with disfavor. When conviction and punishment is delayed it is much more difficult to argue that action without notice or hearing of any kind is necessary to preserve order and enable the court to proceed with its business. In re Iriarte (I), 1 FSM R. 239, 251 (Pon. 1983).

Once a contemner has left the courtroom, there presumably is no immediate necessity to act without a normal hearing to preserve the integrity of the court proceedings. In re Iriarte (I), 1 FSM R. 239, 251 (Pon. 1983).

Criminal contempt is normally considered a criminal case because the charge exposes the defendant to the possibility of imprisonment. In re Iriarte (II), 1 FSM R. 255, 260 (Pon. 1983).

A criminal contempt charge defendant is entitled to those procedural rights normally accorded other criminal defendants. In re Iriarte (II), 1 FSM R. 255, 260 (Pon. 1983).

When the accused disrupts courtroom proceedings and the judge must act immediately to restore order, a trial judge may immediately convict a defendant (the accused) through a "summary contempt" procedure, that is, without prior notice or hearing. In re Iriarte (II), 1 FSM R. 255, 260 (Pon. 1983).

The summary contempt power may be invoked even after some delay if it was necessary for a transcript to be prepared to substantiate the contempt charge, or when the contemner is an attorney and immediate contempt proceedings may result in a mistrial. In re Iriarte (II), 1 FSM R. 255, 261 (Pon. 1983).

When the necessity to restore order by immediate court action ends, the court's summary contempt power has expired. In re Iriarte (II), 1 FSM R. 255, 261 (Pon. 1983).

While the Judiciary Act says relatively little about the appropriate distinctions between civil and criminal contempt proceedings, the statute does reveal a general expectation of Congress that the legal system here shall adhere generally to the same kinds of distinctions between civil and criminal contempt proceedings that have been established in other common law systems. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 62, 65 (Pon. 1991).

Although judiciaries are vested with power to require or authorize initiation of criminal contempt proceedings, and may appoint private counsel to prosecute those proceedings, judiciaries typically attempt to appoint for that purpose government attorneys who are already responsible for public prosecutions. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 62, 66 (Pon. 1991).

A contempt motion brought, not to obtain leverage to force compliance with a existing court order, but instead to attempt to punish the party for a previous violation is criminal in nature. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 62, 66 (Pon. 1991).

Counsel for a party in a civil action may not be appointed to prosecute the opposing party for criminal contempt for violating an order in that action because the primary focus of the private attorney is likely to be, not on the public interest, but instead upon obtaining for his or her client the benefits of the court's order. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 62, 67 (Pon. 1991).

A prosecution for criminal contempt does not pose a double jeopardy problem when previous contempt proceedings were in the nature of civil contempt, nor does it violate the statutory prohibition against successive prosecutions for contempt. FSM v. Cheida, 7 FSM R. 633, 637 (Chk. 1996).

The doctrine of collateral estoppel or issue preclusion holds that when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim. It therefore does not apply to a criminal contempt proceeding for acts after earlier civil contempt proceedings and because the burden of proof is different in a criminal proceeding and because it is not a subsequent action between the same parties. FSM v. Cheida, 7 FSM R. 633, 637-38 (Chk. 1996).

A prosecution for criminal contempt will not be dismissed on statute of limitations grounds when the information is based in part on acts within the three month statute of limitations for contempt. FSM v. Cheida, 7 FSM R. 633, 638 (Chk. 1996).

When a defendant who testified in a civil contempt proceeding was not in custody, the civil contempt proceedings were not conducted to gather evidence for use in a subsequent criminal action and because a court is not required to warn a defendant of his right to counsel before giving testimony in a civil contempt proceeding, the defendant's testimony and voluntarily submitted pleadings in a civil contempt proceeding are admissible in a later criminal contempt proceeding. FSM v. Cheida, 7 FSM R. 633, 640 & n.2 (Chk. 1996).

The standard of review for a criminal contempt conviction, like the standard for any criminal conviction, is whether the appellate court can conclude that the trier of fact reasonably could have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. Johnny v. FSM, 8 FSM R. 203, 206 (App. 1997).

Section 6.1104 of the Kosrae Code expressly gives criminal contempt defendants certain due process

safeguards. In re Contempt of Skilling, 8 FSM R. 419, 424 (App. 1998).

In the vast majority of criminal contempt cases, the defendant is given substantially those procedural rights normally accorded to defendants in other criminal cases. In re Contempt of Skilling, 8 FSM R. 419, 424 (App. 1998).

In order to maintain order in the courtroom, courts have a limited power to make a finding of contempt "summarily" where the contemptuous conduct takes place during courtroom proceedings and is personally observed by the judge. This exception is typically used when the accused disrupts courtroom proceedings and the judge must act immediately to restore order. Fewer procedural safeguards are required in such contexts because the events have occurred before the judge's own eyes and because a reporter's transcript is often available, a hearing is less critical to ensuring that the defendant is treated fairly. In re Contempt of Skilling, 8 FSM R. 419, 424 (App. 1998).

In situations in which attorneys or witnesses have been held in criminal contempt of court for failure to appear at court hearings, the FSM Supreme Court trial court has given notice that it was considering holding kthe defendant in criminal contempt, has taken testimony from the defendant, and has considered whether the defendant's conduct in missing the hearing was intentional. In re Contempt of Skilling, 8 FSM R. 419, 424-25 (App. 1998).

Summary contempt proceedings are viewed with disfavor. In re Contempt of Skilling, 8 FSM R. 419, 425 (App. 1998).

Contempt of court is not a matter between opposing litigants, it is a matter between the offending person and the court. In re Contempt of Skilling, 8 FSM R. 419, 426 (App. 1998).

Criminal contempt requires a specific intent to consciously disregard an order of the court, and willfulness does not exist where a defendant pursues in good faith a plausible though mistaken alternative. Mere negligent failure to comply with an order of the court is not enough. In re Contempt of Skilling, 8 FSM R. 419, 426 (App. 1998).

There must be an identifiable, specific order in the record creating an affirmative duty to appear in order for an alleged contemnor to be guilty of contempt for non-appearance. In re Contempt of Skilling, 8 FSM R. 419, 426 (App. 1998).

A summary order of contempt for non-appearance violates an accused's right to due process under the Kosrae Constitution. Accordingly, on appeal the conviction will be vacated and remanded. In re Contempt of Skilling, 8 FSM R. 411, 418 (App. 1998).

A criminal contempt proceeding is maintained to vindicate the authority of the court or to punish otherwise for conduct offensive to the public in violation of a court order. Cheida v. FSM, 9 FSM R. 183, 187 (App. 1999).

As a criminal contempt remedy is designed for individual deterrence, to punish for intentional disobedience of the court's orders, a defendant's status as a first time offender is not a mitigating factor in his sentencing. Cheida v. FSM, 9 FSM R. 183, 188 (App. 1999).

In the usual criminal contempt proceeding, the defendant is charged with criminal contempt by a government attorney. Cheida v. FSM, 9 FSM R. 183, 189 & n.3 (App. 1999).

Criminal contempt proceedings arising out of civil litigation are between the public and the defendant, and are not a part of the original cause. Cheida v. FSM, 9 FSM R. 183, 189 (App. 1999).

Criminal contempt proceedings are instituted to protect the public interest of maintaining respect for the judicial system, and are not merely a stronger form of civil contempt sanctions against a defendant.

Cheida v. FSM, 9 FSM R. 183, 189 (App. 1999).

An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on him, whether that sanction is imposed on him under the civil procedure rules, the criminal contempt statute, or some other court power. In re Sanction of Woodruff, 10 FSM R. 79, 84 (App. 2001).

The distinction between civil and criminal contempt is that the former is prospective, while the latter is retrospective, which is to say that a civil contempt proceeding's purpose is to bring about compliance with a court order, while the criminal contempt's purpose is to punish for past wrongful conduct. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

A request that someone be punished for his failure to pay a judgment during the period when he did have the ability to comply with the court's orders, is, since the contention relies on past conduct, a request that the court find him in criminal contempt. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

Criminal contempt is not a specified remedy in 6 F.S.M.C. 1412, but is an available remedy under the general FSM contempt statute, 4 F.S.M.C. 119, under which the court may punish any intentional disobedience to a lawful court order. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

An essential element of a criminal contempt is the subjective intent to defy the court's authority. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

A finance director's actions in attempting to achieve payment of a judgment indicates that he lacks the subjective intent necessary for criminal contempt and a court therefore cannot hold him in contempt. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

A criminal contemnor's intent must be ascertained from all the acts, words, and circumstances surrounding the occurrence. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

Criminal contempt (available under 4 F.S.M.C. 119) is retrospective and is punishment for past wrongful conduct. It is not designed to secure compliance with a court order, but instead punishes the intentional violation of a lawful court order. Except for summary cases when the contempt is before a judge and is needed to maintain courtroom decorum, criminal contempt cases are normally prosecuted by the government, and not by an opposing party. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 382 n.23 (App. 2003).

An attorney is not liable for criminal contempt for advising his client in good faith to assert his or her privilege against self-incrimination. For an attorney in the Federated States of Micronesia to be liable for criminal contempt for advising a client to assert his or her right to self-incrimination, the attorney must have given that advice in bad faith. FSM v. Kansou, 13 FSM R. 344, 349 (Chk. 2005).

Punishment, through criminal contempt, cannot be employed where Rule 37 sanctions may be. FSM Dev. Bank v. Adams, 14 FSM R. 234, 253 (App. 2006).

When the trial court had abandoned any further attempts at coercion and imposed Rule 37(b)(2) and 37(b)(2)(A) sanctions and, although it is uncertain whether the contempt sanction was actually ever imposed because the trial court let the Rule 37 sanctions "stand" as the contempt sanctions, if the contempt sanctions were, in fact, imposed, they were not civil in nature and must be reversed, and if none were imposed, then, in light of the Rule 37(b)(2) sanctions, the contempt finding must be vacated because no further purpose can be served by their imposition. FSM Dev. Bank v. Adams, 14 FSM R. 234, 253 (App. 2006).

Rule 37(b)(2) sanctions are not inherently criminal in nature and criminal due process protections do not have to be followed before they can be imposed. FSM Dev. Bank v. Adams, 14 FSM R. 234, 253 (App. 2006).

When an attorney's inappropriate, intemperate, and ill-conceived remarks about the court were neither included in the contempt charge nor mentioned in the information against him and when bad faith was not pled, reliance on the attorney's unmentioned improper remarks to allege his bad faith when that element was not pled in the criminal information is a belated rationalization. FSM v. Kansou, 14 FSM R. 273, 276 (Chk. 2006).

Any request in 2005 for an order to show cause why a defendant should not be held in criminal contempt for failure to appear at the start of the February 5, 2001 trial as required by the witness subpoena served on him, comes much too late since anyone charged with criminal contempt must be charged within three months of the contempt. Amayo v. MJ Co., 14 FSM R. 355, 361 (Pon. 2006).

Except for summary cases when the contempt is before a judge and is needed to maintain courtroom decorum, criminal contempt cases are normally prosecuted by the government, and not by an opposing party. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 225 (Kos. 2010).

One difference between civil and criminal contempt revolves around intent. An essential element of a criminal contempt is the subjective intent to defy the court's authority. The requisite intent is specific intent, such that mere negligent failure to comply is not enough, but a finding of the requisite intent will not be negated because a defendant was not specifically informed of the consequences for disobedience. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 225 (Kos. 2010).

If a debtor cannot overcome the moving party's evidence that the debtor in fact had the ability to pay when the motion was submitted, the court will find him in contempt only if he still has the same ability to pay at the time of the hearing; and in either case the moving party may request a separate adjudication as to criminal contempt. If the debtor did not have the ability to pay when the motion was submitted, the court will not entertain any request for a separate adjudication as to criminal contempt and will find him in contempt only if he has regained the same ability to pay at the time of the hearing. If the debtor's ability to pay at the time of the hearing is diminished, the court will not find him in contempt, but may issue a modified order in aid. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 227 (Kos. 2010).

Since the defendant is entitled to those procedural rights normally accorded other criminal defendants, defendants in the vast majority of criminal contempt cases are given substantially those procedural rights normally accorded to defendants in other criminal cases. Criminal contempt convictions are not a special category of crime deserving of or requiring alternative considerations other than those specified under Chk. S.L. No. 190-08, § 27, Chk. Crim. R. 42, and case law. Chuuk v. Billimon, 17 FSM R. 313, 315-16 (Chk. S. Ct. Tr. 2010).

A trial court show cause order and hearing were all part of a criminal contempt proceeding when the proceeding's purpose was not to coerce a party's compliance with its order to file a pretrial statement and to mark her exhibits with the clerk since she had already done that in time for trial and the trial had been held on time. Instead, its sole purpose was to punish her for past wrongful conduct – her alleged failure to file a pretrial statement and to mark her exhibits by the dates ordered. Thus, even though it was not labeled as such and was silent on whether the trial court considered it civil or criminal, the trial court order was a criminal contempt finding of guilt and the $200 "sanction" was a criminal sentence – a fine. Berman v. Pohnpei Legislature, 17 FSM R. 339, 352 (App. 2011).

Since a notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment must be treated as filed after such entry and on the day thereof, when a party in a civil case was held in criminal contempt of court, but the contempt finding was entered on the civil docket and not on the criminal docket, the ten-day period for criminal appeals has not begun to run since no entry has yet been made on the criminal docket, making a notice of appeal filed 37 days after the contempt finding timely under Appellate Rule 4(b). Berman v. Pohnpei Legislature, 17 FSM R. 339, 353 (App. 2011).

A Criminal Rule 33 motion for a new trial is not timely when it is made over seven days after the guilty

finding and it thus cannot toll the time for a criminal appeal or nullify any notice of appeal filed before the motion was decided, which a timely-filed Rule 33 motion would do since if a timely motion for a new trial on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within 10 days after the entry of an order denying the motion, but not before. Berman v. Pohnpei Legislature, 17 FSM R. 339, 353-54 & n.8 (App. 2011).

The standard of review for a criminal contempt conviction, as for any criminal conviction, is whether the appellate court can conclude that the trier of fact reasonably could have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 (App. 2011).

An element of criminal contempt is the subjective intent to defy the court's authority, and the requisite intent is specific intent. There is thus more to prove to show criminal contempt. There is also a higher burden of proof, beyond a reasonable doubt than the civil contempt burden of clear and convincing evidence of the predicate misconduct. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 (App. 2011).

Since a finding or "recital" that there was an ability to comply is required for civil contempt, it must also be a necessary element of the more difficult to prove criminal contempt. Thus, when nowhere in its contempt order did the trial court make a finding or a "recital" that the contemnor had the ability to comply with its deadlines for filing a pretrial statement and for marking her exhibits with the clerk, the trial court's failure to find a necessary factual element is generally enough to reverse a contempt finding whether civil or criminal. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 (App. 2011).

A criminal contempt conviction would have to be vacated when neither the trial court's contempt finding nor its sentencing were done in open court because a criminal defendant's constitutional right to a public trial requires that the finding of guilt or innocence be made in open court and that, if there is a guilty finding, then the sentence must also be imposed in open court. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 n.10 (App. 2011).

Since the criminal contempt statute provides that no punishment of a fine of more than $100 or imprisonment can be imposed unless the accused is given a right to notice of the charges, to a speedy public trial, to confront the witnesses against him, to compel the attendance of witnesses in his behalf, and to have the assistance of counsel, this statute was violated when a $200 fine was imposed without a public trial and the party having the opportunity to be represented by a public defender. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 n.10 (App. 2011).

Notice that the convicted person has a right to appeal must be given orally when a criminal contempt sentence is imposed. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 n.10 (App. 2011).

In a criminal contempt proceeding, an order to show cause (the notice) why someone should not be held in contempt must describe the contempt charged as criminal contempt as required by Criminal Procedure Rule 42(b), which requires that the notice shall state the essential facts constituting the criminal contempt charged, describing it as such. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 n.10 (App. 2011).

The imposition of disciplinary sanctions is subject to due-process scrutiny. An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on her whether that sanction is imposed on her under the civil procedure rules, the criminal contempt statute, or some other court power. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

Section 119, in Title 4, undisputedly by its terms provides for criminal as well as civil contempt. FSM v. Ehsa, 20 FSM R. 106, 110 (Pon. 2015).

That the criminal offense of contempt of court statute is in Title 4, instead of Title 11, is meaningless and no inference that it is not a crime can be drawn from it. This is because the classification of the titles, chapters, subchapters, and sections of the FSM Code, and the headings thereto, are made for the purpose

of convenient reference and orderly arrangement, and no implication, inference, or presumption of a legislative construction can be drawn therefrom. FSM v. Ehsa, 20 FSM R. 106, 110 (Pon. 2015).

In the usual criminal contempt proceeding, the defendant is charged with criminal contempt by a government attorney. The FSM Department of Justice is the office that files an information accusing a defendant of criminal contempt of a national court. FSM v. Ehsa, 20 FSM R. 106, 110 (Pon. 2015).

The court rejects the notion that contempt of court is not a criminal offense and that the FSM Department of Justice cannot criminally prosecute alleged contemnors. FSM v. Ehsa, 20 FSM R. 106, 110 (Pon. 2015).

Even when the court is reluctant to refer the dispute for prosecution on contempt and social security tax evasion charges, Social Security itself may direct the matter to the FSM Department of Justice's attention for investigation and further action, including possible prosecution. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 128, 130 (Pon. 2015).

The major factor in determining whether a contempt is civil or criminal is the purpose for which the power is exercised. The purpose of a civil contempt is remedial or compensatory, while the purpose of a criminal contempt is punitive. In re Contempt of Jack, 20 FSM R. 452, 461 (Pon. 2016).

In contempt cases, both civil and criminal relief have aspects that can be seen as either remedial or punitive or both: when a court imposes fines and punishments on a contemnor, it is not only vindicating its legal authority but also seeking to give effect to the law's purpose of modifying the contemnor's behavior. The confusion between civil and criminal contempt arises as a result of civil contempt often having the incidental effect of vindicating the court's authority, while, conversely, criminal contempt may permit the movant to derive the incidental benefit of preventing future noncompliance. In re Contempt of Jack, 20 FSM R. 452, 461 n.7 (Pon. 2016).

The distinction between civil and criminal contempt is that the former is prospective, while the latter is retrospective, which is to say that a civil contempt proceeding's purpose is to bring about compliance with a court order, while the criminal contempt's purpose is to punish for past wrongful conduct. In re Contempt of Jack, 20 FSM R. 452, 461-62 (Pon. 2016).

Criminal contempt is retrospective and is punishment for past wrongful conduct. It is not designed to secure compliance with a court order, but instead punishes the intentional violation of a lawful court order. In re Contempt of Jack, 20 FSM R. 452, 462 (Pon. 2016).

The distinction between civil and criminal contempt is somewhat elusive and has plagued the courts. Contempt proceedings, while usually called civil or criminal, are, strictly speaking, neither civil nor criminal but are instead *sui generis*. They partake of the characteristics of both but are procedurally different from other actions. Despite the verbiage used to designate them, they are neither wholly civil or criminal. Thus, criminal contempt is often said not to be a crime at all. In re Contempt of Jack, 20 FSM R. 452, 462-63 (Pon. 2016).

Generally, civil contempt invokes the rules of civil procedure, and criminal contempt invokes the rules of criminal procedure. In re Contempt of Jack, 20 FSM R. 452, 463 (Pon. 2016).

Even though the court chooses to sanction an attorney with a civil contempt, that does not prohibit the court from also sanctioning the attorney with a criminal contempt. The choice is not mutually exclusive and a single contumacious act may in fact necessitate both. In re Contempt of Jack, 20 FSM R. 452, 463 n.8 (Pon. 2016).

The standard of review for a criminal contempt conviction under 4 F.S.M.C. 119(1)(b), like the standard for any criminal conviction, is whether the appellate court can conclude that the trier of fact reasonably could have been convinced beyond a reasonable doubt. In re Contempt of Jack, 20 FSM R. 452, 464 n.11 (Pon.

2016).

The court has the power to punish any intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command and may do so either criminally or civilly, but the standard is not the same. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

The element that escalates contempt to criminal status is the level of willfulness associated with the conduct. Criminal intent is a specific intent to consciously disregard an order of the court. Criminal intent is defined by 11 F.S.M.C. 104(4) as acting with the conscious purpose to engage in the conduct specified. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

Civil intent can be demonstrated by general intent, or by knowledge defined in 11 F.S.M.C. 104(5) as being aware of the nature of the conduct or omission which brings the conduct or omission within the provision of the code. This standard is expressly distinguished from mere negligence, a negligent act is one born of inattention or carelessness – the opposite of an intended act. An act, not willfully intending the result, creating a substantial risk of the unlawful result, is not an act done purposefully or intentionally. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

An attorney's representation that she forgot about the hearing, will not be accepted and the attorney will be found in contempt when she filed a motion to continue the hearing only a few days before the scheduled hearing and when, in her motion for relief, she represents that she assumed the court would grant her motion to continue and if she had known that the court would not approve her motion she would have called in telephonically. In re Contempt of Jack, 20 FSM R. 452, 466 (Pon. 2016).

– Direct

In order to maintain order in the courtroom, courts have a limited power to make a finding of contempt "summarily" where the contemptuous conduct takes place during courtroom proceedings and is personally observed by the judge. This exception is typically used when the accused disrupts courtroom proceedings and the judge must act immediately to restore order. Fewer procedural safeguards are required in such contexts because the events have occurred before the judge's own eyes and because a reporter's transcript is often available, a hearing is less critical to ensuring that the defendant is treated fairly. In re Contempt of Skilling, 8 FSM R. 419, 424 (App. 1998).

The Kosrae Code and Rules of Criminal Procedure provide that a court may summarily punish a contempt committed in its presence if the justice directly saw or heard the conduct constituting the contempt and so certifies. In re Contempt of Skilling, 8 FSM R. 419, 424 (App. 1998).

Under Kosrae state law, summary contempt is only appropriate when the contempt is committed in the court's presence, and when the presiding justice directly saw or heard the conduct constituting the contempt. In re Contempt of Skilling, 8 FSM R. 419, 425 (App. 1998).

The court's second duty in reviewing a contempt action is to determine if the contempt was direct or indirect. Each class of contempt has two subcategories, direct and indirect. Thus there are four possible classifications of contempt: direct-criminal, indirect-criminal, direct-civil, and indirect-civil. In re Contempt of Jack, 20 FSM R. 452, 463 (Pon. 2016).

A direct contempt is used by the court to protect itself against gross violations of decorum. All of the essential elements of the misconduct are under the eye of the court. Direct contempt includes words, acts, or omissions that present an imminent threat to the administration of justice; it must immediately imperil the judge in the performance of his judicial duty. In re Contempt of Jack, 20 FSM R. 452, 463 (Pon. 2016).

An attorney's absence alone does not constitute contempt, but if the attorney offers an insulting, frivolous, or clearly inadequate explanation, a direct contempt has been committed in the presence of the judge. Patently false, flippant, inconsistent, contradictory, and evasive replies support a contempt finding,

as does an attorney's refusal to give any explanation for his or her absence or lateness in arriving for a trial or hearing since that is the equivalent of the lack of a valid excuse. In re Contempt of Jack, 20 FSM R. 452, 464 n.10 (Pon. 2016).

– Indirect

Under Kosrae law, summary contempt is not appropriate for someone's failure to appear on time. Since the alleged contempt is an indirect contempt – a contempt not in the presence of the judge – the court should schedule a show cause hearing to enable the accused to present his own defense. In re Contempt of Skilling, 8 FSM R. 419, 425 (App. 1998).

The court's second duty in reviewing a contempt action is to determine if the contempt was direct or indirect. Each class of contempt has two subcategories, direct and indirect. Thus there are four possible classifications of contempt: direct-criminal, indirect-criminal, direct-civil, and indirect-civil. In re Contempt of Jack, 20 FSM R. 452, 463 (Pon. 2016).

Generally, the failure to obey a court's order is considered civil contempt, and when the refusal takes place outside of the court's presence, it is an indirect civil contempt. Because the court has no personal knowledge of the indirect contempt, the acts must be proven through the testimony of third parties or the contemnor. Thus minimal due process requirements apply to indirect contempts. In re Contempt of Jack, 20 FSM R. 452, 463-64 (Pon. 2016).

Contemptuous behavior includes not only intentionally avoiding a hearing, but also intentionally arriving late for a hearing. Thus, failure to appear or even tardiness may be treated as an indirect civil contempt pursuant to 4 F.S.M.C. 119(2)(a), or as an indirect criminal contempt pursuant to 4 F.S.M.C. 119(2)(b), or both. But in either case, it cannot be treated summarily. In re Contempt of Jack, 20 FSM R. 452, 464 (Pon. 2016).

If the court elects to pursue an attorney's absence as a civil contempt under 4 F.S.M.C. 119(2)(a), the accused has a right to notice of the charges and an opportunity to present a defense and mitigation. In a civil contempt proceeding, this due process requirement is usually met through a show cause hearing where the defendant is given the opportunity to explain or justify the failure to appear. In re Contempt of Jack, 20 FSM R. 452, 464 (Pon. 2016).

CONTRACTS

A seaman's contract claim against the owner of the vessel upon which he served would be regarded as falling within the FSM Supreme Court's exclusive admiralty and maritime jurisdiction. Lonno v. Trust Territory (I), 1 FSM R. 53, 68-71 (Kos. 1982).

The Federated States of Micronesia Income Tax Law confirms that it is the nature of the services performed and the person performing the services, rather than the stated identity of the contracting party, which determines the tax treatment for the compensation under the contract. It is of no import that the "contractor" was identified as a corporation rather than as an individual when the contract makes clear that the primary services to be rendered were those of an individual and the corporation was merely a name under which the individual conducted business. Heston v. FSM, 2 FSM R. 61, 64 (Pon. 1985).

Common law decisions of the United States are an appropriate source of guidance for this court for contract and tort issues unresolved by statutes, decisions of constitutional courts here, or custom and tradition within the Federated States of Micronesia. Review of decisions of courts of the United States, and any other jurisdictions, must proceed however against the background of pertinent aspects of Micronesian society and culture. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 142 (Pon. 1985).

A message of the judicial guidance clause is that a court, when interpreting a contract, may not simply assume that reasonably intelligent Micronesians will perceive the same meaning as would reasonably

intelligent Americans. Courts may not blind themselves to the pertinent aspects of Micronesian society, such as less facility in the English language, less exposure to business concepts, and paucity of legal resources, which might cause a reasonably intelligent Micronesian to perceive a meaning differently than would a person from some other nation. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 149 (Pon. 1985).

A telephone conversation between parties, in which the defendant related his desire to hire plaintiff's rental vehicle, coupled with plaintiff driving the vehicle from his place of business to defendant's place of employment, and defendant, after signing the rental agreement and returning the plaintiff to his business office, driving the vehicle away, satisfied the elements of a binding agreement. Phillip v. Aldis, 3 FSM R. 33, 36 (Pon. S. Ct. Tr. 1987).

Common law decisions of the United States are an appropriate source of guidance for the FSM Supreme Court for contract issues unresolved by statutes, decisions of constitutional courts or custom and tradition within the Federated States of Micronesia. FSM v. Ocean Pearl, 3 FSM R. 87, 90-91 (Pon. 1987).

In determining whether the terms of a contract should be enforced, the court will consider the parties' justified expectations, any forfeiture that would result if enforcement were denied, and any special public interest in the enforcement of the particular term. Falcam v. FSM, 3 FSM R. 194, 197-98 (Pon. 1987).

Although the FSM Supreme Court has often decided matters of tort law without stating explicitly that state rather than national law controls, there has been acknowledgment that state law controls in the resolution of contract and tort issues. When the Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, its goal should be to apply the law the same way the highest state court would. Edwards v. Pohnpei, 3 FSM R. 350, 360 n.22 (Pon. 1988).

Since general contract law falls within powers of the state, state law will be used to resolve contract disputes. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM R. 3, 9 (Pon. 1989).

A statement that one party to a contract has a rental obligation to a nonparty does not constitute a promise to the other party to the contract that the specific rental will be paid to that nonparty. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM R. 3, 11-12 (Pon. 1989).

It is especially important for the court to scrutinize carefully and strictly construe contractual provisions which relate to the payment of attorney's fees. Bank of the FSM v. Bartolome, 4 FSM R. 182, 185 (Pon. 1990).

Where an agreement between two parties is so vague and uncertain that the court cannot determine who is the breaching party, or cannot fashion a remedy to enforce the agreement, there is no contract. Jim v. Alik, 4 FSM R. 198, 200 (Kos. S. Ct. Tr. 1989).

Restitution is a remedy which returns the benefits already received by a party to the party who gave them where the court can find no contract. Jim v. Alik, 4 FSM R. 198, 201 (Kos. S. Ct. Tr. 1989).

Generally, in cases requiring the interpretation or construction of contracts, the national courts would be called on to apply state law. Bank of Hawaii v. Jack, 4 FSM R. 216, 218 (Pon. 1990).

Where attorney's fees claimed pursuant to a contractual provision are excessive or otherwise unreasonable, it is within the equitable and discretionary power of the court to reduce or even deny the award, despite the contractual provision. Bank of Hawaii v. Jack, 4 FSM R. 216, 220 (Pon. 1990).

Where time of delivery was not of the essence of the contract and the contract was flexible in the agreed arrangements for delivery, a delivery of a bad container should not be seen as a failure of a condition to further obligations under the contract. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM R. 123, 127 (Pon. 1991).

Prior representation of another party to contractual negotiations is not in and off itself sufficient to create a conflict of interest which would invalidate the negotiated contract unless it can be shown such representation was directly adverse to the other client or materially limited the interests of the present client. Billimon v. Chuuk, 5 FSM R. 130, 135 (Chk. S. Ct. Tr. 1991).

Lease agreement executed by the Chuuk state government is void insofar as it purports to "incur public indebtedness" without legislative authority by way of an appropriation or statute. Billimon v. Chuuk, 5 FSM R. 130, 135-36 (Chk. S. Ct. Tr. 1991).

Where the plaintiffs were performing their contractual obligations, neither the defendant's wishes to accommodate a municipality's environmental concerns nor the defendant's reliance upon a subsequently passed state law making the subject matter of the contract illegal but which exempts existing contracts, will prevent the defendant from being held liable for termination of the contract. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 124-25 (Pon. 1993).

Where a part of a contract provided that the state give a landowner leftover construction materials a trial court is fully warranted to believe that, by giving the landowner the opportunity to take whatever leftover materials he wanted, the state gave him the materials. Kinere v. Kosrae, 6 FSM R. 307, 309 (App. 1993).

Problems regarding the timing of performance, or the existence of vague terms will not necessarily interfere with the enforceability of a contract. Iriarte v. Micronesian Developers, Inc., 6 FSM R. 332, 335 (Pon. 1994).

Where a stipulated preliminary injunction is void because of the judge's disqualification and because of the stipulated dismissal of the court case in which it was issued, factual questions must be resolved before deciding whether it is enforceable as an independent contract. Etscheit v. Adams, 6 FSM R. 365, 391-92 (Pon. 1994).

The doctrine of unjust enrichment generally applies where there is an unenforceable contract due to impossibility, illegality, mistake, fraud, or another reason and requires a party to either return what has been received under the contract or pay the other party for it. The unjust enrichment doctrine is based on the idea one person should not be permitted unjustly to enrich himself at the expense of another. Etscheit v. Adams, 6 FSM R. 365, 392 (Pon. 1994).

Common law decisions of the United States are an appropriate source of guidance for the FSM Supreme Court for contract issues unresolved by statutes, decisions of the constitutional courts here, or custom and tradition within the Federated States of Micronesia, but review of decisions of courts of the United States or other jurisdictions, must proceed against the background of pertinent aspects of Micronesian society and culture. Black Micro Corp. v. Santos, 7 FSM R. 311, 314 (Pon. 1995).

A state as a party to a contract has the same rights as any party to a contract and may exercise all the rights that the parties have agreed upon in the contract itself. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 342 (Chk. S. Ct. Tr. 1995).

Since freedom of will is essential to the validity of a contract, an agreement obtained by duress, coercion, or intimidation is invalid. Nahnken of Nett v. United States, 7 FSM R. 581, 588 (App. 1996).

Where the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. The standard of review for findings of fact is whether the trial court's findings are clearly erroneous. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 620 (App. 1996).

State law controls in the resolution of contract and tort issues. When the Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, its goal should be to apply the law the same way the highest state court would. When no existing case law is found the FSM Supreme Court must decide

issues of tort law by applying the law as it believes the state court would. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 294-95 (Pon. 1998).

Principles of contract are inapplicable to employment cases when the proper issue is whether plaintiff has shown a legal entitlement to permanent employment under the Truk State Public Service System Act. Hauk v. Terravecchia, 8 FSM R. 394, 396 (Chk. 1998).

An officer's authority to contract for a corporation may be actual or apparent, and may result from the officer's conduct and the acquiescence thereto by the directors. The corporation may be estopped to deny the officer's authority by having accepted the benefit of the contract. Generally, an officer's authority to act for his corporation with reference to contracts is a question of fact to be determined by the trier of fact. Asher v. Kosrae, 8 FSM R. 443, 452 (Kos. S. Ct. Tr. 1998).

When the parties did not reach a full understanding of what would be provided in exchange for the right to build an access road across the plaintiffs' land, but the defendant did agree to compensate the plaintiffs in some way, and when the defendant represented to the plaintiffs that the access road, once constructed, would be usable by the plaintiffs' vehicle, the defendant is liable to make the road passable by car or truck. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 539-40 (Pon. 1998).

An open account is not self-proving. An account must be supported by an evidentiary foundation to demonstrate the accuracy of the account. FSM Telecomm. Corp. v. Worswick, 9 FSM R. 6, 15 (Yap 1999).

Problems regarding the timing of performance will not necessarily interfere with the enforceability of a contract. O'Byrne v. George, 9 FSM R. 62, 64 (Kos. S. Ct. Tr. 1999).

An open account is an account based upon running or concurrent dealing between the parties which has not been closed, settled, or stated, and which is kept unclosed with the expectation of further transactions. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 78 (Kos. 1999).

In an action brought to recover the balance due upon a mutual and open account, or upon a cause of action on which partial payments have been made, the cause of action shall be considered to have accrued at the time of the last item proved in the account. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 78 (Kos. 1999).

The statute of limitations for an action to collect the balance due on an open account is six years from the accrual date of the cause of action. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 78 (Kos. 1999).

When a plaintiff's interest and attorney's fee claim rests on a paragraph on the bottom left portion of each invoice and none of the invoices bears the defendant's signature, an issue of fact exists as to whether this pre-judgment interest and fee clause ever formed a material part of the open account agreement between the parties. Summary judgment is therefore denied on the issue. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 79 (Kos. 1999).

When the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. Tulensru v. Utwe, 9 FSM R. 95, 98 (Kos. S. Ct. Tr. 1999).

Lessors are entitled to the unpaid rent from time lessees stopped paying rent until the time lessors terminated the lease, pursuant to the lease's terms, for lessees' failure to pay rent. Ueda v. Stephen, 9 FSM R. 195, 196 (Chk. S. Ct. Tr. 1999).

In determining whether the terms of a contract should be enforced, the court will consider the parties' justified expectations, any forfeiture that would result if enforcement were denied, and any special public interest in the enforcement of the particular term. Malem v. Kosrae, 9 FSM R. 233, 236 (Kos. S. Ct. Tr. 1999).

When matters outside the pleadings are presented to and not excluded by the court, the motion will be treated as one for summary judgment and disposed of as provided in Rule 56. Such consideration of extra-pleading material causes the "conversion" of the motion to dismiss to one for summary judgment, but parties have been allowed to go beyond the question of the complaint's formal sufficiency and introduce affidavits and other matters in conjunction with the Rule 12(b)(6) motion to ascertain whether there is any merit, to the claim, when the extra-pleading material offered by the plaintiffs, as respondents to the motion, tends merely to buttress the complaint's allegations. If the court finds that the complaint's allegations are sufficient to state a cause of action, it will not consider the extra-pleading material, and will treat the motion as titled, i.e., as a motion to dismiss, and not one for summary judgment, and denies the motion to dismiss. Adams v. Island Homes Constr., Inc., 9 FSM R. 530a, 530b-30c (Pon. 2000).

A plaintiff's claim for payment arises at the time that the payment became due because a cause of action arises when the right to bring suit on a claim is complete: the true test in determining when a claim arose is based upon when the plaintiff first could have maintained the action. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 556-57 (Pon. 2000).

When under the parties' contract, the defendant was to pay plaintiff within one year from the time that the defendant accepted the plaintiff's Master Plan and the Master Plan was accepted on October 3, 1994, the plaintiff's claim against defendant arose one year later on October 4, 1995. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 557 (Pon. 2000).

As a general proposition, an express contract and an implied contract for the same thing cannot exist at the same time. Where an express contract is in force, the law does not recognize an implied one. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 558 (Pon. 2000).

As a matter of law, the presence of an express written contract, which clearly sets forth the obligations of the parties, precludes a party from bringing a claim under quantum meruit. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 558 (Pon. 2000).

An agreement and promissory note that does not set out the exact amount of payments needed to make a debt current, would not make performance of that agreement impossible when the party assuming the payments could easily have calculated the amount of the payments he would have to make to bring the loan current. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 76 (Pon. 2001).

When the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 194 (Kos. S. Ct. Tr. 2001).

Where no contract exists, the court may use its inherent equity power to fashion a remedy under equitable doctrines. The doctrine of promissory estoppel allows enforcement of promises that induce reliance. The doctrine of promissory estoppel, also referred to as detrimental reliance, is summarized as: A promise which the promisor should reasonably expect to induce action on the part of the promisee, and which does induce such action, is binding if justice requires enforcement of the promise. The remedy for breach may be limited as justice requires. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

Under the doctrine of promissory estoppel, a person's reliance upon a promise may create rights and duties. The finding of detrimental reliance does not depend upon finding any agreement or consideration. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

Where no contract existed, a court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

The doctrine of unjust enrichment generally applies where there is an unenforceable contract. It requires a party to either return what has been received or pay the other party for it. The unjust enrichment doctrine is based on the idea one person should not be permitted unjustly to enrich himself at the expense

of another. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

A breach of contract and warranty claim that all defendants had warranted that the construction project would be a reasonably safe workplace will be dismissed when the contract does not contain such a warranty, and no other evidence supports the allegation that such an express warranty was made. Amayo v. MJ Co., 10 FSM R. 244, 249 (Pon. 2001).

A parol agreement inconsistent with a written agreement made contemporaneously therewith is void and unenforceable, unless it was omitted from the written contract by fraud, accident, or mistake. FSM Dev. Bank v. Arthur, 10 FSM R. 479, 480 (Pon. 2001).

Neither the FSM nor Kosrae have yet adopted a Uniform Commercial Code (UCC) to govern sales of goods, although the UCC has been adopted in virtually every U.S. jurisdiction as state law. Edwin v. True Value Store, 10 FSM R. 481, 485 (Kos. S. Ct. Tr. 2001).

When the attorney-client contract is at an end without liability for breach on either side, the attorney remains entitled to compensation according to the contract terms for the services performed to date. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 497 (Chk. 2002).

Contract provisions for the payment of attorney's fees will be enforced only to the extent that the fees demanded are reasonable. In debt collection cases, the amount awarded for attorney's fees should not exceed 15 percent of the outstanding principal and interest. Jackson v. George, 10 FSM R. 523, 526 (Kos. S. Ct. Tr. 2002).

When there was no legal requirement for the lessor to offer insurance to the lessee in a car rental agreement, the lessor's failure to offer insurance to the lessee in a rental agreement does not serve as a defense to the damages assessed against the lessee for an accident. Jackson v. George, 10 FSM R. 523, 527 (Kos. S. Ct. Tr. 2002).

An attorney's fee must be reasonable, and the court must make such a finding. Therefore, contract provisions for the payment of attorney's fees will be enforced only to the extent that the fees demanded are reasonable. In debt collection cases, the amount awarded for attorney's fees should not exceed 15 percent of the outstanding principal and interest. Jackson v. George, 10 FSM R. 531, 532-33 (Kos. S. Ct. Tr. 2002).

The Chuuk State Supreme Court is a court of general jurisdiction and has concurrent original jurisdiction to try all civil cases. As such, it may exercise, subject to the principle of forum non conveniens, jurisdiction over contract cases generally, regardless of where the contract was formed, unless exclusive jurisdiction for that particular contract resides in some other court. First Hawaiian Bank v. Engichy, 10 FSM R. 536, 537 (Chk. S. Ct. Tr. 2002).

That a contract was formed in another jurisdiction does not deprive a court of jurisdiction over a dispute over or enforcement of that contract. It may, however, involve a choice of law problem – contract questions may need to be resolved by resort to the substantive law of the jurisdiction in which the contract was formed, but not necessarily by resort to that jurisdiction's courts. First Hawaiian Bank v. Engichy, 10 FSM R. 536, 537-38 (Chk. S. Ct. Tr. 2002).

Neither Rule 68, nor any principle of contract law, requires an acceptance to be on a different piece of paper from the offer of judgment in order for it to be valid. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

When a settlement contract for landfill of Muraka was formed between the parties that was not dependent on the case's active status, the contract is still enforceable because the case's status (pending or dismissed) was not part of the agreement. Therefore, the defendant is still liable to the plaintiff because the case's dismissal did not affect the parties' contract or the court's order when the court's order was based

upon the parties' agreement and not upon any trial on damages. James v. Lelu Town, 11 FSM R. 337, 339-40 (Kos. S. Ct. Tr. 2003).

When a construction contract did not require the plaintiff contractor to perform or pay for any landfilling equipment or landfill materials or to be responsible for payment to any sub-contractor for landfilling equipment or landfill materials and when there was no written Contract Change Order, executed by the parties, as required by General Condition # 1 of the construction contract regarding payment for landfilling equipment or landfill materials, the plaintiff contractor, pursuant of the construction contract's terms, is not responsible for payment of the landfilling equipment costs or the landfill material costs. Youngstrom v. Mongkeya, 11 FSM R. 550, 553 (Kos. S. Ct. Tr. 2003).

An experienced, certified trial counselor admitted to practice law in Kosrae is held to a higher standard regarding knowledge of contract requirements. He should have known that a valid, enforceable contract requires the material term of the cost. Youngstrom v. Mongkeya, 11 FSM R. 550, 554 (Kos. S. Ct. Tr. 2003).

The creation of laws relating to contracts is not identified in the Constitution as falling within the national government's powers. Rather, it is generally presumed to be a power of the state. Accordingly, state law determines the statute of limitations in a contract case. Youngstrom v. NIH Corp., 12 FSM R. 75, 77 (Pon. 2003).

Pohnpei state law specifies limitation periods of two and twenty years for certain delineated causes of action and provides that all other actions – including contracts – must be commenced within six years after the cause of action accrues. Youngstrom v. NIH Corp., 12 FSM R. 75, 77 (Pon. 2003).

Given that a cause of action accrues when a suit can be successfully maintained thereon, it is indisputable that if the construction was in fact defective, a suit could have been maintained from the date that construction was completed. Youngstrom v. NIH Corp., 12 FSM R. 75, 77 (Pon. 2003).

Under the Pohnpei statute of limitations, if anyone who is liable to any action fraudulently conceals the cause of action from the knowledge of the person entitled to bring it, the action may be commenced at any time within the times limited within the statute after the person who is entitled to bring the same shall discover or shall have had reasonable opportunity to discover that he has such cause of action, and not afterwards. Youngstrom v. NIH Corp., 12 FSM R. 75, 77 (Pon. 2003).

If a plaintiff fraudulently conceals allegedly defective construction methods, the six-year limitations period does not begin to run until the date on which the defendant discovered or had a reasonable opportunity to discover the alleged defect. It is not appropriate for the court, at the juncture of a motion to dismiss, to rule on an essentially factual matter. The trial's purpose will be to determine whether the construction methods that are alleged were, in fact, utilized; whether those methods were improper; and if they were, at what point the defendant knew or should have known of them. Youngstrom v. NIH Corp., 12 FSM R. 75, 77-78 (Pon. 2003).

A promissory note and a security agreement are enforceable contractual agreements between the parties. Goyo Corp. v. Christian, 12 FSM R. 140, 146 (Pon. 2003).

When the argument that the defendants should not be bound in their personal capacities but that only a corporation should be bound by the agreement, contradicts the promissory note's plain meaning, as it is worded, and when the individuals, in their depositions, acknowledged that they read and signed the agreement, they should not be permitted to claim that they did not understand the clear terms. And when at the same time the individuals clearly intended to encumber their personal property and assets, not merely those of the corporation, based upon the promissory note's plain, unambiguous language, the plaintiff is entitled to summary judgment as to the affirmative defense of lack of capacity. Goyo Corp. v. Christian, 12 FSM R. 140, 148 (Pon. 2003).

An MOU that contains promises between two parties for the performance of mutual obligations is a legally binding, enforceable contract. Esau v. Malem Mun. Gov't, 12 FSM R. 433, 435 (Kos. S. Ct. Tr. 2004).

When the parties entered into an oral agreement, which was later reduced to writing, whereby the plaintiff leased his property to the defendant for a monthly rent and for repairs to be completed by defendant, it is an enforceable contract. Lonno v. Talley, 12 FSM R. 484, 486 (Kos. S. Ct. Tr. 2004).

Repeated, intentional instances of failure of a state to pay a judgment does not constitute a separate, constitutional claim for deprivation of property without due process where the original underlying claim is not constitutional in character, but is based on common law contract and when there is no constitutional claim that supports the judgment itself, nor a national statute applicable that implicates a "clear and substantial" national interest. Barrett v. Chuuk, 12 FSM R. 558, 561-62 (Chk. 2004).

When the plaintiffs allege two separate claims for the same damages in this suit and one sounds in contract and alleges a breach of a purchase agreement since part of the plaintiffs' agreed share of the purchase price was not paid to them and the other claim sounds in tort and alleges that the defendant was negligent in wrongfully releasing the remaining balance to someone else without taking such precautionary measures that a reasonably prudent person would be expected to take as a holder of funds that plaintiffs were entitled to, the court will analyze the contract claim first and finding a breach of the purchase agreement, need not address the plaintiffs' negligence tort claims. Edgar v. Truk Trading Corp., 13 FSM R. 112, 117 (Chk. 2005).

When the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. Livaie v. Weilbacher, 13 FSM R. 139, 143 (App. 2005).

The Pohnpei Development Leasehold Act says that every development lease must contain a covenant stating that the lessor shall have the rights of future benefit to the improvements placed on the land by or on behalf of the lessee and that, upon the lease's termination, existing improvements thereon shall become the property of the lessor thereof or his successor in interest without further cost or condition to be met by the lessor, the property's title holder or any successor in interest to said property. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 225 n.1 (Pon. 2005).

The term "charter party" is used in maritime law to designate the specialized form of contract for the hire of an entire ship, specified by name. "Charter party" is used synonymously with "charter." Three principal types are recognized: 1) under a time charter, the charterer engages for a fixed period of time a vessel, which remains manned and navigated by the vessel owner, to carry cargo wherever the charter instructs; 2) under a voyage charter, the charterer engages the vessel to carry goods only for a single voyage; and 3) under a demise, or bareboat charter, the charterer takes complete control of the vessel, mans it with his own crew, and is treated by law as its legal owner. Yap v. M/V Cecilia I, 13 FSM R. 403, 408 (Yap 2005).

A stipulated judgment is not a judicial determination or holding. Stipulated judgments, while they are judicial acts, also have the attributes of voluntarily-undertaken contracts. A stipulated judgment (also called a consent decree) although enforceable like any other judicial decree, is not a judicial determination of any litigated right. It may be defined as a contract of the parties acknowledged in open court and ordered to be recorded by a court of competent jurisdiction. Mailo v. Chuuk, 13 FSM R. 462, 467-68 (Chk. 2005).

A stipulated judgment is not a judicial determination, but is a contract between the parties entering into the stipulation. A consent decree or stipulated judgment does not constitute a resolution of parties' rights but is a mere recordation of their private agreement. Once a consent decree has been entered it is generally considered to be binding on the parties and it cannot be amended or varied without each party's consent. Mailo v. Chuuk, 13 FSM R. 462, 468 (Chk. 2005).

When it is necessary to construe a stipulated judgment or consent decree, courts resort to ordinary principles of contract interpretation. Mailo v. Chuuk, 13 FSM R. 462, 468 (Chk. 2005).

To say that a plaintiff's only remedy was to sue a defendant it had contracted with on a contract theory misses the point that it was the other defendant that was unjustly enriched, and to accept that the plaintiff's only remedy would be against long defunct enterprise defendant would confer upon the plaintiff an illusory remedy, and would confound its efforts to call to account the other defendant which actually received the money the plaintiff paid to the first defendant. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 516 (App. 2005).

When the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. DJ Store v. Joe, 14 FSM R. 83, 85 (Kos. S. Ct. Tr. 2006).

When a lot was leased for the purpose of supporting air transportation and a fence's construction supported that purpose and the Lease Agreement permitted removal of soil and rock as allowed by Articles 6 through 19 of a 1984 Lease (incorporated by reference in the 1999 lease agreement), but the plaintiff neglected to submit that into evidence although by 1999 Lease Agreement's terms, Articles 6 through 19 were to be attached to it, the plaintiff has not proven that the security fence's construction, needed for airport purposes, was barred by the 1999 Lease Agreement without further compensation. Uehara v. Chuuk, 14 FSM R. 221, 226 (Chk. 2006).

In deciding contract cases, the Chuuk State Supreme Court has generally followed common law contract principles except when a Chuuk statute or constitutional provision is applicable. Hartman v. Krum, 14 FSM R. 526, 530 (Chk. 2007).

When the plaintiff claims ownership of the parcels based on a contract with him as grantee to exchange land for building materials and money, but the evidence supports only that the plaintiff was to receive ownership of a portion of the land, not to the full parcels, and when the defendants' witness agreed that the plaintiff bought a portion of land that formerly belonged to them and had an agreement to extend the boundary of that land to a specific location, the plaintiff failed to prove that he had an enforceable contract to transfer ownership of both parcels to him. The evidence only shows he received the portion of the land and had an agreement to extend the boundary of that portion. Siba v. Noah, 15 FSM R. 189, 195 (Kos. S. Ct. Tr. 2007).

When there is no enforceable contract, a court may use its inherent equity power to fashion a remedy under doctrines such as unjust enrichment or detrimental reliance. The doctrine of unjust enrichment is based on the idea that one person should not be unjustly enriched at the expense of another. It usually applies when a party has partly performed under a contract that is later void for mistake, fraud, illegality, impossibility, or some other reason, or where there is an implied contract. Generally, the person must either return what has been received under the contract or pay for it. Siba v. Noah, 15 FSM R. 189, 195 (Kos. S. Ct. Tr. 2007).

When the court concludes that there was a contract between the plaintiff and the defendant, it will not address the plaintiff's alternative claims under unjust enrichment and promissory estoppel. George v. George, 15 FSM R. 270, 273 (Kos. S. Ct. Tr. 2007).

When the court concludes that there was a contract between the plaintiff and the defendant, it will do not address the plaintiff's alternative claims under unjust enrichment and promissory estoppel. George v. Albert, 15 FSM R. 323, 326 (Kos. S. Ct. Tr. 2007).

Where liability was conceded when the defendants listed as an undisputed fact in their pretrial briefs that they each had an "open/mutual account" with the plaintiff, but the extent of those liabilities were not conceded, trials on damages only, that is, only on the issue of each business ledger's accuracy, must be held. Albert v. George, 15 FSM R. 574, 581 (App. 2008).

Although fee suits appear from a distance to be basically suits to recover on a breach of contract or, in some instances, to recover for the reasonable value of personal services, on closer inspection, the law is clear that lawyers suing clients are not treated as are merchants suing former trading partners. The procedural landscape is much narrower and more tightly regulated. The burden is on the lawyer to present detailed evidence of services actually rendered. Saimon v. Wainit, 16 FSM R. 143, 147 (Chk. 2008).

There are two principal ways in which attorney-fee suits differ from other kinds of collection suits between commercial strangers. One is that the court, exercising its supervisory powers over lawyers, can reduce the amount charged, and the other is that the defenses available to clients are expanded. Saimon v. Wainit, 16 FSM R. 143, 147 (Chk. 2008).

A sales contract provision that the buyer "agrees to pay all attorney's collection and court fees and an additional 33% of the principal amount and accrued interest in the event this invoice is referred to an attorney or collection agency for collection" appears, since it is included in the same sentence as "all attorney's collection and court fees," to not only constitute "double-dipping" or double recovery of attorney's fees, but it would also award attorney's fees greatly in excess of the 15% maximum usually allowed in collection cases, and will therefore not be awarded. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 225 (Chk. 2008).

Attorney's fees and costs are not recoverable when the plaintiff has not prevailed on any of his other claims since recovery of fees and costs is dependent upon the plaintiff successfully prevailing on some other claim. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 367 (Yap 2009).

Subject to proof at trial, a breach of an implied covenant of good faith claim may sound, at least in part, in contract rather than in tort. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 605 (Pon. 2009).

When the first question is whether there is a valid contract, the plaintiff has the burden of proving each element of that claim by a preponderance of evidence. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 645 (Kos. S. Ct. Tr. 2009).

When Shigeto's contracted with Piisemwar municipality for the purchase of motors and the state was not a party to that contract and when Shigeto's Store has not raised any other basis for liability other than set-off between the contracts it had with Ruo and Piisemwar municipalities, judgment will enter for Shigeto's Store and against only Piisemwar municipality. Ruo Municipality v. Shigeto's Store, 17 FSM R. 195, 197-98 (Chk. S. Ct. Tr. 2010).

U.S. common law decisions are an appropriate source of guidance for contract issues unresolved by statutes, FSM court decisions, or FSM custom and tradition. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 570 n.1 (Pon. 2011).

A subcontractor is one who is awarded a portion of an existing contract by a contractor. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

An independent contractor is one who is entrusted to undertake a specific project but who is left free to do the assigned work and to choose the method for accomplishing it. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

The two terms – subcontractor and independent contractor – are not mutually exclusive. A subcontractor may or may not have an agency relationship with the contractor and that relationship does not control whether or not a subcontract has been struck. A party might be both an independent contractor and a subcontractor. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

A subcontractor's status, when compared to that of an employee, is ordinarily that of an independent contractor. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

Subcontracting is merely "farming out" to others all or part of work contracted to be performed by the original contractor. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 572 (Pon. 2011).

When an Hawaii-based architect undertook to perform part of the contractor's existing contract but his initial designs were never used and his later conceptual design work was not actually used since the final designs were prepared by an employee of the contractor and not by an independent contractor or other subcontractor, this transaction might better be described as an unsuccessful attempt to subcontract part of the contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 573 (Pon. 2011).

Common law decisions from U.S. sources are an appropriate source of guidance for the FSM Supreme Court for contract and tort issues unresolved by statutes or decisions of constitutional courts within the FSM. Ihara v. Vitt, 18 FSM R. 516, 526 (Pon. 2013).

A plaintiff has a good chance of success on the merits when its contract with the State provided for "the first right to negotiate," and "mandatory and binding arbitration," since these clauses would be meaningless if they were not enforceable after the contract's expiration date. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 567 (Pon. 2013).

When the salvage contract between the salvor and the vessel owner did not require that an invoice be presented in order that the salvor be paid, but the contract between the salvor and the insurer, the party that everyone expected would make the actual payment, did require that an invoice be presented, payment was due after an invoice was presented. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 10 (Pon. 2013).

A bona fide purchaser for value is someone who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims. Mori v. Hasiguchi, 19 FSM R. 16, 21-22 (Chk. 2013).

As a general rule, in the absence of an agreement or stipulation to the contrary, a debt is payable at the place where the creditor resides, or at his place of business, if he has one, or wherever else he may be found; and ordinarily it is the duty of the debtor to seek the creditor for the purpose of making payment, provided the creditor is within the state of his residence when the payment is due. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 145 (App. 2013).

Where the obligor on a promissory note is to make his payments does not relate to a matter of vital importance or go to the contract's essence since the note provides a number of options for place of payment, and since the obligor was not deprived of the benefits he expected to receive under the contract – his use of the bank's money (the loan) for a specified period of time. He knew he had an obligation to pay the bank and he knew (or should have known) where to pay and if he did not know it was his duty to find out where. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 145 (App. 2013).

As a matter of law, the presence of an express written contract, which clearly sets forth the parties' obligations, precludes a party from bringing a claim in equity under quantum meruit. Smith v. Nimea, 19 FSM R. 163, 172 (App. 2013).

A court will enforce a contract's unambiguous terms. Smith v. Nimea, 19 FSM R. 163, 172 (App. 2013).

When the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. Harden v. Inek, 19 FSM R. 244, 249 (Pon. 2014).

A defendant's inability to pay does not eliminate the defendant's liability to pay. Eot Municipality v. Elimo, 19 FSM R. 290, 295 (Chk. 2014).

The duty of good faith and fair dealing is implied in the performance and enforcement of all contracts.

Johnny v. Occidental Life Ins., 19 FSM R. 350, 362 (Pon. 2014).

The court will consider United States decisions as an appropriate source of guidance in considering unresolved questions arising in the area of contracts, and, under 1 F.S.M.C. 203, the Restatements may be used when applying common law rules in the absence of written law. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 476 (Pon. 2014).

A party is ordinarily entitled to rely on the notarized signature on an agreement when it sues on that agreement, but if the party knows before filing suit that the defendant claims not to have signed the agreement or to know anything about the agreement, the plaintiff cannot base his suit on the presumption arising from the notarized signature. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581 (Pon. 2014).

A contract is a promise or set of promises for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 17 (Pon. 2016).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be an enforceable contract, there must be an offer, acceptance, consideration, and definite terms. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 17 (Pon. 2016).

Generally, an oral agreement is as enforceable as a written one. Reducing an agreement to writing, however, can assist the parties in assuring that all the necessary terms have been agreed to and are definite, or later assist a court in ascertaining what those terms were. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 n.3 (Pon. 2016).

– Accord and Satisfaction

For there to be an accord and satisfaction, there must be an offer in full satisfaction of a debt accompanied by acts and declarations that amount to a condition that if the offer is accepted, it is in full satisfaction of the obligation. The condition must be such that the party to whom the offer is made is bound to understand that if it accepts the offer in full satisfaction, it does so subject to the condition imposed. Richmond Wholesale Meat Co. v. Kolonia Consumer Coop. Ass'n (I), 7 FSM R. 387, 389 (Pon. 1996).

An affirmative defense of accord and satisfaction negotiations being underway fails when no accord and satisfaction has been agreed to, in other words, when the negotiations were not successful. FSM Dev. Bank v. Chuuk Fresh Tuna, Inc., 16 FSM R. 335, 338 (Chk. 2009).

The necessary elements to establish accord and satisfaction are 1) a claim about whose amount there exists a good faith dispute between the parties; 2) an agreement between the parties that the payment is in full satisfaction of the (contested) obligation and 3) acceptance of the payment by creditor. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 276 (Pon. 2014).

Accord and satisfaction between the parties bars any further attempt to enforce claims on the obligations that had been satisfied. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 277 (Pon. 2014).

For there to be an accord and satisfaction, there must be an offer in full satisfaction of a debt, accompanied by acts and declarations that amount to a condition that if the offer is accepted, it is in full satisfaction of the obligation. Hairens v. Federated Shipping Co., 20 FSM R. 404, 409 (Pon. 2016).

– Account Stated

As a general rule a creditor may rely on its running account, produced in the normal course of it business, to establish a prima facie case, but in the face of contrary credible evidence, it is insufficient to sustain the creditor's burden of proof and each item, or each item not given credit for, must be proven. But the rule does not apply when to support its running account, the plaintiff introduced copies of the accounts

sent to the defendant, its internal records of the account, the record of the calls that the defendant said made sense made during the first seven-month period, the testimony of its Yap accountant and of the chief of its division of collections, and when the defendant's own testimony contradicted the record she had prepared in advance of trial showing the calls she admitted making. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 464 (App. 2000).

An account stated is a species of contract action, in which the plaintiff must prove that the defendant agreed to pay a specific amount to the plaintiff. It is an agreement, based on prior transactions between the parties, that all terms of the account are true and that the balance struck is due and owing from one party to the other. An account stated is an agreement, expressed or implied, that an examination of the account between the parties has occurred, a statement of that account has been asserted, and accepted as correct. Saimon v. Wainit, 16 FSM R. 143, 146-47 (Chk. 2008).

The existence of an account stated need not be express and frequently is implied from the circumstances. For example, where a creditor renders a statement and the debtor fails to object in a reasonable time, the open account may be superseded by an account stated. Saimon v. Wainit, 16 FSM R. 143, 147 n.1 (Chk. 2008).

An attorney seeking to recover unpaid attorney fees on the theory of account stated must prove the reasonable value of the services rendered if the fee agreement was entered into during the course of the attorney-client relationship. This is because when the account stated is for legal services, there is a presumption of undue influence when entered between an attorney and client during their fiduciary relationship. The attorney has the burden of showing that the transaction was fair and regular and entered voluntarily by the client with full knowledge of the facts. Saimon v. Wainit, 16 FSM R. 143, 147 (Chk. 2008).

By Pohnpei statute, in an action brought to recover the balance due upon a mutual and open account, or upon a cause of action upon which partial payments have been made, the cause of action is considered to have accrued at the time of the last item proved in the account. Bank of Hawaii v. Susaia, 19 FSM R. 66, 70 n.3 (Pon. 2013).

– Assignment and Delegation

Liabilities arising from a contract are not assignable without the consent of the creditor, and the mere assumption of the debt by a third party is not sufficient to establish a novation of the original contract unless there is a clear assent by the creditor to the substitution of a new obligor. Black Micro Corp. v. Santos, 7 FSM R. 311, 314-15 (Pon. 1995).

When a person is liable for a business's debts because he is the sole proprietor of a business, the sale of the business to another who has agreed to assume the business's liabilities will not relieve him of liability if the creditor has not agreed to the assignment. Black Micro Corp. v. Santos, 7 FSM R. 311, 315 (Pon. 1995).

A party to a contract cannot relieve himself of the obligations which a contract imposed upon him merely by assigning the contract to a third person. Unless the obligee agrees otherwise, neither delegation of performance nor a contract to assume the duty made with the obligor by the person delegated discharges any duty or liability of the delegating obligor. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 74 (Pon. 2001).

Liabilities arising from a contract are not assignable without the consent of the creditor, and a third party's mere assumption of the debt is not sufficient to establish a novation of the original contract unless there is a clear assent by the creditor to the substitution of a new obligor. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 74 (Pon. 2001).

When a person is liable for a business' debts because he is the sole proprietor of a business, the sale

of the business to another who has agreed to assume the business' liabilities will not relieve him of liability if the creditor has not agreed to the assignment. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 74 (Pon. 2001).

When a bank agreed to allow another to take on the obligations under a promissory note, but did not agree to allow the borrowers to be free from liability on that note once they had assigned their rights, and when the language of the assignment agreement and promissory note indicates that the parties (assignors and assignee) intended that the assignors would remain liable on the promissory note, the assignors remain liable, and if the assignors are in default on the note, the bank is entitled to summary judgment against the assignors based on their breach of the duty to pay as required. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 74 (Pon. 2001).

While the fact that as part of an assignment another agreed to assume all of a debtor's liabilities under a stipulated judgment may provide the debtor with recourse against the other, it does not affect the debtor's obligation to the creditor under the judgment and payment order. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

– Breach

A breach of contract which is material justifies a halt in performance under the contract by the injured party. Whether a breach is material is a question of fact depending on several factors, particularly where the breach deprives the injured party of the benefits of the contract. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM R. 123, 128 (Pon. 1991).

A breach of contract which is material justifies a halt in performance under the contract by the injured party. Whether a breach is material is a question of fact depending on several factors, particularly when the breach deprives the injured party of the benefits of the contract. O'Byrne v. George, 9 FSM R. 62, 65 (Kos. S. Ct. Tr. 1999).

When the defendant's estimate of the construction materials' cost was a material term in the parties' agreement and the plaintiff paid the defendant the total amount due for materials, the plaintiff's refusal to provide more funds for materials does not constitute a breach of the contract because the plaintiff did not have any obligation to pay defendant any additional sums for construction materials. Therefore the defendant breached his promise to provide all necessary construction materials for the sum the plaintiff paid him. O'Byrne v. George, 9 FSM R. 62, 65 (Kos. S. Ct. Tr. 1999).

A defendant who has completed substantial performance in constructing the plaintiff's house is entitled to payment for the second of three installments for labor and the plaintiff's failure to pay is a breach of her promise to pay the defendant the agreed amount for labor costs. O'Byrne v. George, 9 FSM R. 62, 65 (Kos. S. Ct. Tr. 1999).

When both parties have fulfilled their obligations under the contract, there is no breach of the contract by either party. Tulensru v. Utwe, 9 FSM R. 95, 98 (Kos. S. Ct. Tr. 1999).

When one party fails to perform their promise, there is a breach of contract. Malem v. Kosrae, 9 FSM R. 233, 236 (Kos. S. Ct. Tr. 1999).

Breach of contract claims against Pohnpei state have a two year statute of limitations. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 557 (Pon. 2000).

When estoppel serves as the basis for a plaintiff to file a breach of contract claim and that contract claim has been time barred, the plaintiff's estoppel claim is also barred. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 559 (Pon. 2000).

When the undisputed facts show that a party clearly entered into a legally binding agreement whereby

he agreed and promised to make payments to the bank in exchange for purchasing a taxi service and when he breached it by failing to make the required payments, the court will grant summary judgment to the taxi service seller. The fact that the taxi service was losing money does not excuse the buyer from his responsibility. Nor does the fact that it might have been a bad investment. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 78 (Pon. 2001).

At trial, the plaintiff has the burden of proving each element of his breach of contract claim by a preponderance of the evidence. If he fails to do so, it is appropriate for the trial court to enter judgment against him. Tulensru v. Wakuk, 10 FSM R. 128, 132 (App. 2001).

As a general proposition, a governmental entity's breach of a contract, without more, does not constitute a due process violation. Talley v. Lelu Town Council, 10 FSM R. 226, 237 (Kos. S. Ct. Tr. 2001).

When the plaintiff paid the defendant $475 as consideration for the purchase of a washing machine and the defendant promised to sell a new, working washing machine to the plaintiff, who was not able to inspect the washing machine's working condition at the store because the washer was packaged in its original cardboard container, and when the plaintiff discovered that the washing machine did not work properly only after it was installed, the defendant breached the contract by failing to provide to the plaintiff a new, working washing machine because a new washing machine is expected to work properly to wash clothes. Edwin v. True Value Store, 10 FSM R. 481, 484-85 (Kos. S. Ct. Tr. 2001).

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for). When one party fails to perform their promise, there is a breach of contract. Goyo Corp. v. Christian, 12 FSM R. 140, 146 (Pon. 2003).

When a plaintiff has a judgment based on a common law contract, and there is no FSM statute that affects ordinary contracts in a way that shows a substantial national interest in such matters, the law of contracts is generally one in which state law controls. A governmental entity's breach of a contract, without more, does not constitute a due process violation. Barrett v. Chuuk, 12 FSM R. 558, 561 (Chk. 2004).

When one party fails to perform his promise, there is a breach of contract. A breach of contract which is material justifies a halt in performance under the contract by the injured party. George v. Alik, 13 FSM R. 12, 15 (Kos. S. Ct. Tr. 2004).

When there was a binding purchase agreement between a land buyer and a clan land seller and the plaintiffs were intended beneficiaries of that contract and when that contract could only be modified by a consensus decision by the seller's clan members evidenced by the agreement of five or more of the six designated clan members but the purported modification did not contain five genuine signatures of the designated committee representatives, there was a breach of the purchase agreement entitling plaintiffs to damages. Edgar v. Truk Trading Corp., 13 FSM R. 112, 117-18 (Chk. 2005).

When one party fails to perform his promise, there is a breach of contract. Thus, when the plaintiff performed his promise to pay the defendant the amount of $10,000, but the defendant failed to perform her promise to transfer her right, title and interest in two parcels to the plaintiff, the defendant breached the contract with the plaintiff by her failure to perform. The defendant is liable to the plaintiff for breach of contract and the plaintiff is entitled to summary judgment on the issue of defendant's liability for breach of contract. Isaac v. Palik, 13 FSM R. 396, 400 (Kos. S. Ct. Tr. 2005).

Since, upon the execution of a valid and legal substituted agreement the original agreement merges into and is extinguished, and since failure to perform the substituted agreement will not revive the old agreement, a 1999 lease agreement that was extinguished by a 2001 land purchase agreement will not be revived by the state's breach of the land purchase agreement. Uehara v. Chuuk, 14 FSM R. 221, 226 (Chk. 2006).

A land seller cannot claim a forfeiture and at the same time receive the purchase money. Accordingly, there can be no doubt that a vendor by receiving money when past due is precluded from availing himself of any right of forfeiture which has arisen because of the failure to pay on time. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

When an insurance agent's contract with the insurer contains language regarding the agent's duty to make certain that the premium checks were sent to the insurer, the agent is liable to the insurer for breach of contract when the agent failed to fulfill the contractual obligation to send the premium checks to the insurer's office in Kansas City. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 437-38 (Pon. 2009).

When the facts establish only two defendants had contracts with the plaintiff, the plaintiff's complaint alleging that all defendants breached a contract with the plaintiff will be dismissed with respect to all defendants except the two. Yoruw v. Ira, 16 FSM R. 464, 466 (Yap 2009).

A government's breach of a contract, without more, does not violate due process rights. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 484 (Pon. 2009).

When the plaintiffs suing their appellate attorney are seeking to recover damages in the amount they paid their attorney to handle their appeal and are not seeking to recover the amount of the land that was at issue in the appeal, the plaintiffs' claim is one for breach of contract and not legal malpractice. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644 (Kos. S. Ct. Tr. 2009).

When the court is not looking at negligence in handling the case or the manner in which the brief was written as there was no brief written or submitted to the FSM Supreme Court appellate division and when the attorney did not guarantee a specific result, promise, warrant or specify an outcome in the appeals case, the case is a "do nothing" case where the promisor-attorney had promised to perform a certain activity, to represent the plaintiffs in handling of an appeal, and the failure to complete that action exposed the promisor-attorney to liability for breach of contract. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644-45 (Kos. S. Ct. Tr. 2009).

If a party fails to perform, then the contract is breached and damages may be awarded. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

A breach of contract which is material justifies a halt in performance under the contract by the injured party. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

When an attorney had promised to handle an appeal case for the plaintiffs and when the attorney failed to file a brief in the case resulting in the appeal's dismissal, the attorney, by his failure to file a brief, breached his contract with the plaintiffs. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

To succeed on a breach of contract claim, a plaintiff must show that the defendant breached the contract and that the breach was material. The elements of a breach of contract claim are: 1) a valid contract, 2) a material breach, and 3) resulting damages. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 570 (Pon. 2011).

The material breach of a contract justifies the injured party's halt of performance under the contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 570 (Pon. 2011).

Not every departure from a contract's literal terms is sufficient to be deemed a material breach of a contract requirement, thereby allowing the non-breaching party to cease its performance and seek appropriate remedy. The standard of materiality for the purposes of deciding whether a contract was breached is necessarily imprecise and flexible. A breach is material when it relates to a matter of vital importance, or goes to the essence of the contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 570 (Pon. 2011).

Whether a breach is material may be a question of fact depending on several factors, particularly when the breach deprives the injured party of the contract's benefits. In some cases, the determination of whether the breach is material is a mixed question of law and fact, but when the facts are undisputed, the determination of whether there has been a material non-compliance with a contract's terms is necessarily reduced to a question of law. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 570 (Pon. 2011).

At the summary judgment stage, the nonmovant plaintiff must show that it has admissible evidence of damages that were proximately caused by the contract breach. It does not need to prove the exact amount of damages or the extent of the damages. But it must show that it has admissible evidence that can. The time to do that is now, or never. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 572 (Pon. 2011).

Causation is an essential element of damages in a breach of contract action; and, as in tort, a plaintiff must prove that a defendant's breach directly and proximately caused his or her damages. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 573 (Pon. 2011).

Even if a contract breach causes no loss or if the amount of loss is not proved with sufficient certainty, the injured party can recover as nominal damages a small sum, commonly six cents or a dollar, fixed without regard to the amount of loss. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 573 (Pon. 2011).

When a subcontracting prohibition was deemed an important public policy and when, to avoid the risk of proving actual damages or being awarded nominal damages, the FSM could have included in the contract a liquidated damages provision for a breach of that prohibition but did not, the contractor's breach of the subcontracting ban could, even if there were no direct monetary damages, entitle the FSM to terminate the contract and to nominal damages and could stand as a possible defense to a breach-of-contract counterclaim. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 573 (Pon. 2011).

A claim that a design contractor used the wrong coordinate system for a road survey work seems more like, or as much a professional malpractice claim as a breach of contract claim. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 577 n.9 (Pon. 2011).

Ordinarily in a design contract or in a construction contract, it is expected that from time to time the contractor may be asked to re-do work that has not met the contract's specifications, that is, to cure any defects, especially when a contract paragraph provides that the FSM is not obligated to pay until an assigned task has been satisfactorily completed, that is, the FSM was expected to tell the contractor to do the work over until the FSM was satisfied. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 578 n.10 (Pon. 2011).

It is difficult to see how the actions of a non-party, albeit a contract beneficiary, can be construed as a material breach of the contract by one of the two contracting parties. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 578 (Pon. 2011).

Being put in a politically awkward situation does not constitute a breach of contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 578 (Pon. 2011).

When a contract provision unequivocally authorizes a party's involvement in Asian Development Bank development projects since the ADB is a foreign donor organization and when there is no contractual provision requiring the party to contact foreign donor organizations only through the FSM diplomatic channels or requiring any particular procedure at all, the party's direct contact with the ADB may have caused puzzlement and delay by the ADB and become politically awkward for the FSM, but it was not a breach of the contract between the party and the FSM. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 579 (Pon. 2011).

When the parties' contract creates the deadlines, the tardy submission of reports, except in the most egregious cases, may be less professional malpractice than a contract breach, although even then the breach might not be material. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 582 n.16 (Pon. 2011).

When the court has nothing before it from which it can determine whether any delayed payment was made within a reasonable time, it must deny summary judgment on the claim that the contract was breached by untimely payments. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 588 (Pon. 2011).

When the court has granted the movant summary judgment on only some of the seven grounds that the nonmovant asserted were grounds for termination of the contract for cause but that the movant asserted were pretextual, the court must deny the movant summary judgment on its counterclaim that the termination was a breach of contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 590 (Pon. 2011).

As a general proposition, a governmental entity's breach of a contract, without more, does not constitute a civil rights or due process violation. Stephen v. Chuuk, 18 FSM R. 22, 25 (Chk. 2011).

When the contract clearly contemplates that the insurer's Pohnpei agents might, even in the absence of an administrative agreement, receive premium payments other than the first policy payment and when the agents' contractual obligation is clearly spelled out that the agents must immediately remit to the insurer, all money received or collected on its behalf, and that such money will be considered as the insurer's funds held in trust by the agents, the agents obviously breached this contract provision by cashing the insurer's premium checks on Pohnpei instead of immediately remitting to the insurer's home office those checks that they had received on its behalf. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 354 (App. 2012).

When a breach of contract cause of action arose on Pohnpei, Pohnpei's statute of limitations should be used. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 354 (App. 2012).

When the petitioners' breach-of-contract liability is based solely on the breach of their contractual obligation to immediately remit to the appellee all money received or collected on its behalf and when it is undisputed that they did not immediately remit to the appellee all money received on its behalf, the petitioners would still be liable to the appellee on its breach-of-contract cause of action and the judgment would remain unaltered. Iriarte v. Individual Assurance Co., 18 FSM R. 406, 408 (App. 2012).

To succeed on a breach of contract claim, a plaintiff must show: 1) an express, valid contract; 2) a material breach of that contract; and 3) resulting damages. Kosrae v. Edwin, 18 FSM R. 507, 514 (App. 2013).

The standard of materiality for the purposes of deciding whether a contract was breached is necessarily imprecise and flexible. A breach is material when it relates to a matter of vital importance, or goes to the contract's essence. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 10 (Pon. 2013).

The salvor's failure to obtain an oil/water separator and to use it to process the slops was a material breach of the salvage contract when the acquisition of an oil/water separator and its use to separate the oil from the slops and return it to the vessel was a matter of vital importance the went to the salvage contract's essence; when an essential element of any modern salvage contract is the protection of the marine environment; and when the largest component of the contract price was for processing the slops. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 10 (Pon. 2013).

When the only component of a salvage contract that the salvor did not satisfactorily complete was the slops processing, the salvor's material breach of failing to obtain and use an oil/water separator does not excuse performance – payment – for the rest of the salvage contract components. Nor does it excuse performance (payment) for the work that the salvor was asked to do, and which it agreed to do, that was outside the salvage contract's scope of work, but it does excuse payment for the storage of the slops since that storage would have been unnecessary if the salvor had obtained and used an oil/water separator. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 11 (Pon. 2013).

Only a breach which is material, justifies a halt in performance by the injured party. A material breach is a question of fact which relies on several factors, but most particularly on whether the breach deprives the

injured party of the contract's benefits. Bank of Hawaii v. Susaia, 19 FSM R. 66, 71 (Pon. 2013).

Since the making payments at the Pohnpei branch bank office was not a material part of loan agreement and since the bank provided a means so that loan payments and other services might still be made locally, the bank did not deprive the borrower of any benefit under the promissory note and, since the borrower provided no evidence showing that he did not know where or how to continue to make the required loan payments, he did not show that the bank's conduct rendered his performance under the contract difficult or impossible. Bank of Hawaii v. Susaia, 19 FSM R. 66, 71-72 (Pon. 2013).

A bank did not breach a material provision of the contract when the bank notified the borrower of the bank branch's closure and the borrower knew of alternative agents and locations of making payments due on the loan. Bank of Hawaii v. Susaia, 19 FSM R. 66, 72 (Pon. 2013).

Issues of whether an act was a material breach of a contract can be a mixed question of law and fact. An appellate court will review questions of law de novo and will review a trial court's factual determinations under a clearly erroneous standard. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143 (App. 2013).

Not every departure from a contract's literal terms can be deemed a material breach of the contract thereby allowing the non-breaching party to cease its performance and seek an appropriate remedy. The standard of materiality for the purposes of deciding whether a contract was breached is necessarily imprecise and flexible. A breach is material when it relates to a matter of vital importance or goes to the contract's essence. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 144 (App. 2013).

Whether a breach is material may be a question of fact depending on several factors, particularly when the breach deprives the injured party of the contract's benefits. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 144 (App. 2013).

When a promissory note, by its express terms, did not require the obligor to pay at the Pohnpei branch office but stated that payments were to be made "to our branch address above, or at any of our other branches" and the "branch address above" was "PO BOX 280, KOLONIA, POHNPEI FM 96941," under the note's terms, payment at any branch office will do. When it is undisputed that the bank still had an office on Pohnpei, the bank cannot have breached its contract by moving its office to another location on Pohnpei. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 144 (App. 2013).

A bank does not breach its agreement with a borrower by closing its retail branch office on Pohnpei, and if it did it was not a material breach excusing performance. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 146 (App. 2013).

The statute of limitations period for a breach of contract claim against the State of Chuuk is six years. Eot Municipality v. Elimo, 19 FSM R. 290, 294 (Chk. 2014).

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for). When one party fails to perform their promise, there is a breach of contract. Johnny v. Occidental Life Ins., 19 FSM R. 350, 357 (Pon. 2014).

The insurer did not breach an insurance policy's terms when it denied coverage because the dependent was not a covered family member since, although she was under 25, she had not been enrolled as a full time student in a post-secondary institution of higher learning for five calendar months or more. Johnny v. Occidental Life Ins., 19 FSM R. 350, 358 (Pon. 2014).

Summary judgment cannot be granted on a breach of contract claim when whether the plaintiff's termination was "reasonable" is a material issue of fact in dispute since the employment contract required the plaintiff to perform to the government's reasonable satisfaction. Zacchini v. Hainrick, 19 FSM R. 403,

410-11 (Pon. 2014).

The defendant did not breach the contracts when it is clear that the parties' contracts required only that the defendant undertake reasonable efforts to repair the plaintiff's vehicle, but did not require the defendant to guarantee success. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 476 (Pon. 2014).

The defendant did not breach the contracts since the repairs performed by the defendant were completed within a reasonable time and since the price charged by the defendant was a reasonable price. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 476-77 (Pon. 2014).

When the $250 additional labor charge constituted the reasonable charge demanded by the defendant as compensation for work performed under valid contracts with the plaintiff, the plaintiff's claim for breach of contract must fail. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 477 (Pon. 2014).

Whether a breach of contract has occurred is generally not a question of law but is rather a factual question, but when the facts are undisputed, the determination of whether there has been a material non-compliance with a contract's terms is necessarily reduced to a question of law. George v. Palsis, 19 FSM R. 558, 564 (Kos. 2014).

– Breach – Waiver

When, six months after the deadline for the state to either pay the plaintiff the balance of the purchase price or to deed the land back to the plaintiff, the state, having done neither, tendered to the plaintiff, and she accepted, a further payment of $24,787.50, by accepting this payment, the plaintiff is estopped from asserting that the land be deeded back to her because she has waived the breach and thus her right to enforce the land purchase agreement's "deed back" clause. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

The general rule is that when the contracting party, with knowledge of the breach of the other party, receives money in the performance of the contract, he will be held to have waived the breach. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

If the land vendor receives a partial payment of an amount past due, he is precluded from immediately asserting a forfeiture of the contract for default in payment, and a land seller, who long after all purchase payments have become due accepts a payment, that seller has waived his right to declare a forfeiture as of the time of payment. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

When a fuel retailer seeks to be reimbursed for the value of gasoline from a leaky tank and to have its supplier perform or to bear the cost for all the environmental remediation work required by the Yap EPA before his service station can reopen and when these are claims that, under the supply contract's terms, the retailer waived by his admitted failure to perform the duties – to inspect the tanks daily for water accumulation, to record the volume of fuel in each tank, to keep a daily log of fuel inventory, and to reconcile daily the measured inventory with the meter readings – contractually required of him, the supplier is entitled to summary judgment on the claims for environmental remediation and for lost product. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 366 (Yap 2009).

Although the written contract required the plaintiffs to give the defendant a non-refundable retainer fee of $5,000, the defendant waived this requirement when he only required $500, altering the contract. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 647 (Kos. S. Ct. Tr. 2009).

When the contract itself permitted waivers of the subcontracting prohibition only by the FSM's "prior written consent" and then only within the FSM's discretion and "only in exceptional cases," the prohibition was of vital importance to the contract and went to the contract's essence so that a breach of this prohibition is likely a material breach. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 572 (Pon. 2011).

When the FSM could have terminated GMP by written notice to GMP if, after notice and a hearing, the contracting officer found that GMP or its agent or representative had offered or given gratuities to any FSM officer or employee, but when the FSM never invoked this contractual procedure or gave notice or held a hearing, the FSM has waived any claim that it can use this alleged breach of contract to lawfully terminate the contract. Since the FSM failed to follow the contractual administrative procedure for termination when a gratuity allegation is made, GMP is entitled to summary judgment on the FSM's breach of contract claim based on allegations that GMP offered gratuities. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 574-75 (Pon. 2011).

Where, under a construction contract, work is accepted with knowledge that it has not been done according to the contract, or under such circumstances that knowledge of its imperfect performance may be imputed, the acceptance will generally be deemed a waiver of the defective performance. But this rule does not apply to latent defects. The rule is not any different under a construction design contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 577 (Pon. 2011).

Since the FSM did not have to accept the 35% design and could have withheld payment and insisted that GMP first conduct soil tests on the actual sites but did not, it cannot contend that, by its actions, it did not intend to waive the soil testing requirements that one time and for the Utwe and Lelu school projects when the FSM waived in writing the pre-35% design soil testing requirements for just those projects. It thus cannot claim damages for breach because the pre-design soil tests were not done. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 577 (Pon. 2011).

Although the argument that acceptance of the 100% design and payment for it is waiver of any claims that the wastewater plant design was defective and that any alleged "defects" were not latent but were obvious and patent and known beforehand could prevail on a breach of contract claim, when this is a professional malpractice tort claim, the question is not whether the contractor breached the contract's terms but whether it violated its duty of reasonable care towards its client. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 581 (Pon. 2011).

A subordinate and separable part of the contract may be waived or modified by the parties without a cancellation of the whole contract. Harden v. Inek, 19 FSM R. 244, 250 (Pon. 2014).

Strict and full performance of a contract by one party may be waived by the other party. Harden v. Inek, 19 FSM R. 244, 251 (Pon. 2014).

Waiver must be made intentionally and with knowledge of the circumstances, and can be made expressly or may be implied from the acts of the parties. Harden v. Inek, 19 FSM R. 244, 251 (Pon. 2014).

Waiver is sometimes proved by a party's express declaration or by his undisputed acts or language so inconsistent with a purpose to stand on the contract provisions as to leave no opportunity for a reasonable inference to the contrary, in which case the waiver is established as a matter of law; but more often it is sought to be proved by various species of acts and conduct permitting different inferences and not directly, unmistakably or unequivocally establishing it, in which case it is a question for the finder of fact. Harden v. Inek, 19 FSM R. 244, 251 (Pon. 2014).

A party that has waived enforcement of a certain provision may renew the obligation by giving the other party notice of its intention to subsequently enforce the provision. Since a waiver is not based on consideration, it can be recalled at any time, subject to estoppel limitations. A plaintiff would be estopped from reinstating a contract provision if the defendants could show detrimental reliance on the waiver. Harden v. Inek, 19 FSM R. 244, 251 (Pon. 2014).

When the defendants did not present any evidence of detrimental reliance on the plaintiffs' waiver, the court must conclude that the plaintiffs had the right to reinstate the provisions of section 3 of the lease upon notice to the defendants, and when such notice was provided to the defendants in the form of a letter, the defendants, on receipt of that letter, were obligated to comply with the requirements of section 3 of the lease within a reasonable time. As the defendants have failed to comply with those provisions, they have

breached that contract and the plaintiffs are entitled to relief from the court. Harden v. Inek, 19 FSM R. 244, 251 (Pon. 2014).

Since a waiver is not based on consideration, it can be recalled at any time, subject to estoppel limitations. Harden v. Inek, 19 FSM R. 278, 281 (Pon. 2014).

When the defendants must show detrimental reliance on the plaintiffs' waiver of exclusive possession of a town lot in order to establish the affirmative defense of equitable estoppel, the defendants' argument that burying a family member on the property in 2002 constituted detrimental reliance must fail because burying the family member on the property did not change the defendants' position to their detriment, and they fail to demonstrate that they buried him in reliance on the waiver from the plaintiffs. Harden v. Inek, 19 FSM R. 278, 281 (Pon. 2014).

Injury, detriment, or prejudice to the party claiming the estoppel is one of the essential elements of an equitable estoppel. Harden v. Inek, 19 FSM R. 278, 281 (Pon. 2014).

The defendants' decision to have additional children did not constitute detrimental reliance on the plaintiffs' waiver when no evidence was presented at trial that would allow the court to conclude that the defendants' family planning decisions were influenced in the slightest degree by reliance on the plaintiffs' waiver. Harden v. Inek, 19 FSM R. 278, 282 (Pon. 2014).

– Conditions

A "conditional sale" is one in which the vendee receives possession of and the right to use the goods sold, but transfer of the title depends upon the performance of a condition or the occurrence of a contingency, which is usually full payment of the purchase price. Phillip v. Aldis, 3 FSM R. 33, 37 (Pon. S. Ct. Tr. 1987).

The FSM Supreme Court will not recognize conditions to a contract where they are not created by its express terms or by clear or necessary implication, and where no reasonable construction of the agreement when considered in light of circumstances surrounding its execution points to any intention of the parties to create conditions. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM R. 3, 10-11 (Pon. 1989).

In a contract for installment shipments of goods where the parties' agreement was not in writing and there was no oral agreement or other manifestation of intent that the buyer's obligation to accept shipments was to be conditioned upon each prior shipment having arrived in timely fashion and in good condition, a nonoccurrence of the event or act is a breach of promise which gives rise to a claim for damages, rather than a failure of a condition to performance, which frees the other party from any further duty to perform the promised acts. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM R. 123, 127 (Pon. 1991).

Where time of delivery was not of the essence of the contract and the contract was flexible in the agreed arrangements for delivery, a delivery of a bad container should not be seen as a failure of a condition to further obligations under the contract. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM R. 123, 127 (Pon. 1991).

Requisite clarity to establish a reference in a contract as a condition precedent may be created through plain and unambiguous language or necessary implication manifested by the contract itself. Kihara v. Nanpei, 5 FSM R. 342, 344 (Pon. 1992).

Conditions to contractual obligations are not favored in the law because they tend to have the effect of creating forfeitures. Kihara v. Nanpei, 5 FSM R. 342, 344 (Pon. 1992).

Where the parties to a proposed contract have agreed that the contract is not to be effective or binding until certain conditions are performed or occur, no binding contract will arise until the conditions specified have occurred or been performed. Etscheit v. Adams, 6 FSM R. 365, 388 (Pon. 1994).

Although conditions to contractual obligations are not favored in the law because they tend to have the effect of creating forfeitures, parties may create a condition to a contract through plain and unambiguous language, through necessary implication manifested by the contract itself, or in some other way that makes their intent to create a condition clear. In the absence of some such showing, courts find promises, not conditions to further performances. Adams v. Etscheit, 6 FSM R. 580, 582-83 (App. 1994).

Conditions precedent to a contract are not favored and the courts will not construe stipulations to be such unless required to do so by plain, unambiguous language or by necessary implication. Adams v. Etscheit, 6 FSM R. 580, 583 (App. 1994).

Because conditions precedent are disfavored at law and require plain and unambiguous language to establish, when differing inferences create an issue of fact, summary judgment that a condition precedent exists is inappropriate. Adams v. Etscheit, 6 FSM R. 580, 584 (App. 1994).

A contention that a contract provision is ambiguous defeats a contention that it creates a condition precedent. Conditions precedent to contractual obligations are not favored in the law and courts will not construe terms to be such unless required to do so by plain and unambiguous language or by necessary implication. Nanpei v. Kihara, 7 FSM R. 319, 324 (App. 1995).

When faced with an allegation that an ambiguous contract provision creates a condition, courts prefer either an interpretation that imposes on a party a duty to see that an event occurs, rather than one that makes the other party's duty conditional on the occurrence of the event, or an interpretation that will reduce an obligee's risk of forfeiture if the event does not occur. Nanpei v. Kihara, 7 FSM R. 319, 324 (App. 1995).

Contractual terms that provide that payment is due "when" or "not until" a stated event occurs are generally not considered to be conditions, but merely a means of measuring time, and if the stated event does not occur then the payment is nevertheless due after a reasonable time. Nanpei v. Kihara, 7 FSM R. 319, 324 (App. 1995).

The existence of quitclaim deeds is evidence that the parties had fulfilled their respective agreed conditions precedent to the transfer of land. Nahnken of Nett v. United States, 7 FSM R. 581, 588-89 (App. 1996).

The time for completion of a house is not a material term of the parties' agreement when nothing in the parties' oral agreement indicated that the "time was of the essence" for completion of the house within two months and when the plaintiff pointed out no particular day of completion as being crucial. Therefore, late completion of the house should not be seen as a failure of a condition to further obligations under the contract. O'Byrne v. George, 9 FSM R. 62, 64 (Kos. S. Ct. Tr. 1999).

The filing of the appeal over land was not a breach of the defendant's condition and was not a breach of a customary settlement when the appeal was filed before the customary settlement and condition were made; and when the appeal was not decided in the defendant's favor, the defendant's condition regarding his promised grant of a portion of land was satisfied and the customary settlement and the defendant's promise were therefore enforceable. Robert v. Semuda, 11 FSM R. 165, 168 (Kos. S. Ct. Tr. 2002).

Although conditions to contractual obligations are not favored in the law because they tend to have the effect of creating forfeitures, parties may create a condition to a contract through plain and unambiguous language, through necessary implication manifested by the contract itself, or in some other way that makes their intent to create a condition clear. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 555 (Chk. 2005).

Forfeitures are abhorrent to the law, and are construed strictly. Because the law abhors a forfeiture, the language effecting defeasance in a deed must clearly spell that fact out. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

When the land purchase agreement's forfeiture clause clearly states that title was to be returned to the seller if she was not paid in full by November 30, 2002, but that clause does not state that both the title and possession of the land were to be returned to the original land owner in the event of non-payment, the court cannot order the state to give possession of the lot to the original land owner, because contracts involving a forfeiture cannot be extended beyond the strict and literal meaning of the words used. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

A land seller cannot claim a forfeiture and at the same time receive the purchase money. Accordingly, there can be no doubt that a vendor by receiving money when past due is precluded from availing himself of any right of forfeiture which has arisen because of the failure to pay on time. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

If the land vendor receives a partial payment of an amount past due, he is precluded from immediately asserting a forfeiture of the contract for default in payment, and a land seller, who long after all purchase payments have become due accepts a payment, that seller has waived his right to declare a forfeiture as of the time of payment. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

When the plaintiff is not entitled to the state's forfeiture of the lot, she is entitled to damages. Her damages for the state's breach of the land purchase agreement are the unpaid balance of the purchase price, and if this is not paid within a reasonable time, her right to claim forfeiture of title, which was suspended by her acceptance of a late partial payment, may be revived. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

Contractual terms that provide that payment is due upon the occurrence of a stated event are generally not considered to be conditions indicating a forfeiture or a breach of contract but are merely a means of measuring time, and, if time is not of the essence of the contract, then the payment is due after a reasonable time, and what constitutes a reasonable time depends on the attendant circumstances in each case and is often based on factual determinations. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 587-88 (Pon. 2011).

Contractual terms that provide that payment is due upon the occurrence of a stated event are generally not considered to be conditions indicating a forfeiture or a material breach of contract but are merely a means of measuring time, and, if time is not of the essence of the contract, then the payment is due after a reasonable time, and what constitutes a reasonable time depends on the attendant circumstances in each case and is often based on factual determinations. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 10 (Pon. 2013).

When the parties to a proposed contract have agreed that the contract is not to be effective or binding until certain conditions are performed or occur, no binding contract will arise until the conditions specified have occurred or been performed. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 224 (Pon. 2015).

– Consideration

No obligation may arise from an agreement that lacks consideration, since consideration is required for a valid contract to exist. Therefore, the termination of a contract that lacks consideration does not violate the prohibition against impairment of the obligations of contracts. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 341 (Chk. S. Ct. Tr. 1995).

The contract law pre-existing duty rule is that a promise to perform an act which is already required supplies no consideration for the return promise or performance. On that basis, a contract may fail for lack of consideration. But a contract provision cannot be examined in isolation to determine the sufficiency of consideration as a whole. Therefore the rule does not apply where there is sufficient other consideration flowing between the parties to support an agreement and all of its provisions. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 175 (Pon. 1997).

When there was nothing of value exchanged for a promise to allow a parcel of land to be used to build

a house, there was no consideration for the promise. Since consideration for a promise is required for a promise to be enforceable as a contract, when there was no consideration given in exchange for the promise, the parties did not have an enforceable contract. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 194 (Kos. S. Ct. Tr. 2001).

Under the doctrine of promissory estoppel, a person's reliance upon a promise may create rights and duties. The finding of detrimental reliance does not depend upon finding any agreement or consideration. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

A pre-existing debt establishes sufficient consideration to support the formation of a contract. Goyo Corp. v. Christian, 12 FSM R. 140, 146 (Pon. 2003).

Courts do not generally inquire into the sufficiency of consideration offered pursuant to a promissory note – parties to an agreement are free to attach value to whatever is exchanged. Goyo Corp. v. Christian, 12 FSM R. 140, 148 (Pon. 2003).

When the plaintiff had a legal right to initiate a lawsuit against a corporate defendant for its unpaid debts at the time that the promissory note was executed in 1994, but instead of initiating a lawsuit, it agreed to certain terms of payment, and required individuals to personally guarantee that payment would be made, each of the parties gained something in the execution of the promissory note and security agreement. There was thus consideration exchanged by the parties when they entered into these agreements. Goyo Corp. v. Christian, 12 FSM R. 140, 149 (Pon. 2003).

Like other contracts, contracts of guaranty must be supported by consideration, and a guaranty will not be enforced unless the promise is supported by consideration. However, if the promise of the guarantor is shown to have been given as part of a transaction or arrangement which created the guaranteed debt or obligation, the promise is supported by the same consideration which supports the principal transaction. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

When a guaranty was given as a part of the same transaction by which the debt to the bank was created, no independent consideration was necessary. The guaranty was supported by the same consideration that supported the transaction between the debtor and the bank. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

To be enforceable, a guaranty, like other contracts, must be supported by consideration. However, if a guaranty is made as part of a transaction or arrangement which created the guaranteed debt or obligation, it is not essential to a recovery on the promise of guaranty that the promise shall have been supported by a consideration other than that of the principal debt. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 397 (App. 2006).

Courts generally do not inquire into the sufficiency of consideration. Mori v. Hasiguchi, 19 FSM R. 16, 22 n.4 (Chk. 2013).

Good and valuable consideration is an element in proving that a buyer was a bona fide purchaser for value. Good and valuable consideration is not the equivalent of fair market value; nor is it the equivalent of book value. Good and valuable consideration is often much lower than either of these values. Mori v. Hasiguchi, 19 FSM R. 222, 226 (Chk. 2013).

If a guaranty is made as part of a transaction or arrangement which created the guaranteed debt or obligation, it is not essential to a recovery on the promise of guaranty that the promise was supported by a consideration other than that of the principal debt. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

When security, such as a guaranty, is given as part of the same transaction that created the debt to the bank, no further or independent consideration is needed. The loan itself is sufficient consideration. This principle holds true when a mortgage is the security given for a loan to a third party. Sam v. FSM Dev.

Bank, 20 FSM R. 409, 417 (App. 2016).

The consideration for a mortgage may consist of a loan to a third person. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

It is not essential to a mortgage's validity that the mortgagor should have received the consideration. It is sufficient that the mortgagee parted with consideration. The consideration need not go directly from the mortgagee to the mortgagor. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

– Damages

When a car rental agreement provides that the lessee shall pay to the lessor all costs and expenses incurred as a result of loss or damage to the rented vehicle regardless of fault, then the lessor has a duty to accept the damaged vehicle and simply charge the repair costs to the lessee. Phillip v. Aldis, 3 FSM R. 33, 36 (Pon. S. Ct. Tr. 1987).

The measure of damages is the difference between the agreed price buyer was to have paid and the general market price at which seller could sell to another buyer. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM R. 123, 128 (Pon. 1991).

The equitable remedy of specific performance is one where the court orders a breaching party to do that which he has agreed to do, thereby rendering the non-breaching party the exact benefit which he expected. The remedy is available when money damages are inadequate compensation for the plaintiff – when damages cannot be computed or when a substitute cannot be purchased. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 126 (Pon. 1993).

Where a plaintiff makes damage claims in tort as well damage claims based on contract, contract clauses limiting the contract damages do not apply. McGillivray v. Bank of the FSM (I), 6 FSM R. 404, 409 (Pon. 1994).

The trial court has wide discretion in determining the amount of damages in a contract case. In a breach of contract case the non-breaching party is entitled to damages that will put the party in the position he or she would have been in if not for the breach. The plaintiff may be compensated for the injuries flowing from the breach either by awarding compensation for lost profits, or by awarding compensation for the expenditures made in reliance on the contract. Kihara Real Estate, Inc. v. Estate of Nanpei (III), 6 FSM R. 502, 505 (Pon. 1994).

The plaintiff has the burden of proving the damages, but once a prima facie showing of damages has been made it is the defendant's burden to prove that the injuries did not result from his omission. Kihara Real Estate, Inc. v. Estate of Nanpei (III), 6 FSM R. 502, 505 (Pon. 1994).

The right to recover expenditures made in reliance on the contract has limitations. If the plaintiff would have suffered the same losses even if the defendant had performed under the contract, then the plaintiff cannot recover them, since recovery would put the plaintiff in a better position than he would have been in had the defendant performed. Kihara Real Estate, Inc. v. Estate of Nanpei (III), 6 FSM R. 502, 505 (Pon. 1994).

In order to be recoverable, contract damages must be a proximate consequence of the defendant's breach. A proximate consequence is one that flows from the act complained of, unbroken by any independent cause. Thus, where the loss would have occurred even if the defendant had not breached the contract reliance damages are not recoverable. Kihara Real Estate, Inc. v. Estate of Nanpei (III), 6 FSM R. 502, 506 (Pon. 1994).

The measure of damages for the breach of an agreement to procure insurance is the amount of loss that would have been subject to indemnification by the insurer had the insurance been properly obtained.

FSM Dev. Bank v. Bruton, 7 FSM R. 246, 250 (Chk. 1995).

If a plaintiff cannot be compensated for the value it expected from a breached contract, it might then be compensated for its reliance expenditures and placed in as good a position as it would have been if it had not entered into the contract. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 623 (App. 1996).

Generally, interest is usually included as an element of damages as a matter of right when a debtor knows precisely what he is to pay and when he is to pay it. The complaining party has been deprived of funds to which he was entitled by virtue of the contract, the defaulting party knew the exact amount and terms of the debt, and the goal of compensation requires that the complainant be compensated for the loss of use of those funds. This compensation is made in the form of interest. In the absence of statute, an award of prejudgment interest is in the discretion of the court. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 392-93 (Kos. 1998).

Pre-judgment interest at the statutory, judgment rate of 9% is appropriate when the defendant wrote the insufficient funds checks to plaintiff because the defendant knew precisely the amount to which he was obligating himself, and the effective date of that commitment. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 393 (Kos. 1998).

The trial court has wide discretion in determining the amount of damages in a contract case. O'Byrne v. George, 9 FSM R. 62, 65 (Kos. S. Ct. Tr. 1999).

When the plaintiff has paid the defendant in full the entire sum due for construction materials and when because of the defendant's breach the plaintiff has hired a second contractor to finish her house and was required to buy certain materials necessary to complete her house, the plaintiff has suffered damages in the amount of the materials purchased by the second contractor. O'Byrne v. George, 9 FSM R. 62, 65 (Kos. S. Ct. Tr. 1999).

A defendant who has completed substantial performance in constructing the plaintiff's house is entitled to payment for the second of three installments for labor and the plaintiff's failure to pay is a breach of her promise to pay the defendant the agreed amount for labor costs. O'Byrne v. George, 9 FSM R. 62, 65 (Kos. S. Ct. Tr. 1999).

When the defendant has breached its contract with the plaintiff, the plaintiff, who has completed the contract, is entitled to recover the difference between the contract amount and the amount the defendant has already paid. Malem v. Kosrae, 9 FSM R. 233, 236 (Kos. S. Ct. Tr. 1999).

Prejudgment interest is also recoverable in cases where the plaintiff is entitled to recover a liquidated sum of money. Malem v. Kosrae, 9 FSM R. 233, 236 (Kos. S. Ct. Tr. 1999).

When the amount awarded for prejudgment interest is more than the amount designated as usurious, it is excessive and must be reduced. Malem v. Kosrae, 9 FSM R. 233, 237 (Kos. S. Ct. Tr. 1999).

When there is no statutory rate for prejudgment interest and when there is no contract provision or limitation for the award of prejudgment interest, the court may use its discretion to determine the prejudgment interest rate and may accept as reasonable the statutory 9% post-judgment interest rate. Malem v. Kosrae, 9 FSM R. 233, 237 (Kos. S. Ct. Tr. 1999).

Once a claimant's entitlement to damages is established, the amount of damages is an issue of fact for the finder of fact. Kosrae v. Langu, 9 FSM R. 243, 250 (App. 1999).

The trial court has wide discretion in determining the amount of damages in contract and quasi-contract cases involving equitable doctrines, such as promissory estoppel and restitution. The plaintiff may be compensated for the injuries by awarding compensation for the expenditures made in reliance on the promise. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

Claimed expenditures for food and beverages will not be awarded when the purchase and consumption of these items was not dependent upon the defendant's promise, and labor costs will not be allowed as damages when there was no evidence presented at trial that the plaintiff paid any person a specific sum for labor. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

Generally, pre-judgment interest is only included as an element of damages as a matter of right when a debtor knows precisely what he is to pay and when he is to pay it. This occurs when a party has been deprived of funds to which he was entitled by virtue of the contract, and the defaulting party knew the exact amount and terms of the debt. In those types of cases, the goal of compensation requires that the complaining party be compensated for the loss of use of those funds. This compensation is made in the form of interest. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

The court has wide discretion in the determination of the damages in a contract case. Edwin v. True Value Store, 10 FSM R. 481, 485 (Kos. S. Ct. Tr. 2001).

When the court finds the remedies provided by the UCC, Article 2, for sales of goods to be persuasive, and appropriate to provide substantial justice in a case, the court may adopt and apply its remedy principles to that case. Edwin v. True Value Store, 10 FSM R. 481, 485 (Kos. S. Ct. Tr. 2001).

A buyer has the right to revoke his acceptance of a unit where the unit is non-conforming and the unit's value is substantially impaired. The revocation must occur within a reasonable time. Revocation of acceptance by the buyer requires the buyer to return the non-conforming goods to the seller, and substantial justice requires that the goods be returned in the same substantial condition as when accepted by the buyer. Edwin v. True Value Store, 10 FSM R. 481, 485 (Kos. S. Ct. Tr. 2001).

The buyer's measure of damages for breach in regard to accepted goods is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted. Edwin v. True Value Store, 10 FSM R. 481, 485 (Kos. S. Ct. Tr. 2001).

When a car rental agreement provides that the lessee shall pay to the lessor all costs and expenses incurred as a result of loss or damage to the rental vehicle, then the lessor has a duty to accept the damaged vehicle and simply charge the repair costs to the lessee. Jackson v. George, 10 FSM R. 523, 525 (Kos. S. Ct. Tr. 2002).

When the police accident report and testimony at the trial shows that the left front fender was not damaged in the accident, repair costs for the left front fender cannot be charged to the defendant. Jackson v. George, 10 FSM R. 523, 525 (Kos. S. Ct. Tr. 2002).

Generally, lost profits may be recovered in breach of contract cases, provided that certain evidentiary requirements are satisfied. Jackson v. George, 10 FSM R. 523, 526 (Kos. S. Ct. Tr. 2002).

The terms "lost profits" and "revenues" are not interchangeable as they have entirely different meanings. "Revenues" are the gross receipts of the business. The term "profits" means the gross proceeds of a business transaction less the costs of the transaction. In other words, profits equal the revenues minus the costs. Jackson v. George, 10 FSM R. 523, 526 (Kos. S. Ct. Tr. 2002).

Lost profits may be presumed to a natural result of a breach of contract, but a plaintiff's claim for lost profits must be clearly established. First, the plaintiff must show that there would have been a profit. The plaintiff must also prove costs of the business because it is impossible to prove profits without first proving costs. Jackson v. George, 10 FSM R. 523, 526 (Kos. S. Ct. Tr. 2002).

If the plaintiff fails to produce satisfactory evidence of costs, then the plaintiff's claim to lost profits must fail, because the trier of fact has no basis to compute profits. Jackson v. George, 10 FSM R. 523, 526 (Kos. S. Ct. Tr. 2002).

When the plaintiff breached a construction contract by not paying the defendant for the change order amount of $1,369 and when the defendant breached the contract by not paying a third party $1,000 for the design plan as agreed, the plaintiff is liable to the defendant for $1,369 for the change order and the defendant is liable to plaintiff for $1,000 for the design fee. In the final calculation, the plaintiff is liable to the defendant for $369 and the plaintiff is also liable to pay the third party directly for the $1,000 design fee. Mongkeya v. RV Constr., 11 FSM R. 234, 235-36 (Kos. S. Ct. Tr. 2002).

When a terminated employee was contractually entitled to sixty days notice of termination and he would have received $3,575 in gross salary during that period and when this sum must be reduced by the $2,000 the employee diverted, the employee is entitled to $1,575 damages from his employer arising from its breach of his employment contract. Hauk v. Board of Dirs., 11 FSM R. 236, 242 (Chk. S. Ct. Tr. 2002).

Generally, damages for breach by either party to a contract may be liquidated in the agreement, but only in an amount that is reasonable in light of the anticipated or actual loss caused by the breach and of the difficulties of proof of loss. A term fixing unreasonably large liquidated damages may be unenforceable on grounds of public policy as a penalty. Island Homes Constr. Corp. v. Falcam, 11 FSM R. 414, 416 (Pon. 2003).

When in discovery responses the amount of the plaintiffs' damages was stated as slightly more than the amount actually proven at trial, the invoices offered and received into evidence at trial establish by a preponderance of the evidence the amount of plaintiffs' damages. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 241-42 (Pon. 2003).

An assignment agreement that sets forth the full amount of the open accounts due, does not preclude further liability for any goods and services purchased after the date of the assignment agreement. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 242 (Pon. 2003).

The court's pretrial order did not prevent the bank from adequately defending on the question of damages when all witnesses specified in the bank's pretrial statement whose testimony summaries indicated that they had testimony to offer relevant to the question of damages were permitted to testify. Further, when the bank did not object before trial to the court's limitation of its damages witnesses, it waived any objection in this regard. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 242 (Pon. 2003).

Since the only prejudgment interest recognized so far in breach of contract cases is where the contract itself specifically provides for such a remedy, the part of a foreign judgment containing such prejudgment interest may thus be unenforceable in the FSM as against public policy. Northern Marianas Housing Corp. v. Finik, 12 FSM R. 441, 447 (Chk. 2004).

Since a plaintiff is entitled to recover the difference between the contract amount and the amount that the defendant has already paid, the plaintiff is entitled to recover the $100 per month difference between the contract monthly rental amount of $250 and the monthly $150 payment made and the plaintiff is also entitled to recover the amount necessary to complete the repairs to the ceiling and the floor that the defendant had agreed to do. Lonno v. Talley, 12 FSM R. 484, 486 (Kos. S. Ct. Tr. 2004).

The trial court has wide discretion in determining the amount of damages in a contract case. In a breach of contract case, the non-breaching party is entitled to damages that will put the party in the position he would have been in if not for the breach. George v. Alik, 13 FSM R. 12, 15 (Kos. S. Ct. Tr. 2004).

When the defendant's obligation under the contract was to pay the plaintiff the amount of $2,400 in return for the damaged vehicle and the damages were mitigated by the plaintiff's sale of the vehicle for $800, the damages are reduced by $800 to $1,600, and judgment will be entered in the plaintiff's favor and against the defendant in the amount of $1,600. George v. Alik, 13 FSM R. 12, 15 (Kos. S. Ct. Tr. 2004).

When there is no authorization for compound interest in the settlement agreement and when it is apparent that the parties, in settling their prior lawsuit, intended to apply the legal or judgment rate of

interest to any unpaid settlement balances, the plaintiff's damages must therefore be calculated on a simple interest basis. Lee v. Lee, 13 FSM R. 68, 71 (Chk. 2004).

When there has been a breach of a purchase agreement entitling the plaintiffs to damages, the plaintiffs are entitled to what they expected to receive if the purchase agreement had not been breached. Edgar v. Truk Trading Corp., 13 FSM R. 112, 118 (Chk. 2005).

In a breach of contract case, the non-breaching party is entitled to damages that will put the party in the position he would have been in if not for the breach. Once a party's entitlement to damages is established, the amount of damages is an issue of fact for the finder of fact. Isaac v. Palik, 13 FSM R. 396, 402 (Kos. S. Ct. Tr. 2005).

When the contract provision for repatriation costs is not an entitlement to be paid the amount it would cost to return to the point of hire, but an obligation for the employer to pay the actual repatriation costs to the point of hire or to some other chosen less costlier place, the plaintiff will be awarded as damages the cost of shipping his household goods to Saipan, and the travel costs for him and his family from Chuuk to Saipan instead of what it would have cost to send them to Florida. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 555 (Chk. 2005).

The court may take judicial notice that the airport departure fee from Chuuk is $15 per person and that this is included in the contractual repatriation travel costs. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 555 (Chk. 2005).

On an award for unpaid salary, the defendant employer shall deduct the applicable wage and salary taxes before remitting the balance of this sum to the plaintiff employee and pay those deductions to the proper authorities. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 556 (Chk. 2005).

When the plaintiff is not entitled to the state's forfeiture of the lot, she is entitled to damages. Her damages for the state's breach of the land purchase agreement are the unpaid balance of the purchase price, and if this is not paid within a reasonable time, her right to claim forfeiture of title, which was suspended by her acceptance of a late partial payment, may be revived. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

Fifteen percent is the usual maximum allowed for attorney's fees in a collection case under FSM Supreme Court caselaw. FSM Dev. Bank v. Adams, 14 FSM R. 234, 244 n.4 (App. 2006).

When the trial court awarded attorney's fees against a defendant based on 15% of the judgment against him and a co-defendant was jointly and severally liable for only part of that judgment, if the co-defendant were liable for attorney's fees, its liability would be limited to 15% of the part of the judgment it was liable for. FSM Dev. Bank v. Adams, 14 FSM R. 234, 256 n.8 (App. 2006).

Attorney's fees are awarded to the prevailing party only if authorized by contract or by statute. FSM Dev. Bank v. Adams, 14 FSM R. 234, 256 (App. 2006).

When the personnel manual provides for an employee's involuntary dismissal two weeks after the director has recommended it, and when the employee was not afforded the two weeks of pay that he should have received had the procedure been followed, in this regard, the contract has been breached and the plaintiff is due his expectation damages under the contract, the amount he would have been paid for those two weeks. Reg v. Falan, 14 FSM R. 426, 435 (Yap 2006).

The court has the discretion to award pre-judgment interest, but it is not a matter of right unless the debtor knows precisely what he is to pay and when payment is due. The purpose of awarding interest is to compensate the complaining party for losing use of the funds. George v. George, 15 FSM R. 270, 275 (Kos. S. Ct. Tr. 2007).

When the parties have a written agreement stating that interest would be added to the unpaid balance, an award of pre-judgment interest has been upheld. George v. George, 15 FSM R. 270, 275 (Kos. S. Ct. Tr. 2007).

When the parties have a written agreement stating that interest would be added to the unpaid balance, an award of pre-judgment interest will be upheld. George v. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

When the defendant agreed to make regular payments but there was no written agreement to pay interest on the defendant's open account; when the ledger page showing payments contains a 25-cent charge at the time of each payment but this does not correspond to an interest calculation; and when there is no evidence to show interest was discussed or agreed to by the defendant, the plaintiff is not entitled to pre-judgment interest. George v. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

Damages for an insurer's claim for breach of fiduciary duty are the same as those for its contract claim, since the breach of fiduciary duty claim is also based on the breach of the agency contracts that the insurer had with its agents. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 446 (Pon. 2009).

In a contract case, the trial court has a wide discretion in determining the amount of damages since the non-breaching party is entitled to damages that will put the party in the position he would have been if not for the breach. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

When an attorney failed to perform his duties as the plaintiffs' appellate lawyer, he breached the contract because he did not complete what he stated he would do which was to provide legal representation, the "handling of an appeal," since he never filed a brief and because of this, the FSM appeal case was dismissed. The attorney thus breached his contract. The services promised were not performed and because no brief was filed, the attorney cannot bill the plaintiffs for hours he worked on the brief as there was no brief filed or evidence of work. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

When an attorney cannot provide any proof of his hours of work, he cannot prove his fees and his client should not have been charged for these and since the court cannot find evidence to prove the attorney's breach of contract counterclaim based on a preponderance of the evidence, his counterclaim for attorney's fees will be dismissed. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

When the plaintiffs had a contract with the defendant attorney and their appeal case was dismissed without the plaintiffs getting their day on court due to the attorney's failure to file required materials with the appellate court, the plaintiffs are entitled to a refund of the $500 retainer that they paid the attorney in the case and to the $10 filing fee because $510 is the amount to put the non-breaching party, the plaintiffs, in a position they would have been in but for the attorney's breach. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646-47 (Kos. S. Ct. Tr. 2009).

While it may be true that funds which are not timely obligated are returned to the General Fund, when Ruo municipality paid the funds before they lapsed but did not receive the goods owed for that obligation, the damage is to the municipality, not the state, and the damages to the municipality can be paid into the municipality's separate account. Ruo Municipality v. Shigeto's Store, 17 FSM R. 195, 197 (Chk. S. Ct. Tr. 2010).

Even if a contract breach causes no loss or if the amount of loss is not proved with sufficient certainty, the injured party can recover as nominal damages a small sum, commonly six cents or a dollar, fixed without regard to the amount of loss. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 573 (Pon. 2011).

The function of a liquidated damages provision is for the parties to agree in advance to a damages amount that will be assessed in the event of a certain contract breach where, for both parties, it may ease the calculation of risks and reduce the cost of proof; where it might be the only compensation possible to the

injured party for a loss that cannot be proven with sufficient certainty; and where it would save litigation time and expense. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 573 n.5 (Pon. 2011).

The economic waste principle of contract law states that although a party has the right to insist on performance in strict compliance with the contract's specifications and can require a contractor to correct non-conforming work, the party should not be permitted to direct the replacement of work in situations where the cost of correction is economically wasteful and the work is otherwise adequate for its intended purpose. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 576 n.7 (Pon. 2011).

When GMP used the wrong coordinate system for the Chuuk road survey work, it was a breach of the contract and when there was expert testimony that the survey could have been corrected by converting it to the proper coordinate system with the right computer software and some fieldwork, the court cannot presume that this would have been successful or that it could have been accomplished at no direct cost to the FSM, and GMP will thus be denied summary judgment on this claim and the FSM granted summary judgment that the contract was breached but not for its claim because whether the breach was material is a factual dispute – whether the measure of damages should be the cost of the new survey or what the cost would have been to convert the GMP survey to the Truk-Neoch Coordinate System or whether any damages, other than nominal, are due at all. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 577-78 (Pon. 2011).

An injured party may be compensated for the injuries flowing from a contract breach either by awarding compensation for lost profits (expectancy damages), or by awarding compensation for the expenditures made in reliance on the contract (reliance damages). That is, if an injured party cannot be compensated for the value it had expected to receive from a breached contract, it might then be compensated for its reliance expenditures and placed in as good a position as it would have been if it had not entered into the contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 592 (Pon. 2011).

Damages are contractual in nature when they arose either from the various lease agreements between the plaintiff and the state or from the settlement agreement between them even though the settlement agreement included a claim for a state court partial (and thus probably not final and enforceable) judgment for some of the unpaid periods of the leases because this court used the parties' memorandum of understanding for its determination of damages. Thus the damages judgment in this case was not based on a state court "judgment" but on the parties' contractual stipulation about the amount the state owed the plaintiff as of March 9, 2006. Stephen v. Chuuk, 18 FSM R. 22, 25 & n.1 (Chk. 2011).

When the contract term that prorates compensation based on proportions of time applies to the plaintiff's breach of contract claim and absent complete figures for individual hours worked on each phase of the revenue subject to apportionment and absent an independent basis for determining the relative values of the actual hours worked by both the plaintiff and another, a comparison of the amount of rework the other had to perform is an equitable basis upon which to determine the appropriate proportions of hours the plaintiff and the other worked and therefore the amount due the plaintiff. Smith v. Nimea, 18 FSM R. 36, 43-44 (Pon. 2011).

When the plaintiffs did not present any evidence at trial of damages sustained as a result of the defendants' breach, the court will not award monetary damages against the defendants. Harden v. Inek, 19 FSM R. 244, 252 (Pon. 2014).

When, in general, the witnesses' emotional attachment to the lot is irrelevant to the plaintiff's actual damages from the Board's violation of its civil right to due process, and when, without knowing what the witnesses' testimony will be, it is unknown whether testimony about the lot's necessary background history will unavoidably include some mention of emotional attachment, the court cannot make a blanket ruling barring all mention of a witness's emotional attachment to the lot. During trial, the defendant may object to any irrelevant questions and move to strike any irrelevant matter in a witness's answer to a relevant question. That should be sufficient protection. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 377-78 (Pon. 2014).

A plaintiff has the burden to persuade the court, with competent evidence, as to the amount of his damages. Parties have the responsibility to put forward the evidence to support their case. This is not the court's responsibility. George v. Palsis, 20 FSM R. 111, 117 (Kos. 2015).

A plaintiff must introduce his evidence during his case-in-chief so the defendants will have an opportunity to address it, or to stipulate to it, or to challenge it and to cross-examine witnesses about it, and where, if the defendants feel the need, they can introduce evidence to counter it when it their turn comes. George v. Palsis, 20 FSM R. 111, 117 (Kos. 2015).

– Damages – Consequential

Consequential damages can only be awarded if the loss was such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract as the probable result of the breach of it. FSM Dev. Bank v. Adams, 14 FSM R. 234, 256 (App. 2006).

When a contract provides that in no event shall one party be liable for prospective profits or special, indirect, or consequential damages of the other and that that provision will survive any contract termination however arising, the parties have agreed that, regardless of the cause, one party would never be liable to the other for any claim for lost profits or other consequential damages. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 365-66 (Yap 2009).

Consequential damages can only be awarded if the loss was such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 377 (Pon. 2014).

In the absence of a contractual or statutory right of renewal, consequential damages for the failure to renew cannot have been in the contemplation of both parties. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 377 (Pon. 2014).

It cannot be said that consequential damages were contemplated for the termination of a lease five months early when the leased land had remained undeveloped for a long while and when it is difficult to see what development could have taken place in those five months that would have earned the plaintiff a profit during those five months, that is, whether there would be any consequential damages because the plaintiff was deprived of the use of an undeveloped lot for the last five months of its lease. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 377 (Pon. 2014).

– Damages – Mitigation of

A court will not compensate an injured party for a loss that he could have avoided by making efforts appropriate, in the eyes of the court, to the circumstances. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM R. 123, 129 (Pon. 1991).

In a breach of contract case, the injured party is expected to take appropriate actions to mitigate, or lessen, his damages. George v. Alik, 13 FSM R. 12, 15 (Kos. S. Ct. Tr. 2004).

When the defendant failed to buy, as agreed, for the plaintiff's damaged car, the plaintiff was expected to, and did, mitigate his damages by selling the car to someone else. The car's sale price was its fair market value at the time of the sale and the value of the plaintiff's mitigation. George v. Alik, 13 FSM R. 12, 15 (Kos. S. Ct. Tr. 2004).

In a breach of contract case, the injured party is expected to take appropriate actions to mitigate, or lessen, his damages. A court will not compensate an injured party for a loss that he could have avoided by making efforts appropriate, in the eyes of the court, to the circumstances. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 556 (Chk. 2005).

A court will not compensate an injured party for a loss that he could have avoided by making efforts appropriate, in the eyes of the court, to the circumstances. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 365 (Yap 2009).

When a buyer converted the remaining gasoline and diesel to his own personal use, he, in effect, sold himself the gasoline and diesel and thus mitigated his damages. When more stored kerosene remains available for the buyer to sell or convert to his own personal use, the seller is entitled to summary judgment that it will not be liable for the fuel the buyer converted to his own personal use or for the fuel he still retains since that would be a double recovery. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 365 (Yap 2009).

That a plaintiff has a duty to mitigate his damages is clear. He must take reasonable steps to minimize those damages. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 445 (Pon. 2009).

One sound reason for the mitigation principle is that it makes commercial sense to discourage a plaintiff from sitting back and letting damages get larger instead of stemming further losses. But an innocent party cannot be expected to take steps to mitigate damages before it was aware of the breach. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 361 (App. 2012).

Any inaction before the date the plaintiff became aware of the breach cannot be a failure to mitigate damages because the plaintiff did not know it had any to mitigate. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 361 (App. 2012).

Choosing to remain idle in Pohnpei for nearly three years while forgoing suitable work in the Philippines, is manifestly unreasonable under the circumstances. A court will not compensate an injured party for a loss that he could have avoided by making efforts appropriate in the eyes of the court to the circumstances. The rationale behind this rule is to encourage the injured party to make reasonable efforts to avoid loss. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 275-76 (Pon. 2014).

Even when the plaintiffs failed to make reasonable efforts to secure alternative employment, the burden of proof falls on the former employer to show that the former employees could have found alternative employment in their chosen field. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 276 (Pon. 2014).

When the former employer has demonstrated that suitable alternative employment was available and that the former employees failed to make reasonable efforts to secure alternative employment, the court must conclude that plaintiffs could not recover for breach of contract due to their failure to mitigate damages. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 276 (Pon. 2014).

Since the defendants pled the plaintiff's failure to mitigate damages as an affirmative defense, if the plaintiff had put on evidence of his damages, the burden would have shifted to the defendants to prove that the plaintiff failed to mitigate his damages or to prove to what extent he did mitigate his damages. But since the plaintiff put on no evidence about the amount of his damages, the burden of proof about damages never shifted to the defendants. George v. Palsis, 20 FSM R. 111, 116 (Kos. 2015).

– Damages – Punitive

Punitive damages are not a contract remedy, since only compensatory damages are allowed for breach. Amayo v. MJ Co., 10 FSM R. 244, 249 (Pon. 2001).

Generally, punitive damages are not a contract remedy, because only compensatory damages are usually allowed for breach of contract. Kelly v. Lee, 11 FSM R. 116, 117 (Chk. 2002).

Punitive damages will be denied when the plaintiffs' complaint makes no allegations that the defendants' actions were willful, wanton, or malicious or alleges facts that could constitute willfulness,

wantonness, or malice, and when the cause of action is contract. Punitive damages are not a contract remedy since only compensatory damages are allowed for breach. Zion v. Nakayama, 13 FSM R. 310, 313 (Chk. 2005).

A plaintiff may not as a matter of law recover punitive damages from the State of Chuuk. This principle has been modified somewhat by the enactment section 6 of the Chuuk State Sovereign Immunity Act of 2000, but that Act did not become law until January 25, 2001, and it does not apply to damage claims before that time. Zion v. Nakayama, 13 FSM R. 310, 314 (Chk. 2005).

Generally, punitive damages are not a contract remedy, because only compensatory damages are usually allowed for breach of contract. Isaac v. Palik, 13 FSM R. 396, 401 (Kos. S. Ct. Tr. 2005).

Generally, punitive damages are not a contract remedy, because only compensatory damages are allowed for breach of contract. Nor can punitive damages be awarded under non-contract (i.e., tort) causes of action unless the defendant's actions were alleged and proven to be willful, wanton, and malicious or with deliberate violence. Hartman v. Krum, 14 FSM R. 526, 532 (Chk. 2007).

Punitive damages are derivative, in the sense that they derive from and depend on a separate and independent cause of action. They may be awarded when the acts complained of are wanton, reckless, malicious, and oppressive, but punitive damages are not awardable for breach of contract, since only compensatory damages are allowed in contract cases. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 441 (Pon. 2009).

– Definite Terms

Where no contract existed for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Jim v. Alik, 4 FSM R. 198, 200 (Kos. S. Ct. Tr. 1989).

In order for an agreement to be binding an agreement must be definite and certain as to its terms and requirements, and it must identify the subject matter and spell out the essential commitments and agreements with respect thereto. Etscheit v. Adams, 6 FSM R. 365, 388 (Pon. 1994).

The court will not enforce a written settlement agreement as a verbal contract against a defendant who has not signed it when because of conflicting affidavits the court finds that the settlement terms were not sufficiently definite to constitute an enforceable contract and when there are questions as to whether the settlement was freely and fairly negotiated by the parties thereto. Bank of Hawaii v. Helgenberger, 9 FSM R. 260, 262 (Pon. 1999).

In order to be binding, an agreement must be definite and certain as to its terms and requirements; it must identify the subject matter and spell out the essential commitment and agreements with respect thereto. Phillip v. Marianas Ins. Co., 11 FSM R. 559, 562 (Pon. 2003).

Where no contract existed for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Youngstrom v. Mongkeya, 11 FSM R. 550, 554 (Kos. S. Ct. Tr. 2003).

When the parties have failed to make an enforceable contract due to the lack of definite terms, the court may use its equity power to grant a remedy under the doctrine of restitution. Restitution is a remedy which returns the benefits already received to the party who gave those benefits. Livaie v. Weilbacher, 11 FSM R. 644, 648 (Kos. S. Ct. Tr. 2003).

Issues regarding the timing of performance will not necessarily interfere with the enforceability of a contract. George v. Alik, 13 FSM R. 12, 14 (Kos. S. Ct. Tr. 2004).

When an agreement does not specify when the payment was to be made by the defendant to the

plaintiff, it suggests that the parties did not regard any specific point in time as essential. Accordingly, the court will adopt a "reasonable time" as the time for performance of the contract. George v. Alik, 13 FSM R. 12, 14-15 (Kos. S. Ct. Tr. 2004).

When no contract exists for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Restitution is the proper remedy when no enforceable contract exists. It requires the benefitted party to return what was received or to pay the other party for it. Livaie v. Weilbacher, 13 FSM R. 139, 143 (App. 2005).

In order for an agreement to be binding, an agreement must be definite and certain as to its terms and requirements, and it must identify the subject matter and spell out each party's essential commitments. DJ Store v. Joe, 14 FSM R. 83, 85 (Kos. S. Ct. Tr. 2006).

When the parties' discussion did not reach an agreement on the cement mixer's sale price and the cement mixer's sale price is a required definite term of the contract, as it would spell out the defendant's essential commitment to pay the plaintiff a certain amount, the agreement is unenforceable and not binding because the parties did not agree to a sales price. DJ Store v. Joe, 14 FSM R. 83, 85 (Kos. S. Ct. Tr. 2006).

When no contract exists for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution and where no contract exists for lack of an agreed sale price, restitution is applicable. The doctrine of unjust enrichment generally applies when there is an unenforceable contract. It is based on the idea that one person should not be permitted unjustly to enrich himself at the expense of another. DJ Store v. Joe, 14 FSM R. 83, 85 (Kos. S. Ct. Tr. 2006).

Whether contractual terms are sufficiently certain to support contract formation is a field of inquiry rounded in the common law of contracts. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 475 (Pon. 2014).

The terms of a contract are sufficiently certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 476 (Pon. 2014).

Absent a negotiated time of performance, when the contract calls for a single performance such as the rendering of a service or the delivery of goods, the time for performance is a "reasonable time." Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 476 (Pon. 2014).

When the parties intend to conclude a contract for the sale of goods and the price is not settled, the price is a reasonable price at the time of delivery if nothing is said as to price. Similar principles apply to contracts for the rendition of service where, if the parties manifest an intent to be bound, the price is a reasonable price at the time for doing the work. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 476 (Pon. 2014).

Because the defendant contacted the plaintiff before starting each additional repair so that the plaintiff's agreement to pay for the work could be secured and the plaintiff then agreed to each additional repair, knowing and intending to compensate the defendant for the work and the defendant then proceeded to undertake reasonable efforts to perform the repair, there was a series of valid contracts since the parties' behavior manifested their intent to be bound by such a contract, and for each contract, the parties agreed to perform within a reasonable time, and the price was set as a reasonable price at the time for doing the work. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 476 (Pon. 2014).

For an agreement to be binding, it must spell out the essential commitments and agreements with respect thereto. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

An agreement may lack definite terms when there is no indication as to a schedule of payment that would detail the amount to be paid and a duration or timeline for which payments are to be made. Pohnpei

Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

When no valid contract exists between the parties because of a lack of definite terms, a party may recover for the benefit conferred upon another pursuant to other legal remedies under the law of contracts. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

When no contract exists for lack of definite terms, the court may use its equity power to fashion a remedy under the restitution doctrine. The unjust enrichment doctrine also applies when there is an unenforceable contract. It is based upon the idea that one person should not be permitted unjustly to enrich himself at the expense of another. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

– Executory

When the sale of a barge was conditional upon inspection and was canceled after the inspection occurred, the agreement, prior to cancellation, remained an executory contract. Kosrae v. Worswick, 10 FSM R. 288, 291 (Kos. 2001).

When it is contemplated that something be done to complete the sale, such as weighing, selecting, delivery, or some other act, the contract is "executory," and title does not pass until the specific goods are ascertained and appropriated in the mode agreed on. Kosrae v. Worswick, 10 FSM R. 288, 291 (Kos. 2001).

An assignment executed between a bank and a borrower that provides that, in the event of a default, the bank is the sole and exclusive party entitled to possession of the subject property/premises and to operate the subject business and to receive all income therefrom is a right to possession and operation that, although a security interest, is not a security interest that can be, or was, perfected under Title 33, chapter 10, because it involves real property – the factory building – and the incorporeal right to operate the business from that building. On its face, this is an executory contract for which there was an offer, acceptance, definite terms, and consideration. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 2013).

– Formation

A contract is a promise between two parties for the future performance of mutual obligations which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for). When one party fails to perform their promise, there is a breach of contract. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 123 (Pon. 1993).

A valid and enforceable contract was formed when the state offered to permit plaintiffs to dredge if they would repair the causeway, the plaintiffs accepted the offer by starting repairs, and the material dredged formed the consideration and the terms were sufficiently definite as to the time length of contract because it was limited by the expiration of the U.S. Army Corps of Engineers dredging permit. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 620-21 (App. 1996).

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for). When one party fails to perform their promise, there is a breach of contract. O'Byrne v. George, 9 FSM R. 62, 64 (Kos. S. Ct. Tr. 1999).

A contract is a promise between two parties for the future performance of mutual obligations which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged

for). Tulensru v. Utwe, 9 FSM R. 95, 98 (Kos. S. Ct. Tr. 1999).

A contract is a promise between two parties for the future performance of mutual obligations which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise. Malem v. Kosrae, 9 FSM R. 233, 236 (Kos. S. Ct. Tr. 1999).

An enforceable contract requires an offer, an acceptance, definite terms, and consideration. Bank of Hawaii v. Helgenberger, 9 FSM R. 260, 262 (Pon. 1999).

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise. For an agreement to be binding it must be definite and certain as to its terms and requirements, and it must identify the subject matter and spell out the essential commitments and agreements with respect thereto. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 194 (Kos. S. Ct. Tr. 2001).

An agreement to waive a contractual provision is itself a contract, and the same offer and acceptance are required. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 407 (Pon. 2001).

When the defendant never accepted the plaintiff's offer to waive arbitration, no binding agreement to waive arbitration was ever entered into by the parties. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 407 (Pon. 2001).

When the parties settled rather than go to trial on damages a contract was formed between the parties – the defendant offered specific performance to fill land and in exchange, the plaintiff accepted the offer and agreed to not go to trial on the issue of damages. There was thus an offer and acceptance, consideration, and mutual assent by both parties. James v. Lelu Town, 11 FSM R. 337, 339 (Kos. S. Ct. Tr. 2003).

A contract is a promise between two parties for the future performance of mutual obligations which the law will enforce in some way. For a promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise. Youngstrom v. Mongkeya, 11 FSM R. 550, 554 (Kos. S. Ct. Tr. 2003).

When in the parties' verbal promises, a critical definite terms was missing: the cost for the landfilling equipment and landfill materials were unknown, the parties did not form an enforceable contract with respect to the obligation to pay for the landfilling equipment and the landfill materials. Youngstrom v. Mongkeya, 11 FSM R. 550, 554 (Kos. S. Ct. Tr. 2003).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable, there must be an offer, acceptance, consideration and definite terms. Livaie v. Weilbacher, 11 FSM R. 644, 647 (Kos. S. Ct. Tr. 2003).

When the parties did not agree upon the amount, location, scope, timing or deadline to complete the land filling and were aware of the missing elements as they agreed to meet again to work out the details, but the parties did not meet again to finalize the details, one of the four elements necessary for an enforceable contract, definite terms, remained missing from the parties' understanding. Livaie v. Weilbacher, 11 FSM R. 644, 647-48 (Kos. S. Ct. Tr. 2003).

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for). When one party fails to perform their promise, there is a breach of contract. Goyo Corp. v. Christian, 12 FSM R. 140, 146 (Pon. 2003).

A contract is a promise between two parties for the future performance of mutual obligations. For the

promise to be enforceable, there must be an offer, acceptance, consideration and definite terms. George v. Alik, 13 FSM R. 12, 14 (Kos. S. Ct. Tr. 2004).

When the plaintiff had accepted the defendant's condition that the jeep could not be returned to its original condition and continued to request that defendant work on the jeep, the plaintiff had accepted the defendant's condition regarding workmanship on the jeep and the defendant's inability to return the jeep to its original condition and the plaintiff is thus not entitled to recover his claim for additional work completed later by another. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable there must be an offer, acceptance, consideration, and definite terms. Livaie v. Weilbacher, 13 FSM R. 139, 143 (App. 2005).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable there must be an offer, acceptance, consideration, and definite terms. Livaie v. Weilbacher, 13 FSM R. 139, 143 (App. 2005).

When a review of the record confirms that the parties did not discuss and there was no agreement about the amount, location, scope, timing or deadline to complete the fill and that the agreement was never reduced to writing (although no Kosrae law would require that it be reduced to writing), the record supports the trial court's finding that the parties failed to agree on definite terms and that therefore no contract was formed. Livaie v. Weilbacher, 13 FSM R. 139, 143 & n.1 (App. 2005).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable there must be an offer, acceptance, consideration, and definite terms, and for the agreement to be binding it must be definite and certain as to its terms and requirements, and it must identify the subject matter and spell out the essential commitments and agreements with respect thereto. Isaac v. Palik, 13 FSM R. 396, 399 (Kos. S. Ct. Tr. 2005).

When the plaintiff promised to pay the defendant the amount of $10,000 and the defendant promised to sell to the plaintiff certain parcels and convey all her rights therein and certified that she was the "legal title holder" of the subject parcels through certificates of title and as the legal basis for her promise to transfer her ownership rights in the two parcels, the subject matter, the essential commitments and the agreement were all definite and certain as to its terms and requirements. And since the "Quitclaim Deed" is evidence of the parties' agreement for the sale and transfer of title to the subject parcels, the Quitclaim Deed is an enforceable contract. Isaac v. Palik, 13 FSM R. 396, 399-400 (Kos. S. Ct. Tr. 2005).

An enforceable contract requires an offer, an acceptance, consideration and definite terms. For the agreement to be binding, it must spell out the essential commitments and agreements with respect thereto. Heirs of Nena v. Sigrah, 14 FSM R. 283, 285 (Kos. S. Ct. Tr. 2006).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable, there must be an offer, acceptance, consideration, and definite terms. Hartman v. Krum, 14 FSM R. 526, 530 (Chk. 2007).

No contract was created when the plaintiff's offer was not communicated to the defendant, thus no offer was ever made to the defendant, and there never was an acceptance of an offer by the defendant. Hartman v. Krum, 14 FSM R. 526, 530 (Chk. 2007).

A principal is bound by, and liable for his agent's acts if done with or within the actual or apparent authority from the principal and within the scope of the agent's employment, but when agreeing to pay rent for a cement mixer was not within the scope of the agent's "employment" as the principal's agent, no contract was formed between the principal and the plaintiffs through agency. Hartman v. Krum, 14 FSM R. 526, 530-31 (Chk. 2007).

The elements of an enforceable contract are an offer and acceptance, definite terms, and consideration between the parties. If a party fails to perform, then the contract is breached and damages may be awarded. Siba v. Noah, 15 FSM R. 189, 195 (Kos. S. Ct. Tr. 2007).

When the plaintiff exchanged goods with the defendant in exchange for the defendant agreeing to make payments on the account, the defendant indicated her acceptance of this exchange by making payments. These actions created an enforceable contract. George v. George, 15 FSM R. 270, 273 (Kos. S. Ct. Tr. 2007).

When the plaintiff exchanged goods with the defendant in exchange for the defendant agreeing to make payments on the account and the defendant indicated her acceptance of this exchange by making payments, their actions created an enforceable contract. George v. Albert, 15 FSM R. 323, 326 (Kos. S. Ct. Tr. 2007).

An insurance contract, like all contracts, requires an offer and acceptance to be effective, and, like any contract, an insurance contract is formed when an unrevoked offer by one person is accepted by another, thus satisfying the two prerequisites of mutual assent. Sigrah v. Micro Life Plus, 16 FSM R. 253, 257 (Kos. 2009).

An application for insurance standing alone does not constitute a contract upon which judgment can be recovered. It is merely an offer or request for insurance which may either be accepted or rejected by the insurer. An insurer is at liberty to choose its own risks and is not bound to accept an insurance application for insurance. Sigrah v. Micro Life Plus, 16 FSM R. 253, 258 (Kos. 2009).

An insurance contract may be established when one of the parties to the contract proposes to be insured and the other party agrees to insure, and the subject, the amount, and the rate of insurance are ascertained or understood and the premium is paid if demanded. Sigrah v. Micro Life Plus, 16 FSM R. 253, 258 (Kos. 2009).

A contract is a promise between two parties for the future performance of mutual obligations which the law will enforce in some way. For the promise to be enforceable there must be an offer, acceptance, consideration, and definite terms. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 645 (Kos. S. Ct. Tr. 2009).

When the contract is for an attorney to provide legal assistance for the plaintiffs' appeal case and when the terms are that the attorney will represent the plaintiffs and the plaintiffs will pay the attorney a $100 per hour, there is a promise between the two parties with an offer of performing legal services and the acceptance on the plaintiffs' behalf and there was mutual assent when the parties reached a meeting of the minds with the attorney making the offer and the plaintiffs accepting the offer. The consideration present for the promise was that the attorney offered his legal services to the plaintiffs in exchange for the plaintiffs' money. There was a bargained-for exchange between the parties and what was bargained for was considered of legal value. The contract terms were definite and therefore there was a valid written contract between the parties for the performance of legal services for a fee. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 645 (Kos. S. Ct. Tr. 2009).

When the previously agreed percentages for completed work should be sufficient for a court to determine a contract price for any work done during the contract's last three years; when there is no indication that these same percentages were not intended for use throughout the contract's remaining three years and the overall grant award from the U.S. had a set figure; and when, if the parties thought that the payment terms for the contract's last three years were uncertain, the contract could be amended at any time with or without additional consideration, the court cannot conclude that there was no contract beyond the first two years because no prices had been set for the last three years or that there was no consideration for the last three years. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 589 (Pon. 2011).

Duress takes two forms: physical and economic. Physical duress negates assent *ab initio*; economic duress makes a formed contract voidable. A contract is voidable for economic duress if: 1) a

party's manifestation of assent is induced by an improper threat by the other party that leaves the victim no reasonable alternative; or 2) a party's manifestation of assent is induced by one who is not a party to the transaction, unless the other party to the transaction in good faith and without reason to know of the duress either gives value or relies materially on the transaction. Smith v. Nimea, 18 FSM R. 36, 41-42 (Pon. 2011).

When no evidence suggests that the defendant was responsible for any physical duress against the plaintiff; when the evidence shows that the plaintiff was desperate to get the work, but suggests that the situation is one largely of his own creation, or at least not the defendant's creation; when the plaintiff has not shown that the defendant made any threat, proper or improper, or did any act that left the plaintiff with no reasonable alternative, none of this evidence gives rise to the sort of improper threat and absence of reasonable alternatives upon which the court can find economic duress. Smith v. Nimea, 18 FSM R. 36, 42 (Pon. 2011).

A contract was formed by a salvor's June 16, 2007 e-mail offer and the insurer's June 19, 2007 letter acceptance with offer of additional term of an invoice, with the salvor's acceptance of the additional term by performance. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 9 (Pon. 2013).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable there must be an offer, acceptance, consideration and definite terms. Harden v. Inek, 19 FSM R. 244, 249 (Pon. 2014).

A lease agreement entered into by the parties was a valid contract because the promise to pay rent in exchange for exclusive use of the property constituted an offer, acceptance, and consideration and the agreement's terms were definite and enforceable. Harden v. Inek, 19 FSM R. 244, 249 (Pon. 2014).

When the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 276 (Pon. 2014).

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for). When one party fails to perform their promise, there is a breach of contract. Johnny v. Occidental Life Ins., 19 FSM R. 350, 357 (Pon. 2014).

An insurance contract was formed when there was an invitation made by the insurer to provide life and cancer insurance coverage to the plaintiff and the plaintiff offered to enroll under the policy and the insurer accepted the offer by issuing life and cancer insurance policies and accepting premiums that the plaintiff paid through bi-weekly allotments. The parties' reasonable expectations were that the plaintiff would make timely payments on the policy, and that the insurer would provide coverage subject to the policy's terms. Johnny v. Occidental Life Ins., 19 FSM R. 350, 357 (Pon. 2014).

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise. Zacchini v. Hainrick, 19 FSM R. 403, 410 (Pon. 2014).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable there must be an offer, acceptance, consideration and definite terms. When a contract's existence is at issue, the trier of fact determines whether the contract did in fact exist. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 475 (Pon. 2014).

A series of verbal agreements entered into by the parties may constitute a series of valid contracts. The terms of the agreements were the parties' intentions at the time they entered into the contracts. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 475 (Pon. 2014).

Agreements that lack price and duration terms may be found to be sufficiently certain to form a valid contract. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 475 (Pon. 2014).

Personnel handbook provisions can be enforceable as an employment contract if they meet the requirements for the formation of a unilateral contract, which are: the offer must be definite in form and must be communicated to the offeree. An employer's general statements of policy are no more than that and do not meet the contractual requirements for an offer. George v. Palsis, 19 FSM R. 558, 564 (Kos. 2014).

When a personnel policies manual is detailed and the court finds that it was intended to set the terms of employment; when a review of the employee handbook makes it clear that the employer intended its employees to be bound by the manual's terms and that it intended to bind itself to these terms, the personnel policies manual was meant to be an offer for a unilateral employment contract and an employee has accepted the offer through his continued employment. George v. Palsis, 19 FSM R. 558, 564 (Kos. 2014).

The general rule is that a party who signs an instrument manifests assent to it and may not later complain about not reading or not understanding it. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 127 (Chk. 2017).

Generally, one having the capacity to understand a written document who reads it, or one who, without reading it or having it read to him, signs it, is bound by his signature. Otherwise, no one could rely on a signed document if the other party could avoid the transaction by not reading or not understanding the document. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 127 (Chk. 2017).

A signatory to a contract has a duty to read it, or have it read to him, or a duty to understand what he is signing. The duty to read even involves a person who is blind, illiterate, or unfamiliar with the language in which the contract is written and who has signed the document without having anyone read it aloud or explaining it. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 127 (Chk. 2017).

Except possibly in the case of an emergency, a party must employ self-protection by procuring someone to read aloud, explain, or translate the contract before he signs it. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 127 n.2 (Chk. 2017).

The "duty to read" a contract before signing it applies especially when the lease was the result of long negotiations during which the signer was represented by capable counsel, fluent in his native language, who he could ask for an explanation. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 127 (Chk. 2017).

– Forum Selection Clause

A motion to dismiss because the forum selection clause in the agreement selects a different court to hear the dispute is properly seen as a motion to dismiss for improper forum. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 125 (Pon. 1999).

Parties may by contract designate a forum in which any litigation is to take place. Forum selection clauses are presumed valid, and enforcement will be ordered absent a strong showing that it should be set aside, and unless it clearly would be unreasonable and unjust, or that the clause is invalid for such reasons as fraud or overreaching. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 125 (Pon. 1999).

A forum selection clause may be subject to judicial scrutiny for fundamental fairness. In determining fundamental fairness, courts should consider such factors as: 1) whether the forum was selected by one party as a bad faith tactic to discourage pursuit of legitimate claims by the other; 2) whether consent to the forum selection clause was obtained by fraud or overreaching; or 3) whether the contesting party had no

notice of the forum provision. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 126 (Pon. 1999).

A forum selection clause is not unfair and rendered unenforceable because the court selected is a neutral forum with no relation to the parties or their dispute. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 126 & n.1 (Pon. 1999).

A forum selection clause unaffected by fraud, undue influence, or overweening bargaining power should be given full effect. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 126 (Pon. 1999).

When parties engaged in an international business transaction unambiguously select a forum in a third country, they are to be credited with knowledge of the jurisdictional requirements of the chosen court. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 126 (Pon. 1999).

Once a forum selection clause is determined to be binding, its scope and effect should be determined under a contract law analysis. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 127 (Pon. 1999).

When the forum selection clause language uses "exclusive jurisdiction" in conjunction with the mandatory language, "hereby irrevocably consent," it establishes an intent to have any dispute resolved only by the other forum and it leaves no room for dispute over the clause's meaning in this respect. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 127 (Pon. 1999).

When contracts between the parties provide that any legal proceedings instituted by either party must be filed and heard in the FSM Supreme Court with no other court having jurisdiction and that should the FSM Supreme Court not accept jurisdiction must the parties' dispute be resolved by arbitration, the FSM Supreme Court, not having declined jurisdiction, will not dismiss or stay the case pending arbitration because arbitration is mandated in a dispute arising from the agreements only when the FSM Supreme Court has declined jurisdiction. Mobil Oil Micronesia, Inc. v. Helgenberger, 9 FSM R. 295, 296 (Pon. 1999).

Parties can designate by contract a forum in which any litigation is to take place, and such forum selection clauses are presumed valid and will be enforced unless there is a strong showing that it would be unreasonable or unjust or fraud or overreaching is involved. The clause must unambiguously name another forum. FSM Dev. Bank v. Gouland, 9 FSM R. 605, 607-08 (Chk. 2000).

When a forum selection clause names a court that no longer exists, but another court is in all respects its successor, it is expected that the case is meant to proceed in that court absent some valid reason it should not. FSM Dev. Bank v. Gouland, 9 FSM R. 605, 608 (Chk. 2000).

Parties can designate by contract a forum in which any litigation is to take place, and such forum selection clauses are presumed valid and will be enforced unless there is a strong showing that it would be unreasonable or unjust, or fraud or overreaching is involved. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 5 (Chk. 2001).

A forum selection clause must unambiguously name a forum. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 5 (Chk. 2001).

When a court by the name Truk State Court no longer exists, and had not existed for several years at the time the mortgage with a forum selection clause naming the Truk State Court was executed and the Chuuk State Supreme Court was, and is, in all respects the Truk State Court's successor, a court must conclude that when they executed the mortgage the parties understood the phrase "Truk State Court" to mean the Chuuk State Supreme Court. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 5 (Chk. 2001).

When the mortgagors have not expressly waived their right to require the FSM Development Bank to abide by the forum selection it made when it drafted the mortgage they signed and absent some other valid reason, the foreclosure must proceed in the Chuuk State Supreme Court, even though the FSM Supreme

Court will determine the amount, if any, of the mortgagors' indebtedness on the promissory note. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 5-6 (Chk. 2001).

Forum selection clauses are presumed valid and will be enforced unless there is a strong showing that it would be unreasonable or unjust, or fraud or overreaching is involved. The clause must unambiguously name another forum. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 109 (Chk. 2001).

Because a court by the name Truk State Court had not existed for several years at the time the mortgage was executed and because the Chuuk State Supreme Court was, and is, in all respects its successor, the parties, when they executed the mortgage, understood the phrase "Truk State Court" to mean the Chuuk State Supreme Court. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 109 (Chk. 2001).

There are two types of forum selection clauses – permissive and mandatory. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 109 (Chk. 2001).

A mandatory forum selection clause requires that all litigation between the parties be conducted in the named forum and nowhere else. To be mandatory, a clause must contain language that clearly designates a forum as the exclusive one. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 109 (Chk. 2001).

Forum selection clauses which give a court jurisdiction without clearly making that jurisdiction exclusive are permissive rather than mandatory. A permissive forum selection clause merely allows a chosen forum to exercise personal jurisdiction over the parties but does not bar litigation in another forum and will not alter the presumption in favor of the plaintiff's choice of forum. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110 (Chk. 2001).

A forum selection clause cannot be interpreted so as to make it meaningless. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110 (Chk. 2001).

Because only two courts can exercise jurisdiction over land in Chuuk, the only meaningful reason for the inclusion of a forum selection clause in a mortgage would be to make one court's jurisdiction exclusive. Such a forum selection clause can therefore only be interpreted as mandatory; otherwise it would be meaningless. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110 (Chk. 2001).

When a forum selection clause in a mortgage was not the result of an arm's length transaction, but the bank dictated all the mortgage's terms, which it prepared in a pre-printed form with blanks in which to insert the borrowers' names and addresses, the amount borrowed and at what interest rate, the number and amount of monthly installment payments and their starting date, and the property mortgaged, it would be inequitable to allow the bank to now interpret the forum selection clause so as to make it meaningless. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110-11 (Chk. 2001).

Ambiguity in a forum selection clause may be construed against its drafter. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 111 (Chk. 2001).

A forum selection clause is an agreement that disputes relating to the parties' contract will be heard by a designated court and unambiguously names a forum. A threshold question is whether contractual language at issue is a forum selection clause. Phillip v. Marianas Ins. Co., 11 FSM R. 559, 561 (Pon. 2003).

The FSM Supreme Court does not look kindly upon contractual provisions that can only be understood by individuals who possess an advanced degree in insurance law. Clear, understandable, precise language is a condition to a finding that an insured must bear the cost of litigating in a remote forum. Phillip v. Marianas Ins. Co., 11 FSM R. 559, 562 n.3 (Pon. 2003).

A properly drafted forum selection clause's purpose is to eliminate uncertainty as to where disputes between the parties will be litigated. Such clauses can further eliminate uncertainty by specifying the law

that will be applied. When a clause accomplishes neither purpose, and when it would be fundamentally unfair to conclude that the contract provision's ambiguous language constitutes an agreement that claims may be litigated only in a certain place, it does not constitute a forum selection clause. Phillip v. Marianas Ins. Co., 11 FSM R. 559, 562 (Pon. 2003).

To the extent that a purported forum selection clause could be interpreted to require suit in a foreign country, it must be struck down as void as against public policy unless it is a freely negotiated, arms-length agreement between parties with relatively equal bargaining power. An insurance contract that seeks to oust the FSM Supreme Court's jurisdiction will not be upheld when the insured is an FSM citizen and resident, the insurance policy is obtained in the FSM from an FSM-based agent, the premiums are paid in the FSM to cover vehicles operating in the FSM, and the incident giving rise to a claim occurred in the FSM. The clause is against public policy because it impedes the administration of justice relating to insurance claims, and would undermine the public's confidence in business dealings if upheld. To require such lawsuits to be filed in a foreign country would not only be onerous, but would essentially render insurance companies immune from suit. Phillip v. Marianas Ins. Co., 11 FSM R. 559, 562-63 (Pon. 2003).

A forum selection clause will be stricken from a contract when it is unenforceably vague and ambiguous, and void as against public policy. The court will not make this decision lightly, as judicial restraint requires the exercise of extreme caution in striking down a portion of any contract that is entered into freely. Phillip v. Marianas Ins. Co., 11 FSM R. 559, 563 (Pon. 2003).

Parties may by contract designate a forum in which any litigation is to take place, and forum selection clauses are presumed valid, and enforcement will be ordered absent a strong showing that it should be set aside, and unless it clearly would be unreasonable and unjust, or that the clause is invalid for such reasons as fraud or overreaching. Lee v. Han, 13 FSM R. 571, 578 (Chk. 2005).

A forum selection clause would usually be given full effect, although a forum selection clause may be subject to judicial scrutiny for fundamental fairness. In determining fundamental fairness, courts consider such factors as: 1) whether the forum was selected by one party as a bad faith tactic to discourage pursuit of legitimate claims by the other; 2) whether consent to the forum selection clause was obtained by fraud or overreaching; or 3) whether the contesting party had no notice of the forum provision. Lee v. Han, 13 FSM R. 571, 579 (Chk. 2005).

When the plaintiff has actively pursued litigation in a Korean court, both before and during the time the litigation was pending here, and the defendant actively defended that action, it would be unreasonable and unjust to require the Korean defendants to litigate this case twice, with the second time in a forum where, although it (Chuuk) was convenient when it was chosen and all the parties had business interests here, is no longer convenient, reasonable, or just. Under the circumstances, the plaintiff has waived enforcement of the forum selection clause. Limited to this case's particular facts and circumstances, the forum selection clause will not bar dismissal of this case without prejudice under the forum non conveniens doctrine. Lee v. Han, 13 FSM R. 571, 579 (Chk. 2005).

The court will enforce a forum selection clause when the bank drafted the real estate mortgage and the bank chose to include the forum selection clause as one of the terms it insisted upon in the preprinted mortgage form it used to execute the mortgage; when a mortgagor not only does not expressly waive the bank's forum selection but he affirmatively insists upon the forum selection clause's enforcement; and when no other valid reason is apparent or has been asserted by the bank that would allow the clause's waiver. The bank may thus assert its real estate mortgage foreclosure remedy in the Yap State Court, the forum it chose, and the mortgagor may raise his defenses to the mortgage's validity there and the FSM Supreme Court will adjudicate the bank's action on the promissory note and on the chattel mortgage. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 94 (Yap 2011).

– Guaranty

When the allegations are sufficient to allege an independent, primary, and unconditional promise

among the plaintiffs and the defendant bank that the bank would act to bring another's account with the plaintiffs current, and that it would make future disbursements directly to the plaintiffs, it is not a contract of guaranty. If the obligation sought to be enforced is a primary or unconditional promise so that the promisor is primarily liable regardless of the failure of some other party to perform his contractual duty, the conclusion is that the obligation is not a contract of guaranty. Adams v. Island Homes Constr., Inc., 9 FSM R. 530a, 530c (Pon. 2000).

A guaranty is an enforceable undertaking or promise on the part of one person which is collateral to a primary or principal obligation on the part of another, and which binds the obligor to performance in the event of nonperformance by such other, the latter being bound to perform primarily. Adams v. Island Homes Constr., Inc., 9 FSM R. 530a, 530c-30d (Pon. 2000).

When the leading object of a party promising to pay the debt of another is to promote his own interests, and not to become surety or guarantor, and the promise is made on sufficient consideration, it will be valid, although not in writing. Adams v. Island Homes Constr., Inc., 9 FSM R. 530a, 530d (Pon. 2000).

When the plaintiff had a legal right to initiate a lawsuit against a corporate defendant for its unpaid debts at the time that the promissory note was executed in 1994, but instead of initiating a lawsuit, it agreed to certain terms of payment, and required individuals to personally guarantee that payment would be made, each of the parties gained something in the execution of the promissory note and security agreement. There was thus consideration exchanged by the parties when they entered into these agreements. Goyo Corp. v. Christian, 12 FSM R. 140, 149 (Pon. 2003).

In a broad sense a guarantor or surety is one who promises to answer for the debt or default of another. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 10 (Pon. 2004).

Like other contracts, contracts of guaranty must be supported by consideration, and a guaranty will not be enforced unless the promise is supported by consideration. However, if the promise of the guarantor is shown to have been given as part of a transaction or arrangement which created the guaranteed debt or obligation, the promise is supported by the same consideration which supports the principal transaction. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

When a guaranty was given as a part of the same transaction by which the debt to the bank was created, no independent consideration was necessary. The guaranty was supported by the same consideration that supported the transaction between the debtor and the bank. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

The main distinction between a contract of surety and one of guaranty has been expressed by stating that a surety is primarily and jointly liable with the principal debtor, while a guarantor's liability is collateral and secondary and is fixed only by the inability of the principal debtor to discharge the primary obligation. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

The trial court did not err in finding a meeting of minds and no mutual mistake and that the mistake was in reducing the terms to writing when the facts suggest that the lender understood AHPW to liable on the loan and the parties stipulated that AHPW should have signed the promissory note and that the defendants intended to guarantee the loan. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 396 (App. 2006).

The trial court did not err when it reformed the loan documentation to reflect the parties' stipulated intent that AHPW be the obligor on the promissory note and that the appellants be guarantors of that obligation. As such, appellants were not guaranteeing their own obligation, they were guaranteeing AHPW's obligation on the promissory note. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 397 (App. 2006).

To be enforceable, a guaranty, like other contracts, must be supported by consideration. However, if a guaranty is made as part of a transaction or arrangement which created the guaranteed debt or obligation, it is not essential to a recovery on the promise of guaranty that the promise shall have been supported by a

consideration other than that of the principal debt. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 397 (App. 2006).

When a corporate resolution agreed to guarantee another corporation's loan and that guaranty included any and all of the borrower's indebtedness to the lender and was used in the most comprehensive sense and means and included any and all of the borrower's liabilities then existing or thereafter incurred or created, the guaranty was sufficiently broad to include any restructuring of the loan even if the restructuring was considered a debt thereafter incurred or created, and thus, no later corporate resolution was needed for the guaranty to cover the restructuring. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 287 (Chk. 2009).

A guaranty is an enforceable undertaking or promise on the part of one person which is collateral to a primary or principal obligation on the part of another. A guaranty binds the guarantor to performance in the event of nonperformance by such other, the latter being bound to perform primarily. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 289 (Pon. 2016).

When the primary performer, the borrower, stopped making loan repayments to the bank and defaulted, the guarantors were then bound to perform on the loan repayments once the borrower had ceased to. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 289 (Pon. 2016).

The false notarization of a guaranty does not affect the guaranty's substantive provisions as it relates to the signer when the signer admits that he did sign the guaranty. This is because the purpose of notarization is to verify the identity and signature of the person who signed the document. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 292 & n.8 (Pon. 2016).

If a guaranty is made as part of a transaction or arrangement which created the guaranteed debt or obligation, it is not essential to a recovery on the promise of guaranty that the promise was supported by a consideration other than that of the principal debt. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

When security, such as a guaranty, is given as part of the same transaction that created the debt to the bank, no further or independent consideration is needed. The loan itself is sufficient consideration. This principle holds true when a mortgage is the security given for a loan to a third party. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

There is substantial authority for the proposition that partial payments by a principal debtor do not toll the statute of limitations as to the note's guarantors. The rationale behind this general rule is that a guarantor's consent to the debtor's future conduct may not be presumed merely on the basis of the original guarantee. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

The general rule is that a payment by the principal before the action is time-barred, operates as a renewal as to the principal, and to a surety, but not to a guarantor. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

A payment by the principal debtor will not operate to toll the statute of limitations as to a guarantor of the debt, even though it might do so as to a surety. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

When the trial court correctly decided that the statute of limitations was tolled by the debtor's partial payments, but did not separately determine whether those partial payments also tolled the statute of limitations with respect to the guarantor mortgagors, the appellate court will vacate the trial court judgment against the mortgagors and remand the matter for the trial court to conduct further proceedings to make that determination since that determination may need factual findings about whether the mortgagors were aware that the debtor was making partial payments and whether they acquiesced to the acknowledgment of the debt, and the trial court is the place to address those factual issues. Sam v. FSM Dev. Bank, 20 FSM

R. 409, 419 (App. 2016).

– Illegality

The court may not simply assume that an illegal contract is unenforceable, but must make its own determination as to whether public policy factors militating against enforcement so outweigh the interests in favor that enforcement must be refused. Falcam v. FSM Postal Serv., 3 FSM R. 112, 121 (Pon. 1987).

A contract ostensibly entered into by government officials on behalf of the government but in violation of applicable law is illegal. Ponape Transfer & Storage v. Federated Shipping Co., 3 FSM R. 174, 178 (Pon. 1987).

As a general rule, an illegal contract is unenforceable. Even when performance occurs and a benefit is conferred, no recovery in either expectation damages or quantum meruit may be had. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 125 (Pon. 1993).

The doctrine of unjust enrichment generally applies where there is an unenforceable contract due to impossibility, illegality, mistake, fraud, or another reason and requires a party to either return what has been received under the contract or pay the other party for it. The unjust enrichment doctrine is based on the idea one person should not be permitted unjustly to enrich himself at the expense of another. Etscheit v. Adams, 6 FSM R. 365, 392 (Pon. 1994).

A party to an illegal agreement will not be permitted to avail himself of its illegality until he restores to the other party all that has been received from such a party on the illegal agreement, and so long as he continues to enjoy the benefits of the agreement, he will not be allowed to set up its nullity. Nanpei v. Kihara, 7 FSM R. 319, 325 (App. 1995).

Contract provisions that exceed allowable interest rates, and are reached in violation of conflict of interest laws or the procedures prescribed by law, all concern possible violations of the law and may render the contract void as against public policy. Any contract that violates the law when made is not enforceable in the courts with respect to the illegality. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 340 (Chk. S. Ct. Tr. 1995).

The prohibition against the impairment of contracts is not absolute. The contract must be valid and enforceable when made. A contract which is illegal when made is unenforceable because no obligation arises from an illegal contract, thus there is no obligation that may be impaired. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 341 (Chk. S. Ct. Tr. 1995).

A claim of illegality cannot be raised by a party to nullify a contract until it restores to the other party all that it has received under the contract. Richmond Wholesale Meat Co. v. Kolonia Consumer Coop. Ass'n (I), 7 FSM R. 387, 389 (Pon. 1996).

Even though there is offer and acceptance and consideration exists, there is no contract when the agent signing the proposal was without authority to bind the principal, and the signing violated statutes, which rendered it illegal. Hauk v. Terravecchia, 8 FSM R. 394, 396 (Chk. 1998).

Whether a trial court correctly used the balancing of factors in weighing enforceability of part of an illegal employment contract, or whether the hiring, being in violation of public policy is unenforceable, is a matter of law, which is reviewed de novo. FSM v. Falcam, 9 FSM R. 1, 4 (App. 1999).

The general rule that illegal agreements are void is not without exceptions and restitution ought to be awarded in some situations. FSM v. Falcam, 9 FSM R. 1, 4 (App. 1999).

Because Congress has not explicitly made employment contracts which violate 11 F.S.M.C. 1305 unenforceable, the FSM Supreme Court may properly decide whether a contravention of public policy is grave enough to warrant unenforceabillty. FSM v. Falcam, 9 FSM R. 1, 4 (App. 1999).

The standard of review of whether the balancing factors for weighing enforceability of part of an illegal employment contract were weighed properly is whether the trial court abused its discretion. FSM v. Falcam, 9 FSM R. 1, 4 (App. 1999).

When there is no national precedent on the issue of the enforcement of an employment contract term which was violative of public policy, and there is no custom or tradition governing the matter, the FSM Supreme Court may look to the common law of the United States. FSM v. Falcam, 9 FSM R. 1, 5 (App. 1999).

Although there was a public interest in denying enforcement because the hiring violated public policy, this is outweighed by the special public interest of the government's failure to provide any hearing or opportunity to be heard concerning its failure to pay the employee or take any steps to terminate the contract, thus constituting a violation of due process rights; the employee's justified expectations of being paid; and the substantial forfeiture would result if enforcement were to be denied. Therefore the trial court did not abuse its discretion in its weighing of the factors on the issue of enforceability. FSM v. Falcam, 9 FSM R. 1, 5 (App. 1999).

A contract entered into by government officials on behalf of the government, but in violation of applicable law, is illegal. Talley v. Lelu Town Council, 10 FSM R. 226, 233 (Kos. S. Ct. Tr. 2001).

A contract which is illegal when it is made is not enforceable because there is no obligation that arises from the illegal contract. There is thus no obligation that has been impaired. Talley v. Lelu Town Council, 10 FSM R. 226, 233 (Kos. S. Ct. Tr. 2001).

As a general rule, an illegal contract is unenforceable. Talley v. Lelu Town Council, 10 FSM R. 226, 233 (Kos. S. Ct. Tr. 2001).

When there was no promise or expectation of the plaintiff's continued employment by the municipal government after the contract's expiration; when the plaintiff makes no salary claim for unpaid work because, despite the fact that the second contract failed to receive the town council's support as required by the municipal charter and was therefore illegal, the plaintiff was paid for all work performed under the second written contract; public policy weighs in favor of enforcing the provisions of the municipal charter and weighs against enforcement of a contract made in violation of those charter provisions. Plaintiff's breach of contract claim thus fails. Talley v. Lelu Town Council, 10 FSM R. 226, 234 (Kos. S. Ct. Tr. 2001).

A defendant would be estopped from raising an illegality of contract as a defense to a negligence claim when as the other party to the allegedly illegal contract he had the benefit of it. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

A contract entered into by government officials on behalf of the government but in violation of applicable law is illegal, and as a general rule an illegal contract is unenforceable, even when a benefit has been conferred on the party against whom enforcement is sought. Billimont v. Chuuk, 11 FSM R. 77, 80, 81 (Chk. S. Ct. Tr. 2002).

In order for a lease to be a valid obligation of state funds, it is necessary that the funds be not only already appropriated and available, but appropriated to the specific purpose of funding the lease payments. It is not enough that there are some funds in some account which could be used to pay the lease, having not been used as originally appropriated. Billimont v. Chuuk, 11 FSM R. 77, 80 (Chk. S. Ct. Tr. 2002).

The Restrictive Measures Act, clearly and unambiguously, prohibits execution of housing leases for the benefit of state personnel following its effective date with the only possible exception for the benefit of expatriate professional employees. A lease for a Chuuk citizen does not fit the exception. Billimont v. Chuuk, 11 FSM R. 77, 81 (Chk. S. Ct. Tr. 2002).

When the contract at issue is in violation of two separate Chuuk state statutes, it is illegal, void, and unenforceable, and the plaintiff's breach of contract claim cannot be upheld. Judgment for the defendant on that claim is mandated. Billimont v. Chuuk, 11 FSM R. 77, 81 (Chk. S. Ct. Tr. 2002).

A contract that is entered into *ultra vires* is void and illegal. As a general rule, an illegal contract is unenforceable. Even when performance occurs and a benefit has been conferred, no recovery in either expectation damages or quantum meruit may be had. Nagata v. Pohnpei, 11 FSM R. 265, 271 (Pon. 2002).

A party to an illegal agreement will not be permitted to avail himself of its illegality until he restores to the other party all that has been received from such a party on the illegal agreement, and so long as he continues to enjoy the benefits of the agreement, he will not be allowed to set up its nullity. Goyo Corp. v. Christian, 12 FSM R. 140, 148 (Pon. 2003).

Generally, to avoid liability under an illegal contract, the party seeking to avoid liability must return the benefit received under the illegal contract. Thus, in the case of an illegal loan, a borrower seeking to avoid liability would have to return the loan principal. Arthur v. Pohnpei, 16 FSM R. 581, 599 n.13 (Pon. 2009).

A bank depositor's complaint against a bank fails to state a claim on which it can obtain relief and will be dismissed when the bank honored, in conformance with 54 F.S.M.C. 153, a Division of Customs and Tax Administration Notice of Levy and Execution that was regular on its face since that is not an unauthorized withdrawal from the depositor's account or the result of the bank's negligence of any kind and since it cannot be a breach of any contract between the depositor and the bank because the bank cannot contract to violate FSM law or statutes. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

– Implied Contracts

When passengers purchase passage in an ocean-going vessel for transportation, there is an implied maritime contract for passage even in the absence of written document. Weilbacher v. Kosrae, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

Where prior course of dealing and surrounding circumstances make it apparent that the parties' intention was that pay for unused vacation time would be an implied term of the contract, the former employee is entitled to the pay for unused vacation time minus the applicable taxes. Ponape Transfer & Storage, Inc. v. Wade, 5 FSM R. 354, 356 (Pon. 1992).

The doctrine of unjust enrichment has been expanded to cover cases where there is an implied contract, but a benefit officiously thrust upon one is not considered an unjust enrichment and restitution is denied in such cases. Etscheit v. Adams, 6 FSM R. 365, 392 (Pon. 1994).

When a defendant, after canceling her long distance phone telephone service, continues to make long distance calls because the plaintiff is slow in terminating the service, the defendant, having made those calls, is precluded from arguing that she should not pay for them. FSM Telecomm. Corp. v. Worswick, 9 FSM R. 6, 17 (Yap 1999).

As a general proposition, an express contract and an implied contract for the same thing cannot exist at the same time. Where an express contract is in force, the law does not recognize an implied one. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 558 (Pon. 2000).

The settled rule that the statute of limitations begins to run upon the accrual of a cause of action applies in actions on implied and quasi contracts. When compensation for services is to be made on a certain date, the statute of limitations on an implied or quasi contract begins to run at that time. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 559 (Pon. 2000).

Quantum meruit is an equitable doctrine, based on the concept that no one who benefits by the labor

and materials of another should be unjustly enriched thereby; under those circumstances, the law implies a promise to pay a reasonable amount for the labor and materials furnished, even absent a specific contract therefor. The doctrine of unjust enrichment has been recognized in the FSM. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 232 (Pon. 2002).

A motion to amend a complaint to add an unjust enrichment claim will be denied when it is based upon a defendant's failure to abide by the alleged agreements' terms because these are express agreements, and unjust enrichment is a theory applicable to implied contracts. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 232 (Pon. 2002).

The doctrine of unjust enrichment only applies where there is no enforceable contract; the doctrine of restitution may not be applied where there is a contract; and the doctrines of implied contract and quantum meruit do not apply where there is an enforceable written contract. Esau v. Malem Mun. Gov't, 12 FSM R. 433, 436 (Kos. S. Ct. Tr. 2004).

The equitable doctrine of unjust enrichment operates in the absence of an enforceable contract. The principle requires that the party receiving something of value either pay for it or return it, and is based on the notion that one individual should not be allowed to enrich himself at another's expense. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 515 (App. 2005).

Contracts are express agreements, and unjust enrichment is a theory applicable to implied contracts. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 515 (App. 2005).

To say that a plaintiff's only remedy was to sue a defendant it had contracted with on a contract theory misses the point that it was the other defendant that was unjustly enriched, and to accept that the plaintiff's only remedy would be against long defunct enterprise defendant would confer upon the plaintiff an illusory remedy, and would confound its efforts to call to account the other defendant which actually received the money the plaintiff paid to the first defendant. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 516 (App. 2005).

If a defendant had had capabilities and resources equal to the transaction it undertook – then when it did not perform its contract, the plaintiff may well have had an adequate remedy in suing it on its contract to supply outboard motors, but when it was never a viable business entity, but a shell enterprise the purpose of which was to funnel the money to the other defendant, under all the case's facts and circumstances, the plaintiff should be permitted to "follow the money." Precluding the plaintiff from doing so would result in the other defendant's unjust enrichment at the plaintiff's expense. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 516 (App. 2005).

Unjust enrichment relates to the doctrine of implied contracts, which is to say that the court will, in the absence of a legally enforceable contract, imply a contract in law in the absence of a contract in fact in order to avoid unjust enrichment. Neither the concept of unjust enrichment or the closely associated idea of an implied contract apply where there is an enforceable written contract, since an express contract and implied contract for the same thing cannot govern a legal relationship at the same time. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 651-52 (Pon. 2008).

Although an express contract and implied contract for the same thing cannot govern a legal relationship at the same time, this principle is subject to two exceptions. The first exception is that a party can recover when the implied-in-law contract, also known as a quasi contract, relates to matters outside the express contract or to issues arising after the express contract. The second exception is that a party may prevail in the appropriate case on a quasi-contract when a party has no rights under an enforceable contract. Examples of the second exception are where a contract has failed or was rescinded. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 652 (Pon. 2008).

An exception to the principle that an express contract and implied contract for the same thing cannot govern a legal relationship at the same time is when the implied-in-law contract relates to matters outside the express contract. It will apply when the broker's advancing the premiums fell outside the parties'

binding contracts that the broker would obtain insurance coverage for the Chuuk-operated vessels and that Chuuk would pay for that coverage since the documents do not address whether the broker could, or would, advance the premiums and the broker advanced the premiums after the agreements were reached, and after Chuuk had failed to remit the premiums that it was obligated to pay under the contract. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 652 (Pon. 2008).

A marine insurance broker who advances fleet insurance premiums may obtain reimbursement from the insured on whose behalf it advanced those premiums under an implied-in-law contractual right to reimbursement of the premiums it advanced on another's behalf when the implied-in-law contractual right is integrally related both to the contract whereby the broker was to procure insurance and to the insurance contracts that resulted from that agreement. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 652 (Pon. 2008).

When, although Chuuk did not pay the premiums, they were paid by the broker on Chuuk's behalf and the policies were in full force and effect for the vessels operated by Chuuk, Chuuk is responsible for these premiums because the broker established by a preponderance of the evidence at trial that the broker and Chuuk had entered into an agreement whereby the broker would procure insurance for the Chuuk-operated vessels and that Chuuk would pay for that insurance. This express contract serves as the basis for an implied-in-law contract that Chuuk is liable for reimbursement to the broker. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 653 (Pon. 2008).

The existence of an account stated need not be express and frequently is implied from the circumstances. For example, where a creditor renders a statement and the debtor fails to object in a reasonable time, the open account may be superseded by an account stated. Saimon v. Wainit, 16 FSM R. 143, 147 n.1 (Chk. 2008).

6 F.S.M.C. 702(3) waives the FSM's sovereign immunity only for claims, whether liquidated or unliquidated, upon an express or implied contract with the FSM. But, although the equitable doctrine of unjust enrichment operates in the absence of an enforceable contract when a party has received something of value and neither paid for it or returned it, unjust enrichment is a theory applicable to implied contracts. Thus, depending upon the facts of a case, 6 F.S.M.C. 702(3) does not bar an unjust enrichment claim since it does waive the FSM's sovereign immunity for implied (as well as express) contract claims. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 605 (Pon. 2009).

The equitable doctrine of unjust enrichment, a theory applicable to implied contracts, operates in the absence of an enforceable contract and this principle requires that the party receiving something of value either pay for it or return it, and is based on the notion that one party should not be allowed to enrich himself at another's expense. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 119 (App. 2011).

A trial court has wide discretion in determining the amount of damages in contract and quasi-contract cases involving equitable doctrines, such as promissory estoppel and restitution and the plaintiff may be compensated for the injuries by awarding compensation for the expenditures made in reliance on the promise. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 120 (App. 2011).

When the equities involved include that the plaintiff falsely informed Chuuk that the marine insurance policy was not in effect when, in fact, it was in effect because the net premium had been paid to the insurer, promissory estoppel may instead be a better measure of the damages than implied contract or unjust enrichment. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 120 (App. 2011).

When the plaintiff was a new hire and had not completed her probationary period and when the employer included in its employee handbook a clear and unambiguous disclaimer that the handbook is not to be construed as a contract, the disclaimer is effective and the employee handbook does not create an implied employment contract and the plaintiff was an at-will employee who could have been terminated at any time within the introductory period with or without cause. Peniknos v. Nakasone, 18 FSM R. 470, 483-84 (Pon. 2012).

If there was a valid contact, a court cannot use an implied contract and an unjust enrichment analysis because the doctrines of unjust enrichment and implied contract do not apply when there is a valid, enforceable written contract. The unjust enrichment doctrine applies only when there is an unenforceable contract due to impossibility, illegality, mistake, fraud, or other reason and is based on the idea one person should not be permitted to unjustly enrich himself at another's expense. Kosrae v. Edwin, 18 FSM R. 507, 514 (App. 2013).

Unjust enrichment is an equitable doctrine that relates to the doctrine of implied contracts in that the court will, in the absence of a legally enforceable contract, imply a contract in law in the absence of a contract in fact in order to avoid unjust enrichment. Kosrae v. Edwin, 18 FSM R. 507, 514 (App. 2013).

When the trial court concluded that Kosrae was liable because there was an implied contract and because Kosrae was unjustly enriched, it must necessarily have also concluded that there was no valid enforceable contract since if there were an express contract, the implied contract and unjust enrichment doctrines would not apply. Kosrae v. Edwin, 18 FSM R. 507, 514 (App. 2013).

The implied contract doctrine is a method by which a contract is derived from the parties' intentions and actions when there is no enforceable contract. Kosrae v. Edwin, 18 FSM R. 507, 515 (App. 2013).

Either the circumstances are such that a contract is implied in law or the circumstances are such that a contract cannot be implied in law and there is no contract at all. Kosrae v. Edwin, 18 FSM R. 507, 515 (App. 2013).

Unjust enrichment is a theory applicable to implied contracts. The unjust enrichment doctrine covers cases where there is an implied contract. But if a benefit is officiously thrust upon another, it is not considered an unjust enrichment and restitution is denied in such cases. Kosrae v. Edwin, 18 FSM R. 507, 515 (App. 2013).

When the appellees did not officiously thrust their services as vice-principals on Kosrae but had applied for the vice-principal position; thought they had been hired for the position (and did not know their contracts were invalid); and then performed the duties required by that position and as they were instructed by their superiors, Kosrae was unjustly enriched and therefore should compensate the appellees. Kosrae v. Edwin, 18 FSM R. 507, 515 (App. 2013).

Since it is an established rule in this jurisdiction that an express contract and an implied contract cannot govern a legal relationship at the same time and since the lease is an express contract that governs the legal relationship between the parties and has a provision which grants the plaintiffs sole physical possession of the property and a separate provision that speaks to the issue of utilities payments, the court may not recognize the existence of an implied in fact contract that would govern these same issues. Harden v. Inek, 19 FSM R. 244, 250-51 (Pon. 2014).

Unjust enrichment relates to the doctrine of implied contracts, which is to say that in order to avoid unjust enrichment the court will, in the absence of a legally enforceable contract, imply a contract in law in the absence of a contract in fact. Neither the concept of unjust enrichment or the closely associated idea of an implied contract apply when there is an enforceable written contract, since an express contract and implied contract for the same thing cannot govern a legal relationship at the same time. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

The doctrine of unjust enrichment does not apply when there is a legally binding agreement in the form of life and cancer insurance policies that the parties agreed to and executed. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

– Indemnification

Where it is shown that the party seeking indemnification drafted the contract language, had greater bargaining power than the other party, had greater control over the work activities, or had considerably larger stake and expectation of profits from the endeavor, the courts become increasingly insistent upon ever more precise language in the indemnity clause as a condition to a finding that a non-negligent indemnitor is required by the clause to bear the burden of the indemnitee's negligence. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 146 (Pon. 1985).

Where there was no clear statement in a contractual indemnification clause that the indemnitee was to be protected against its own negligence, a reasonably intelligent FSM citizen aware of the general circumstances of the parties would not have perceived the English words used would require that the non-negligent party who had no control over, and relatively little economic stake in the work, must indemnify the major contractor against negligence of that major contractor. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 149 (Pon. 1985).

In indemnification provisions, in particular, the court requires pristine clarity in the language of the clause. Bank of the FSM v. Bartolome, 4 FSM R. 182, 185 (Pon. 1990).

Because agreements in promissory notes for the payment of attorney's fees are essentially indemnity clauses, they will be given effect only to the extent that expenses and losses are actually incurred, as demonstrated by detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. Bank of Hawaii v. Jack, 4 FSM R. 216, 219 (Pon. 1990).

A contract between a foreign fishing agreement party and the owner of vessels permitted under that agreement that the vessels' owner will be responsible for criminal and civil charges for fishing violations merely provides the foreign fishing agreement party with a contractual right of indemnity against the vessels' owner and does not bar the government's imposition of penalties for fishing agreement violations on the foreign fishing agreement party. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 89 (Pon. 1997).

Although the FSM Supreme Court has recognized claims for indemnity based on contractual provisions between two parties, and required precise clarity in the indemnification clause language, it is not prepared to create a common law indemnity claim. Joy Enterprises, Inc. v. Pohnpei Utilities Corp., 8 FSM R. 306, 311 (Pon. 1998).

When an agreement's indemnification provisions regarding the transfer of liability for causes of action and other claims are clear, the transferee is liable to indemnify the transferor for damages awarded for the transferor's negligence. Asher v. Kosrae, 8 FSM R. 443, 453 (Kos. S. Ct. Tr. 1998).

In the case of indemnity the defendant is liable for the whole damage springing from contract, while in contribution the defendant is chargeable only with a ratable proportion founded not on contract but upon equitable factors measured by equality of burden. Senda v. Semes, 8 FSM R. 484, 505 (Pon. 1998).

Although the court has previously recognized claims for indemnity based on contractual provisions between two parties, in the absence of a contractual provision it will not create a common law indemnity claim, therefore, in the absence of any contractual provisions between the parties, there is no basis for a claim of indemnity by a defendant against a plaintiff, the court will dismiss the defendant's counterclaim for indemnity. Primo v. Semes, 11 FSM R. 324, 329 (Pon. 2003).

Indemnification arises out of an express or implied contract by which a party held liable shifts the entire loss to another in order to prevent an unjust or unsatisfactory result. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 449 (Pon. 2003).

The court will recognize claims for indemnity based on contractual provisions between two parties, but, in the absence of a contractual provision, it will not create a common law indemnity claim. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 347 (Pon. 2004).

A hold-harmless agreement is a contract in which one party agrees to indemnify the other. "Indemnify" means to reimburse another for a loss suffered because of a third party's act or default; or to promise to reimburse another for such a loss; or to give another security against such a loss. Thus in a hold-harmless agreement, one of the two parties assumes any liability to third parties. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 364 (Yap 2009).

Logically indemnification cannot be applied to cases involving claims for losses that do not arise from liability to a third party. Where a party does not seek to be held harmless from a third party claim, but rather from the other party's own claim for damage to the other party's property and business, a contract's hold-harmless or indemnification provision does not apply. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 364-65 (Yap 2009).

Courts require crystal clarity in a contract's indemnification language before holding that a non-negligent indemnitor must bear the burden of the indemnitee's negligence. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 365 (Yap 2009).

Although the FSM Supreme Court has recognized claims for indemnity based on contractual provisions between two parties, and required precise clarity in the indemnification clause language, it is not prepared to create a common law indemnity claim. Thus, even assuming the court had found any defendant liable, when no contractual provision for indemnification between the plaintiff and any of the defendants was presented to the court, the plaintiff's claim for indemnity fails. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 458 (Pon. 2009).

When the 2009 Chuuk-FSM Joint Law Enforcement Agreement contains a clause whereby the FSM national government and the State of Chuuk "agree that at the end of each fiscal year the terms of this agreement shall continue in effect until such time it is terminated or renewed by the parties" and when neither party has given the required thirty days notice to terminate the 2009 Joint Law Enforcement Agreement, the agreement remains in effect. FSM v. Sias, 16 FSM R. 661, 663 (Chk. 2009).

A joint law enforcement agreement clause that states – "Any renewal shall be subject to the availability of funds." – applies only to a renewal, not to a continuation of the current agreement. FSM v. Sias, 16 FSM R. 661, 663 (Chk. 2009).

Although the FSM Supreme Court has recognized indemnity claims based on the parties' contractual provisions and has required precise clarity in the indemnification clause language, it has not been prepared to create a common law indemnity claim. Thus, when, even assuming the court were to find a defendant liable, there is no contractual provision for the plaintiff's indemnification by a defendant, a plaintiff's indemnity claim fails. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 112 (Pon. 2010).

When a lease's only indemnification provision is one by which the lessee is required, under certain circumstances, to indemnify the lessor, the lessee's indemnification cross-claim against the lessor accordingly fails and is dismissed. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 112 (Pon. 2010).

A hold-harmless agreement is a contract in which one party agrees to indemnify the other party, that is, to reimburse the other party for a loss suffered because of a third party's act or default; or to promise to reimburse the other party for such a loss; or to give another security against such a loss. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 353 (App. 2012).

The words "indemnify" and "hold harmless" are typically interpreted to apply to third-party claims. Logically, a contract's hold-harmless or indemnification provision cannot apply when the party invoking it does not seek to be held harmless from a third-party claim but rather asserts its own claim against the other party for damage to its property or business. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 353 (App. 2012).

In a hold-harmless agreement, one of the two contracting parties assumes any liability to third parties. The hold-harmless provision thus allocates between the contracting parties the risk of liability to third parties. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 353 (App. 2012).

When a contracting party seeks damages, not for liability to a third-party, but for its own claim against the other contracting party for losses to its business by their failure to remit its funds to its home office, the contract's hold-harmless provision cannot be used as a basis for liability since it is a dispute between the contracting parties. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 353 (App. 2012).

– Installment Contracts

In a contract for installment shipments of goods where the parties' agreement was not in writing and there was no oral agreement or other manifestation of intent that the buyer's obligation to accept shipments was to be conditioned upon each prior shipment having arrived in timely fashion and in good condition, a nonoccurrence of the event or act is a breach of promise which gives rise to a claim for damages, rather than a failure of a condition to performance, which frees the other party from any further duty to perform the promised acts. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM R. 123, 127 (Pon. 1991).

In an installment contract setting, the statute of limitations begins to run from the time that each installment is due. Segal v. National Fisheries Corp., 11 FSM R. 340, 342 (Kos. 2003).

An installment contract is one in which the agreed performance of at least one of the parties is to be rendered, not as a whole at one time and place, but piecemeal at different times or different places. Bank of Hawaii v. Susaia, 19 FSM R. 66, 70 (Pon. 2013).

A cause of action accrues and the statute of limitations begins to run, when a suit may be successfully maintained thereon. When a note is payable in installments, each installment is a distinct cause of action and the statute of limitations begins to run against each installment from the time it becomes due, that is, from the time when an action might be brought to recover it. Bank of Hawaii v. Susaia, 19 FSM R. 66, 70 (Pon. 2013).

The applicable statute of limitation period for an installment contract is six years. Bank of Hawaii v. Susaia, 19 FSM R. 66, 70 (Pon. 2013).

– Interpretation

When a purported state employment contract erroneously and consistently recites that it is between the employee and the Trust Territory of the Pacific Islands and contains other statements demonstrating that the contract words were not taken seriously and did not comport with reality, the document is unpersuasive evidence of the relationships among the employee, the state, and the national government. Manahane v. FSM, 1 FSM R. 161, 165-67 (Pon. 1982).

Where there is ambiguity within a contractual clause and there are various reasonable and practical alternative constructions available, it is necessary to employ rules of interpretation. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 147 (Pon. 1985).

The purpose of the common law rules of interpretation is to assist in reaching an objective interpretation, determining the meaning which reasonably intelligent people, knowing the circumstances, would place upon the words. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 148 (Pon. 1985).

Where two clauses within an agreement are inconsistent, the court should attempt to interpret the agreement so that each provision has meaning, but the paramount rule is that the deed must be construed so as to give effect to the intention of the parties as collected from the whole instrument. Melander v. Kosrae, 3 FSM R. 324, 327 (Kos. S. Ct. Tr. 1988).

Where there are various reasonable and practical alternative constructions of a contractual provision available, rules of interpretation dictate that any ambiguities in a contract should be construed more strictly against the party who wrote it. Bank of the FSM v. Bartolome, 4 FSM R. 182, 185 (Pon. 1990).

Contracts are not interpreted on the basis of subjective uncommunicated views, or secret hopes of one of the parties, but on an objective basis, according to the reasonable expectations or understanding of parties based upon circumstances known to the parties and their words and actions, at the time the agreement was entered into. Kihara v. Nanpei, 5 FSM R. 342, 345 (Pon. 1992).

Where prior course of dealing and surrounding circumstances make it apparent that the parties' intention was that pay for unused vacation time would be an implied term the former employee is entitled to the pay for unused vacation time minus the applicable taxes. Ponape Transfer & Storage, Inc. v. Wade, 5 FSM R. 354, 356 (Pon. 1992).

The controlling factor in the interpretation of contracts is the intention of the parties at the time of the entering into of the contract. Ponape Transfer & Storage, Inc. v. Wade, 5 FSM R. 354, 356 (Pon. 1992).

When the language of a contract is ambiguous or uncertain a court may look beyond the words of the contract to the surrounding circumstances and the parties' intent without changing the writing. Ponape Transfer & Storage, Inc. v. Wade, 5 FSM R. 354, 356 (Pon. 1992).

Where the express language of the contract does not unambiguously require the employer to pay a terminated employee the equivalent of the cost of shipping household goods back to point of hire when no goods are actually shipped and where there are no surrounding circumstances or prior course of dealing indicating that this was the parties' intent the court will find that it was not the parties' intent and thus not a term of the contract that terminated employees be paid shipping costs for household goods not shipped. Ponape Transfer & Storage, Inc. v. Wade, 5 FSM R. 354, 357 (Pon. 1992).

Contracts frequently do not specify the time of performance and courts routinely decide what a reasonable time for performance is in those cases where no time has been specified. Iriarte v. Micronesian Developers, Inc., 6 FSM R. 332, 335 (Pon. 1994).

The presumption that a written contract that is complete on its face embodies the final and entire agreement between the parties may be rebutted by evidence presented at trial. Etscheit v. Adams, 6 FSM R. 365, 384 (Pon. 1994).

An instrument that is not a promissory note because it fails to contain words of negotiability may still be enforceable as a contract between the parties. Nanpei v. Kihara, 7 FSM R. 319, 323 (App. 1995).

Interpretations of terms in contracts are matters of law to be determined by the court. Nanpei v. Kihara, 7 FSM R. 319, 323 (App. 1995).

When the language of a contract is ambiguous or uncertain a court may look beyond the words of the contract to the surrounding circumstances to determine the parties' intent without changing the writing, and the court should attempt to determine meaning of words used rather than what signatory later says he intended. Nanpei v. Kihara, 7 FSM R. 319, 324 (App. 1995).

When faced with an allegation that an ambiguous contract provision creates a condition, courts prefer either an interpretation that imposes on a party a duty to see that an event occurs, rather than one that makes the other party's duty conditional on the occurrence of the event, or an interpretation that will reduce an obligee's risk of forfeiture if the event does not occur. Nanpei v. Kihara, 7 FSM R. 319, 324 (App. 1995).

Unless it is clear from the agreement or the surrounding circumstances that the obligee has assumed the risk of forfeiture, courts prefer an interpretation that reduces that risk. Nanpei v. Kihara, 7 FSM R. 319, 324 (App. 1995).

Interpretations of contract terms are matters of law to be determined by the court, and are reviewed on appeal *de novo*. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 621 (App. 1996).

Contracts are not interpreted on the basis of subjective uncommunicated views, or secret hopes of one of the parties, but on an objective basis. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 86 (Pon. 1997).

The determining factor as to the rights of a third-party beneficiary is the intention of the parties who actually made the contract. The question whether a contract was intended for the benefit of a third person is generally regarded as one of construction of the contract. The parties' intention in this respect is determined by the terms of the contract as a whole, construed in the light of the circumstances under which it was made and with the apparent purpose that the parties are trying to accomplish. Mailo v. Penta Ocean Inc., 8 FSM R. 139, 141 (Chk. 1997).

The time for completion of a house is not a material term of the parties' agreement when nothing in the parties' oral agreement indicated that the "time was of the essence" for completion of the house within two months and when the plaintiff pointed out no particular day of completion as being crucial. Therefore, late completion of the house should not be seen as a failure of a condition to further obligations under the contract. O'Byrne v. George, 9 FSM R. 62, 64 (Kos. S. Ct. Tr. 1999).

The controlling factor in the interpretation of contracts is the intention of the parties at the time of the entering into the contract. Tulensru v. Utwe, 9 FSM R. 95, 98 (Kos. S. Ct. Tr. 1999).

Contracts are not interpreted on the basis of subjective uncommunicated views, or secret hopes of one of the parties, but on an objective basis. Contracts are interpreted according to the reasonable expectations or understanding of parties based upon circumstances known to the parties and their words and actions, at the time the agreement was entered into. Tulensru v. Utwe, 9 FSM R. 95, 98 (Kos. S. Ct. Tr. 1999).

When the parties made their verbal agreement promising that the plaintiff would provide fill materials from his quarry for various of the defendant's municipal projects and that the defendant would provide the plaintiff with two loads of fill material for each day of hauling, they formed a contract because these promises contained an offer, acceptance and consideration and the terms of the agreement were definite and enforceable. The parties' essential commitments and agreement were identified and definite. Therefore the agreement is binding. Tulensru v. Utwe, 9 FSM R. 95, 98 (Kos. S. Ct. Tr. 1999).

Once a forum selection clause is determined to be binding, its scope and effect should be determined under a contract law analysis. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 127 (Pon. 1999).

When the forum selection clause language uses "exclusive jurisdiction" in conjunction with the mandatory language, "hereby irrevocably consent," it establishes an intent to have any dispute resolved only by the other forum and it leaves no room for dispute over the clause's meaning in this respect. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 127 (Pon. 1999).

Contractual interpretation is a question of law to be reviewed de novo on appeal. Wolphagen v. Ramp, 9 FSM R. 191, 194 (App. 1999).

When a lease provides that the lessees have the right to build such structures as they see fit with the buildings to become the lessor's property upon the lease termination and the lessees built two houses, they built such structures as they saw fit, and in doing so defined the nature of those structures. Once built, those structures became the lessor's property, although not until the lease's termination. At that time, the lessor was entitled to find himself the owner of dwellings, not a bar. He was within his rights to prevent the houses from being renovated for use in that manner. Wolphagen v. Ramp, 9 FSM R. 191, 195 (App. 1999).

It is a well established principle of contract construction that clauses which are knowingly incorporated into a contract should not be treated as meaningless. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110 (Chk. 2001).

Ambiguity in a contract provision is generally construed against the drafter. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 111 (Chk. 2001).

In interpreting a contract, words are to be given their plain and ordinary meaning. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 115 (Kos. 2001).

A contract provision that states that a fishing association will "take necessary steps to facilitate prompt and adequate settlement of any claim for loss or damage" against its member vessels cannot be read to mean that the association assumed liability for those claims because to "facilitate" a settlement of a claim or loss, without more, does not mean to assume liability for the claim or loss. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 115 (Kos. 2001).

When contractual provisions differ significantly from similar ones in another contract they therefore must be interpreted differently, and a party's liability must be based on the language in the agreement it signed, not on the language in the agreement that another signed. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 173 (Chk. 2001).

Interpretations of contract terms are matters of law to be determined by the court. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 173 (Chk. 2001).

When a fishing agreement requires that the signatory organizations must only take "necessary steps to ensure" that their members comply with the laws, regulations, and their permits and the government has made no allegation and introduced no evidence that the signatory has failed to take any of these "necessary steps," the government cannot seek to impose some sort of strict liability on the signatory for the actions of its members' employees because the fishing agreement's terms, without more, do not create liability for the signatory organizations for each and every violation of FSM fishery law or the foreign fishing agreement that their members commit. The government is therefore not entitled to summary judgment because, as a matter of law, the foreign fishing agreement's contractual terms do not impose vicarious liability on the signatory. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 173-74 (Chk. 2001).

Construction of a contract for an attorney's compensation is governed by the same rules that apply to contracts generally and interpretation of contract terms are matters of law to be determined by the court. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 496 (Chk. 2002).

Contracts are not interpreted on the basis of one of the parties' subjective uncommunicated views or secret hopes. Instead, courts interpret and enforce agreements on an objective basis, according to the parties' reasonable expectations based upon the circumstances known to the parties and their words and actions, at the time the agreement was entered into. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 502, 504-05 (Pon. 2002).

The fact that a party's understanding of an agreement is at variance with its express terms does not raise an issue of fact precluding summary judgment. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 502, 505 (Pon. 2002).

Ambiguities in a contract must be construed against the drafter. Hauk v. Board of Dirs., 11 FSM R. 236, 241 (Chk. S. Ct. Tr. 2002).

In interpreting a contract, the words thereof are to be given their plain and ordinary meaning. Hauk v. Board of Dirs., 11 FSM R. 236, 241 (Chk. S. Ct. Tr. 2002).

When a contract provision for written notice of termination was inserted in the contract to assure that

the employee had actual notice of the adverse action and when there is no dispute that the employee received actual notice of his termination, the employer's failure to provide written notice is not actionable breach of contract. Hauk v. Board of Dirs., 11 FSM R. 236, 242 (Chk. S. Ct. Tr. 2002).

When an employment contract has no provision for immediate termination under any circumstances, even where it is undisputed that the employer's property was misappropriated by an employee under contract, the court, construing the contract against the drafter, must conclude that the employer was required to provide the employee with sixty days written notice of his termination, which must run from the date of actual notice of impending termination. Hauk v. Board of Dirs., 11 FSM R. 236, 242 (Chk. S. Ct. Tr. 2002).

When interpreting a contract, the FSM judiciary may not simply assume that reasonably intelligent Micronesians will perceive the same meaning as would reasonably intelligent Americans. The court may not blind itself to the pertinent aspects of Micronesian society, such as less facility in the English language, less exposure to business concepts, and paucity of legal resources, which might cause a reasonably intelligent Micronesian to perceive a meaning differently than would a person from some other nation. Phillip v. Marianas Ins. Co., 11 FSM R. 559, 563 n.4 (Pon. 2003).

Contracts are not interpreted on the basis of subjective, uncommunicated views or secret hopes of one of the parties. Instead, courts interpret and enforce agreements on an objective basis, according to the parties' reasonable expectations or understanding based upon the circumstances known to the parties and their words and actions, at the time the agreement was entered into. Goyo Corp. v. Christian, 12 FSM R. 140, 146 (Pon. 2003).

Only when there is ambiguity within a contract and there are various reasonable and practical alternative constructions available is it necessary to employ rules of interpretation. Otherwise, a party may not seek to introduce evidence that shows that the clear and unambiguous terms of a written agreement are other than as shown on the face of the agreement. Such a prohibition preserves the security and credibility of those who contract with the good faith belief that what they sign is what they agree to. Goyo Corp. v. Christian, 12 FSM R. 140, 146 (Pon. 2003).

The word "shall" renders the indicated procedures mandatory. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 239 (Pon. 2003).

Contracts frequently do not specify the time of performance and courts routinely decide what is a "reasonable time" for performance in those cases. Therefore, if the timing of a party's performance under a contract is in dispute, it is the court's duty to determine what is a "reasonable time" for performance. Esau v. Malem Mun. Gov't, 12 FSM R. 433, 435 (Kos. S. Ct. Tr. 2004).

A default judgment's determination of damages may require the court to interpret a contract's terms. Interpretations of contract terms are matters of law to be determined by the court. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 554 (Chk. 2005).

When the contract addendum language is plain and unambiguous that the extra $3,000 per year pay was contingent upon the employer actually obtaining OMIP funding, not upon the plaintiff's trying his best or taking all possible steps to obtain that funding, the plaintiff's base annual pay was $55,000, not $58,000, and $55,000 should be read into the contract in place of $58,000. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 555 (Chk. 2005).

Interpretation of contract provisions is a matter of law to be determined by the court. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 364 (Yap 2009).

A contract must be read as a whole in the light of the circumstances under which it was made and with the apparent purpose that the parties are trying to accomplish. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 365 (Yap 2009).

A court may not simply assume that reasonably intelligent Micronesians will perceive the same meaning as would reasonably intelligent Americans because the court will not blind itself to the pertinent aspects of Micronesian society, such as less facility in the English language, less exposure to business concepts, and paucity of legal resources, which might cause a reasonably intelligent Micronesian to perceive meaning differently than would a person from some other nation. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 365 n.2 (Yap 2009).

Disclaimers of the warranties of merchantability and fitness for a particular purpose for certain equipment, translated into plain English, mean that the equipment is not warrantied or guaranteed to be in the condition to be used for the purpose it is being supplied, that is, the equipment is supplied "as is." Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 367 (Yap 2009).

Since U.S. common law decisions are an appropriate source of guidance for contract and tort issues unresolved by statutes, decisions of FSM constitutional courts, or custom and tradition within the FSM, the Kosrae State Court will look to U. S. common law decisions for guidance on contract issues against the background of pertinent aspects of Micronesian society and culture. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644 (Kos. S. Ct. Tr. 2009).

A contract's prohibition of subcontracting includes independent contractors as well as those subcontractors over whom the contractor would exercise strict supervision and close control. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

Contracts are not interpreted and enforced on the basis of one party's subjective, uncommunicated views or secret hopes but on an objective basis based upon the parties' words and actions and the circumstances known to them when the contract was made. A court should try to determine the meaning of the contract's words rather than rely on what a signatory later says was intended. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 n.3 (Pon. 2011).

For the final expression of the parties' intent, the court relies primarily on the terms as expressed in the contract's words although when the contract language is ambiguous, it can look beyond the contract's words to the surrounding circumstances to determine the parties' intent without changing the writing. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 572 n.4 (Pon. 2011).

When waiver of the subcontracting prohibition can only be granted by the FSM's "prior written consent," the FSM's contracting officer's failure to object to subcontracting is not a waiver under the contract, nor can it be deemed an acceptance of subcontracting as in compliance with the contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 572 (Pon. 2011).

When a contract provision unequivocally authorizes a party's involvement in Asian Development Bank development projects since the ADB is a foreign donor organization and when there is no contractual provision requiring the party to contact foreign donor organizations only through the FSM diplomatic channels or requiring any particular procedure at all, the party's direct contact with the ADB may have caused puzzlement and delay by the ADB and become politically awkward for the FSM, but it was not a breach of the contract between the party and the FSM. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 579 (Pon. 2011).

When, in a contract, the nearest antecedent to the term "on a monthly basis" is "submission of duplicate invoices and progress reports," the phrase "on a monthly basis" qualifies when duplicate invoices and progress reports are due, not when payments are due because the grammatical construction of contracts generally requires that a qualifying or modifying phrase be construed as referring to its nearest antecedent. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 587 (Pon. 2011).

Contractual terms that provide that payment is due upon the occurrence of a stated event are generally not considered to be conditions indicating a forfeiture or a breach of contract but are merely a means of measuring time, and, if time is not of the essence of the contract, then the payment is due after a reasonable

time, and what constitutes a reasonable time depends on the attendant circumstances in each case and is often based on factual determinations. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 587-88 (Pon. 2011).

Interpretations of contract terms are matters of law to be determined by the court. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 588 (Pon. 2011).

When the previously agreed percentages for completed work should be sufficient for a court to determine a contract price for any work done during the contract's last three years; when there is no indication that these same percentages were not intended for use throughout the contract's remaining three years and the overall grant award from the U.S. had a set figure; and when, if the parties thought that the payment terms for the contract's last three years were uncertain, the contract could be amended at any time with or without additional consideration, the court cannot conclude that there was no contract beyond the first two years because no prices had been set for the last three years or that there was no consideration for the last three years. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 589 (Pon. 2011).

Since interpretation of contract provisions is a matter of law to be determined by the court, an appellate court will review de novo the interpretation of contract provisions. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143 (App. 2013).

Interpretation of contract provisions is a matter of law to be determined by the court, and an appellate court reviews issues of law de novo. Smith v. Nimea, 19 FSM R. 163, 169 (App. 2013).

Appellate courts interpret contract language de novo. Smith v. Nimea, 19 FSM R. 163, 171 (App. 2013).

When the contract language is clear and the record is clear, the appellate court may, on an alternate ground, affirm the trial court's decision denying an employee's claims for wages and overtime claims when the state administrative decision found as fact that he worked only on the projects for which he was paid a commission and when that decision was necessarily before the trial court when it was asked to grant partial summary judgment. Smith v. Nimea, 19 FSM R. 163, 171 (App. 2013).

When, under the employment contract, compensation is to be figured on the "net total amount for the specific job" not on the net total amount for only a part of the contract job, the employee's commission compensation must be figured on a contract job by contract job basis, not on a task-by-task basis within the contract job. Smith v. Nimea, 19 FSM R. 163, 172 (App. 2013).

A court will enforce a contract as written. Contracts are not interpreted and enforced on the basis of one party's subjective views or secret hopes but on an objective basis based upon the meaning of the contract's words rather than on what a signatory later says. Smith v. Nimea, 19 FSM R. 163, 172 (App. 2013).

When the contract's words mean that the employee's compensation must be based on a prorated share of the time spent on the project, the trial court did not err by concluding that the employee's compensation was based on the proportion of the time spent since that is what the contract required. Smith v. Nimea, 19 FSM R. 163, 172 (App. 2013).

A contract must be interpreted on an objective basis, based upon the parties' intent at the time of contracting. Harden v. Inek, 19 FSM R. 244, 249-50 (Pon. 2014).

The controlling factor in interpretation of contracts is the parties' intention at the time of entering into the contract. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 274 (Pon. 2014).

When a contract's language is ambiguous or uncertain, a court may look beyond the words of the contract to the surrounding circumstances and the parties' intent without changing the writing. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 274 (Pon. 2014).

Contracts are not interpreted on the basis of subjective uncommunicated views or secret hopes of one of the parties, but on an objective basis according to the parties' reasonable expectations or understanding based upon circumstances known to the parties and their words and actions when the agreement was entered into. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 274 (Pon. 2014).

When, given the plaintiffs' work experience, the objective intent of the parties must have been for the plaintiffs to perform work on a barge, the only two possibilities of the parties' intent that are in any way supported by the contract's context are for the contract term "project" to refer either to the barge's conduction voyage or to its conduction voyage and subsequent dredging activity. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 274 (Pon. 2014).

Common law decisions of the United States are an appropriate source of guidance for the FSM Supreme Court for contract issues unresolved by statutes, decisions of constitutional courts, or custom and tradition within the FSM. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 275 (Pon. 2014).

The court's precedents establish the validity of the principle of *contra proferentem* – any ambiguity in a contract is to be construed against the drafter – in this jurisdiction. But the rule that language is interpreted against the party who chose it has no direct application to cases where the language is prescribed by law. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 275 (Pon. 2014).

When one party chooses a contract term he is likely to provide more carefully for the protection of his own interests than for those of the other party. However, when the government mandates the specific contract language, neither party can directly impact the language through superior bargaining power and so the rule of *contra proferentem* does not apply. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 275 (Pon. 2014).

A rationale for the rule of *contra proferentem* is that the party against whom it operates had the possibility of drafting the language so as to avoid the dispute. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 275 (Pon. 2014).

When the employer could not have drafted the contract's duration clause differently because the language was mandated by a government agency, the policy rationale behind the doctrine of *contra proferentem* is inapplicable and the court will not use it to interpret the term "project" in the contract's duration clause. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 275 (Pon. 2014).

When the defendant arranged accommodation for its crew at a hotel and the crew members signed a check-in form that specified the check-out date as January 15, 2011, and since the January, 15 2011 check-out date not an ambiguous term, the meaning of the term is a question of law. The court will interpret the term according to its plain meaning that as a matter of law the contract ran through January 15, 2011. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 277 (Pon. 2014).

When a court is presented with a valid contract that lacks a duration clause, it must construct one into the contract using the guideline of reasonableness. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 277 (Pon. 2014).

When, under the circumstances, a reasonable duration term would be that the parties intended the crew to remain until the defendant provided the hotel with notice that accommodations were no longer required and when two of the crew members departed before January 27, 2011, and the hotel duly checked them out of the hotel and closed their account, this course of performance aids the court in determining that the parties intended the contract's duration to be that the crew members remain until the hotel was notified that accommodations were no longer required. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 277 (Pon. 2014).

Contracts frequently do not specify the time of performance and courts routinely decide what a reasonable time for performance is when no time has been specified. Eot Municipality v. Elimo, 19 FSM R.

290, 295 (Chk. 2014).

When repayment of the airport renovation loan was due a reasonable time after the $500,104.65 partial payment and when, without identifying the exact date that would constitute a reasonable time after the partial payment that the repayment should be complete, the court is confident that, based on the attendant circumstances, that time frame would be within the six-year period before suit was filed on January 24, 2012. Eot Municipality v. Elimo, 19 FSM R. 290, 295 (Chk. 2014).

What constitutes a reasonable time depends on the attendant circumstances in each case and is often based on factual determinations. Eot Municipality v. Elimo, 19 FSM R. 290, 295 (Chk. 2014).

Contracts are not interpreted on the basis of subjective, uncommunicated views or secret hopes of one of the parties. Instead, courts interpret and enforce agreements on an objective basis, according to the parties' reasonable expectations or understanding based upon the circumstances known to the parties and their words and actions, at the time the agreement was entered into. Johnny v. Occidental Life Ins., 19 FSM R. 350, 357 (Pon. 2014).

Whether the term "costs" in a verbal contract between a client and his attorney included attorney's fees is a question of contract interpretation that must be resolved by the court as a matter of law. Damarlane v. Damarlane, 19 FSM R. 519, 523 (Pon. 2014).

Since a sophisticated lawyer negotiating against her own client should have reduced the agreement to writing and specified that "costs" included attorney's fees, the court will not reward the attorney's flawed conduct by imposing her interpretation of the term "costs" on her client more than 20 years after they entered into the representation agreement. Damarlane v. Damarlane, 19 FSM R. 519, 524 (Pon. 2014).

Whether a breach of contract has occurred is generally not a question of law but is rather a factual question, but when the facts are undisputed, the determination of whether there has been a material non-compliance with a contract's terms is necessarily reduced to a question of law. George v. Palsis, 19 FSM R. 558, 564 (Kos. 2014).

When only the construction of a contract is at issue, the legal effect and interpretation of the contract is a question of law, and summary judgment is proper. George v. Palsis, 19 FSM R. 558, 565 (Kos. 2014).

A written instrument, such as a contract, must be read as a whole and in the light of the circumstances under which it was made. George v. Palsis, 19 FSM R. 558, 565 (Kos. 2014).

When the Personnel Manual, read as a whole, authorizes the payment of the full amount (if it is 600 hours or less) of accrued annual leave to a former employee only when that employee has resigned with two weeks' written notice, the result must be that an employee's right to accrued annual leave pay is contingent upon certain events and if those events do not occur, the right never becomes a vested property interest. When it is undisputed that those events (written resignation with two weeks' notice) never occurred, the former employee, as a matter of law, did not have a vested property interest in his accrued annual leave. George v. Palsis, 19 FSM R. 558, 566 (Kos. 2014).

A court should endeavor to determine the meaning of a contractor's words, rather than rely on what a signatory later says was intended. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 223-24 (Pon. 2015).

The interpretation of terms within contracts constitutes a matter of law to be determined by the court. Hairens v. Federated Shipping Co., 20 FSM R. 404, 408 (Pon. 2016).

An insurance contract in the FSM that made reference to "the benefits provided under the Workers' Compensation of the CNMI," only intended to merely utilize 4 N. Mar. I. Code § 9310 to ascribe a dollar amount to the benefits to which an injured employee would be entitled, as opposed to adopting the entire CMNI Workers' Compensation Program. Hairens v. Federated Shipping Co., 20 FSM R. 404, 408 (Pon.

2016).

In interpreting a contract, the words thereof, are to be given their plain and ordinary meaning. Hairens v. Federated Shipping Co., 20 FSM R. 404, 408 (Pon. 2016).

Clauses that are knowingly incorporated into a contract should not be treated as meaningless. Hairens v. Federated Shipping Co., 20 FSM R. 404, 408 (Pon. 2016).

Any ambiguities in a contract provision should be construed more strictly against the party who wrote it. Hairens v. Federated Shipping Co., 20 FSM R. 404, 408 (Pon. 2016).

Questions of contract interpretation are matters of law to be determined by the court. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 (App. 2016).

When a letter signed by both parties clearly states that the partial payments were a "repayment plan for the outstanding balance of the loan," it cannot be interpreted in any way other than as an acknowledgment of the whole debt and that the agreed $100 payments were partial payments on the whole debt. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 (App. 2016).

Interpretation of contract provisions is a matter of law to be determined by the court. Eot Municipality v. Elimo, 20 FSM R. 482, 489 (Chk. 2016).

Since the Chuuk State Supreme Court has generally, except when a Chuuk statute or constitutional provision is applicable, followed common law contract principles in deciding contract cases, the court will apply common law contract rules. Common law decisions of the United States are thus an appropriate source of guidance for the FSM Supreme Court for contract issues unresolved by statutes, decisions of constitutional courts, or custom and tradition within the FSM. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 127 n.1 (Chk. 2017).

– Mistake and Misunderstanding

Where fraud or mistake are involved, the court can reform or cancel a deed, but relief will be denied in either situation if the misunderstanding of the aggrieved party was caused by his unexplained failure to read the necessary documents. Melander v. Kosrae, 3 FSM R. 324, 329 (Kos. S. Ct. Tr. 1988).

The doctrine of unjust enrichment generally applies where there is an unenforceable contract due to impossibility, illegality, mistake, fraud, or another reason and requires a party to either return what has been received under the contract or pay the other party for it. The unjust enrichment doctrine is based on the idea one person should not be permitted unjustly to enrich himself at the expense of another. Etscheit v. Adams, 6 FSM R. 365, 392 (Pon. 1994).

The parol evidence rule generally prohibits the introduction of any extrinsic evidence, whether oral or written, to vary, alter or add to the terms of an integrated written instrument, but parol evidence is generally held admissible to alter the terms of a written contract when it is shown that by reason of mutual mistake the parties' true intention is not expressed. FSM Dev. Bank v. Arthur, 10 FSM R. 479, 480 (Pon. 2001).

In the case of mutual mistake the adversely affected party may rescind or avoid the contract. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

A mutual mistake occurs when both parties are under substantially the same erroneous belief as to the facts. In a mutual mistake case, the party adversely affected must show that: 1) the mistake goes to a basic assumption on which the contract was made; 2) the mistake has a material effect on the agreed exchange of performances; and 3) the mistake is not one of which he bears the risk. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

When the mistake did not go to a basic assumption upon which the contract (loan) was made; when the mistake had no effect on the agreed exchange of performances – the loan terms offered by the bank and accepted and agreed to by the borrower were not a result of the "mistake"; and when both parties were not under substantially the same erroneous belief as to the facts that were the basis of the agreement, there was no mutual erroneous belief about the facts which were the basis for the loan and its terms and it is not a case of mutual mistake. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

Contracts are not reformed for mistake, writings are. The distinction is crucial. Courts have been tenacious in refusing to remake a bargain entered into because of mistake. They will, however, rewrite a writing which does not express the bargain. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

The classic case for reformation is a scrivener's or typist's error. Reformation is available in the case of the omission of a term agreed on, the inclusion of a term not agreed on, or the incorrect reduction of a term to writing. At the simplest level it is the mechanism for the correction of typographical and other similar inadvertent errors in reducing an agreement to writing. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

The variance between the original agreement and the writing may take any one of an infinity of conceivable forms. Often, the mistake is as to the legal effect of the writing; the parties' agreement called for a particular legal result. The writing, if enforced, produces a different result. Reformation is available. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

Where, because of mistake, a writing fails to accurately state the parties' agreement, reformation is the exclusive remedy. If the writing is inaccurate because of fraud, the alternative remedies of reformation and rescission are available. But when no allegation of fraud has been made, rescission is not an available remedy. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

– Modification

The parol evidence rule does not bar evidence of subsequent modification of the contract. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 251 (Chk. 1995).

The court will find that the parties' verbal agreement was not modified later by any of the parties' later actions when the plaintiff has failed to sustain his burden of proof with respect to those later actions. Tulensru v. Utwe, 9 FSM R. 95, 98 (Kos. S. Ct. Tr. 1999).

When both plaintiff and defendant were aware of the project's changed specifications; when defendant was present at the project site on the first day of construction and on several days throughout the project term; when defendant had ample notice and knowledge that the project specifications had been changed; and when defendant did not, at any time, notify, stop or interfere with plaintiff's work and completion of the project, it would be unfair to enforce the contract term that required a writing signed by both parties to amend the agreement's terms and conditions. The parol evidence rule does not bar evidence of subsequent modification of a contract. Malem v. Kosrae, 9 FSM R. 233, 236 (Kos. S. Ct. Tr. 1999).

When a contract was later modified verbally by the parties to require a monthly rental payment of $150 for the first year of the agreement, in addition to the agreed upon repairs to be completed by the defendant, this verbal modification of the lease agreement is enforceable. Lonno v. Talley, 12 FSM R. 484, 486 (Kos. S. Ct. Tr. 2004).

When there was a binding purchase agreement between a land buyer and a clan land seller and the plaintiffs were intended beneficiaries of that contract and when that contract could only be modified by a consensus decision by the seller's clan members evidenced by the agreement of five or more of the six designated clan members but the purported modification did not contain five genuine signatures of the designated committee representatives, there was a breach of the purchase agreement entitling plaintiffs to damages. Edgar v. Truk Trading Corp., 13 FSM R. 112, 117-18 (Chk. 2005).

Although the written contract required the plaintiffs to give the defendant a non-refundable retainer fee of $5,000, the defendant waived this requirement when he only required $500, altering the contract. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 647 (Kos. S. Ct. Tr. 2009).

Whether a contract has been modified by the parties thereto is ordinarily a question of fact for the finder of fact. Harden v. Inek, 19 FSM R. 244, 250 (Pon. 2014).

Since modification is a common law doctrine in the field of contracts, the court will consider United States decisions as an appropriate source of guidance in analyzing unresolved questions arising in the area of contracts. Under longstanding principles of common law, a contract may be modified with both parties' assent, provided that there is consideration for the new agreement or it is made under circumstances making consideration unnecessary. Harden v. Inek, 19 FSM R. 244, 250 (Pon. 2014).

A subordinate and separable part of the contract may be waived or modified by the parties without a cancellation of the whole contract. Harden v. Inek, 19 FSM R. 244, 250 (Pon. 2014).

When it is clear that the parties did not reach a meeting of the minds necessary to modify the contract, the absence of mutual assent makes the doctrine of modification inapplicable. Harden v. Inek, 19 FSM R. 244, 250 (Pon. 2014).

– Necessity of Writing

Under a statute of frauds writings are not required to make a contract, but to provide evidence that a contract has been made. A writing meets the statute of frauds if it contains the names of the parties, terms and conditions of the contract, a reasonable description of the subject of the contract and is signed by the party to be charged. It need not state the particulars of the contract so long as its substance or essential terms are stated, and it need not be a single document, but may be pieced together from separate writings. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 620 (App. 1996).

When the leading object of a party promising to pay the debt of another is to promote his own interests, and not to become surety or guarantor, and the promise is made on sufficient consideration, it will be valid, although not in writing. Adams v. Island Homes Constr., Inc., 9 FSM R. 530a, 530d (Pon. 2000).

There is no statute of frauds – a law requiring that certain agreements or contracts to be in writing before they are enforceable in court – in Chuuk. Customarily, any agreement, even that selling land, might be oral. Marcus v. Truk Trading Corp., 10 FSM R. 387, 389 (Chk. 2001).

There is no statute of frauds in Chuuk, that is, no legal requirement that there be a writing for there to be an enforceable contract. Under Chuukese customary law, no writing is needed to effect any contractual transaction, including the transfer of an interest in land. Nakamura v. Moen Municipality, 15 FSM R. 213, 217 (Chk. S. Ct. App. 2007).

There is no statute of frauds – a law requiring that certain agreements or contracts to be in writing before they are enforceable in court – in Chuuk. Customarily, any agreement, even that selling land, might be oral, but in some situations, a customary oral transfer must be registered to be enforceable. The reason is not that the Torrens land registration system must supplant custom and tradition. Rather, the reason is one of evidence because certificates of title are prima facie evidence of ownership as stated therein against the world. Setik v. Ruben, 17 FSM R. 465, 472 (App. 2011).

Chuuk does not have a statute of frauds. Killion v. Nero, 18 FSM R. 381, 384 (Chk. S. Ct. Tr. 2012).

There is no statute of frauds in the FSM Code. The relevant statutes do not require salvage contracts, or maritime contracts of any kind, to be in writing in order to be enforceable. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 9 (Pon. 2013).